

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

BAADE ENERGY LIMITED

(a company registered in England no 7818063)
("the Company")

**WRITTEN RESOLUTIONS
OF
MEMBERS**

Circulation Date: 11/11 2011
Date Passed: 11/11 2011

THURSDAY



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17/11/2011
COMPANIES HOUSE

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006 ("the Act"), the directors of the Company propose that following resolutions be passed as ordinary and special resolutions as indicated ("the Resolutions")

ORDINARY RESOLUTION

- 1 **THAT** each of the issued ordinary shares of 1p be and hereby is redesignated into "B" ordinary shares of 1p each in the capital of the Company ("B" Ordinary Shares"), having the rights set out in the Articles proposed to be adopted pursuant to Resolution 2 below

SPECIAL RESOLUTION

- 2 **THAT** the articles of association attached hereto be and hereby are adopted as the articles of association of the Company in substitution for the existing articles of association ("Articles")

ORDINARY RESOLUTION

- 3 **THAT** the directors be and hereby are generally and unconditionally authorised in accordance with section 551 of the Act to allot shares in the Company or to grant rights to subscribe for, or to convert any security into, shares in the Company up to an aggregate nominal value of £200,000, provided that such authority shall (unless previously revoked or varied by the Company in general meeting) expire on the fifth anniversary of the date hereof and save that the directors may allot relevant securities pursuant to this authority after that date pursuant to an offer or agreement made by the Company on or before that date

SPECIAL RESOLUTION

- 4 **THAT** pursuant to the authority granted in accordance with section 551 of the Act by resolution 3 above, and in accordance with Article 6 2 of the Articles, the pre-emption provisions of Article 6 1 of the Articles or any other provision of pre-emption

under the Act, shall not apply to the issue of "B" Ordinary Shares pursuant to, or as contemplated by, the investment agreement proposed to be entered into between the Company (1), the EIS Investors (as defined therein) (2), Lightsource Renewable Energy Limited (3), Octopus Investments Limited (4) and Octopus Investments Nominees Limited (5) ("the Investment Agreement")

ORDINARY RESOLUTIONS

- 5 **THAT** the entering into of the Investment Agreement be and hereby is approved for all purposes
- 6 **THAT**, subject to and with effect from, the first allotment of "B" Ordinary Shares pursuant to the Investment Agreement, the "B" Ordinary Share each held by OCS Services Limited and Octopus Nominees Limited be and hereby is redesignated as a deferred share of 1p in the capital of the Company ("Deferred Shares"), having the rights set out in the Articles

SPECIAL RESOLUTION

- 7 **THAT** to the extent that consent is required from the holders of "B" Ordinary Shares to the passing and implementation of any of the above resolutions, by agreeing to the above resolutions such consent is hereby given by the holders of all of the issued shares of such class

AGREEMENT TO WRITTEN RESOLUTIONS

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

The undersigned, being the persons entitled to vote on the Resolutions on the circulation date set out above, hereby irrevocably agree to the passing of the Resolutions



For and on behalf of OCS Services Limited

11 NOV 2011

Date of signature



For and on behalf of Octopus Nominees Limited

11 NOV 2011

Date of signature

NOTES If you wish to agree to the Resolutions, please indicate your agreement by signing and dating this document where indicated and returning it to the Company at the Company's registered office or for the attention of Kim Hawkins by fax on 0800 763 1812 or by email (in PDF format) to kim.hawkins@martineau-uk.com If you do not agree to the Resolutions you need not do anything. You will not be deemed to agree if you fail to respond. Once you have indicated your agreement to the Resolutions you may not revoke your agreement. Unless by the end of the period of 28 days beginning with the circulation date set out above sufficient agreement has been received for the Resolutions to be passed they will lapse.

CPU

Company Number: 7818063

THE COMPANIES ACT 2006
PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION
OF
BAADE ENERGY LIMITED

(Adopted on 11 November 2011)

Reference KXP/OC826 71



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THE COMPANIES ACT 2006
PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

BAADE ENERGY LIMITED

("the Company")

1 APPLICATION OF MODEL ARTICLES

1 1 The model Articles of association for private companies limited by shares contained in Schedule 1 of the Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended at the date of adoption of these Articles ("**the Model Articles**") shall apply to the company save in so far as they are excluded or modified by these Articles

1 2 Notwithstanding that the company is a private company, certain Articles contained in the model articles of association for public companies contained in Schedule 3 of the Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended at the date of adoption of these Articles ("**the Model PLC Articles**") shall apply to the company, but only where expressly incorporated into these Articles Where so expressly incorporated, any reference in a Model PLC Article to a "**member**" shall in these Articles be deemed to be a reference to a "**shareholder**"

2 INTERPRETATION

2 1 Without prejudice to any other definitions contained elsewhere in these articles, the following words and expressions shall in these articles have the meanings set out or referred to opposite each respectively (unless the context otherwise requires)

"the Act"	means the Companies Act 2006,
"Acceptance Period"	the period during which an offer made under Article 11 7 is open for acceptance,
"Agreed Terms"	the form signed or initialled on behalf of the Company and by Martineau on behalf of the "B" Ordinary Shareholders,
"Articles"	these articles of association
"Auditors"	the auditors for the time being of the Company,

““B” Ordinary Shareholders”	the holders for the time being of the issued “B” Ordinary Shares (and each a ““B” Ordinary Shareholder”),
““B” Ordinary Shares”	the “B” ordinary shares of 1p each in the capital of the Company and having the rights ascribed thereto as set out in these Articles,
““B” Ordinary Share Specified Total Return”	a Total Return to the Investors who at the time of any such return are holders of “B” Ordinary Shares of not less than £1 12,
“Beneficial Owner”	as defined in Article 10 2,
“the Called Shareholders”	as defined in Article 16 1,
“the Companies Acts”	as defined in the 2006 Act,
“company”	includes any body corporate,
“Conflicting Situation”	a situation in which a director has, or can have, a direct or indirect interest that conflicts, or may possibly conflict, with the interests of the Company, including in relation to the exploitation of any property, information or opportunity and regardless of whether the Company could take advantage of the property, information or opportunity itself,
“Connected”	as defined by Section 993 of the Tax Act, provided however that (for the purposes of Articles 4 1 4, 4 2 6 and 4 3 3) any determination of fact as to whether two or more persons are acting together shall, in the absence of any ruling by the HMRC, be made by the tax advisers appointed by the Investors 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 members,
“Deferred Shareholders”	the holders for the time being of the issued Deferred Shares,
“Deferred Shares”	the deferred shares of 1p each in the capital of the Company and having the rights (and being subject to the restrictions) ascribed thereto as set out in these Articles,
“the Directors”	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 directors of the Company,
“the Drag Along Price”	as defined in Article 16 1,
“the Drag Along Right”	as defined in Article 16 1,
“Effective Date”	the date on which the Company first acquires a wholly owned subsidiary as contemplated by the Project

	Services Agreement,
"EIS Investors"	as defined in the Investment Agreement,
"eligible director"	means in relation to any matter a director who would be entitled to vote on the matter concerned at a meeting of directors, but excluding any director whose vote is not to be counted in respect of the matter concerned,
"equity share capital", "holding company" and "subsidiary undertaking"	shall have the meanings set out in Sections 548, 1159 and 1162 of the 2006 Act,
"Excluded Person"	<p>(i) 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 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), and/or</p> <p>(ii) any Member or other person who has been required to give a Transfer Notice under Article 12 1 or Article 14 (whether or not that requirement has been complied with),</p>
"the Investment Agreement"	the investment agreement in Agreed Terms to be entered into on the date hereof between the Company (1), the Director (as therein defined) (2), the EIS Investors (as defined therein) (3), Lightsource Renewable Energy Limited (4), Octopus Investments Limited (5) and Octopus Investments Nominees Limited (6),
"Investors"	the EIS Investors (or their nominees), such expression to include (where the context permits) any other holder for the time being of "B" Ordinary Shares,
"Investor Affiliate"	the fund manager or advisor to any Investor or to any fund in which any Investor participates or an employee, member or partner of the fund manager or adviser to any Investor or to any such fund;
"Investor Director"	a person appointed as a director of the Company pursuant to Article 22 1,
"Investor Majority"	the holders of not less than one half of the total number of "B" Ordinary Shares for the time being in issue,
"Issue Price"	the aggregate amount paid up (or credited as paid up) in respect of the nominal value thereof and any share premium thereon,
"Legislation"	Chapter 4, Part 5 of the Tax Act,

"Lightsource"

Lightsource Renewable Energy Limited (registered in England and Wales with registration number 07129343),

"Lightsource Associate"

any person, firm or company which is for the time being Connected with Lightsource and (without prejudice to that and whether or not they are Connected with Lightsource for the purpose of these Articles) any or all of the following

- (i) any subsidiary undertaking of Lightsource (or of any other company which would itself be a Lightsource Associate) or any other company in which Lightsource (or any other company which would itself be a Lightsource Associate) or any holder of shares in Lightsource (or any person, firm or company which is for the time being Connected with any holder of shares in Lightsource) has an interest (direct or indirect and whether legal or beneficial including (but without limitation) as the holder or beneficial owner of any shares or other securities in its capital) or to which Lightsource (or of any other company which would itself be a Lightsource Associate) has advanced any sums by way of loan,
- (ii) any limited liability partnership or any unincorporated body of any description and in any jurisdiction in which Lightsource (or any other company which would itself be a Lightsource Associate) or any holder of shares in Lightsource (or any person, firm or company which is for the time being Connected with any holder of shares in Lightsource) has an interest (whether direct or indirect and whether legal or beneficial),
- (iii) any person, firm or company to which Lightsource (or any other company which would itself be a Lightsource Associate) or any holder of shares in Lightsource (or any person, firm or company which is for the time being Connected with any holder of shares in Lightsource) has been a provider of energy, goods or services or with whom Lightsource has had any other contractual relationship within the period of 2 years immediately prior to the date on which the application of this definition falls to be considered and any person, firm or company Connected with any such person, firm or company,

and, if, at the time when the application of this definition falls to be considered, there are any contractual or other arrangements in place (whether conditional or unconditional and including any option or similar arrangement) which, when implemented, would lead to any person, firm or company becoming a Lightsource Associate, then such person, firm or company shall be deemed to be a Lightsource Associate,

"Listed or Listing"

the admission of all or any of the shares in the capital of the Company (or any part thereof) to

- (i) the Official List of the UK Listing Authority and the admission of all or any of such shares to trading on the main market of the London Stock Exchange
- (ii) trading on the Alternative Investment Market, or
- (iii) trading on any recognised investment exchange as defined by Section 285 of the Financial Services and Markets Act 2000, or
- (iv) trading on the New York or American Stock Exchange or the NASDAQ National market in the United States of America, or
- (v) trading on the Neuer Market, or
- (vi) trading on such other stock exchange as an Investor Majority may agree with the Offeror,

"Member"

a holder of "B" Ordinary Shares,

"a Member of the same Group"

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,

"Model Articles"

has the meaning given in Article 1,

"Model PLC Articles"

has the meaning given in Article 1,

"New Member"

has the meaning given in Article 16 7,

"Offer"

either

- (i) an offer to purchase all the "B" Ordinary 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
- (ii) 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 "B" Ordinary 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,

"the Offeror"	as defined in Article 16 1,
"the Prescribed Price"	the price per Sale Share agreed or determined pursuant to Article 11 4 or, determined pursuant to Article 11 5 or as the case may be, the price per Sale Share specified by the Investors pursuant to a transfer made in accordance with Article 10 2 1,
"Project Services Agreement"	the Project Services Agreement in Agreed Terms, to be entered into between the Company and Lightsource on or about the date of adoption of these Articles,
"Proposing Transferee"	as defined in Article 15 1,
"Proposing Transferor"	a Member proposing to transfer or dispose of "B" Ordinary Shares or any interest therein,
"Purchaser"	a Member willing to purchase "B" Ordinary Shares comprised in a Transfer Notice,
"the Relevant Transaction"	as defined in Article 15 1,
"Sale"	completion of the transaction(s) by which an Offer has arisen,
"the Sale Shares"	all "B" Ordinary Shares comprised in a Transfer Notice,
"Sale Value"	<p>a sum equal to the aggregate of any proceeds of a Sale in excess of the amount necessary to give each of the Investors a Total Return of an amount equal to or greater than the "B" Ordinary Share Specified Total Return which relates to the "B" Ordinary Shares which they hold plus an amount equal to</p> <p>(a) all Success Fees (as defined in the Project Services Agreement) paid to Lightsource on or before the date on which such Sale takes place, and</p> <p>(b) all distributions made by the Company to the "B" Ordinary Shareholders (whether such distribution takes the form of a distribution of any of the profits of the Company, a return of assets on a liquidation or capital reduction or similar) after the date on which each of the Investors has received a Total Return of an amount which brings the provisions of Articles 4 2 4 to 4 2 6 into operation,</p>

"the Specified Proportions"	as defined in Article 4 2 6,
"Tax Act"	the Income Tax Act 2007 as amended,
"Total Return"	the total return (whether such return takes the form of a distribution of any of the profits of the Company, a return of assets on a liquidation or capital reduction or similar or by way of proceeds on a Sale or Listing) received by each of the Investors in respect of its total investment in the Company (whether such investment takes place by way of subscription for shares or otherwise), divided by the amount of the total investment in the Company by the Investor concerned,
"Transfer Notice"	a written notice served by a Member on the Company, in accordance with Article 11 or deemed to have been served pursuant to either Article 12 or Article 13,
"the Vendors"	as defined in Article 16 1

- 2 2 Save as otherwise specifically provided in these Articles, words and expressions which have particular meanings in the Model Articles shall have the same meanings in these Articles, subject to which and unless the context otherwise requires, words and expressions which have particular meanings in the Act shall have the same meanings in these Articles
- 2 3 Any reference in these Articles to any provision of any statute or to any other legislative provision shall be deemed to include a reference to any statutory or other legislative modification or re-enactment of that provision from time to time in force
- 2 4 In these Articles, where the context so permits, words importing the singular number shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter and vice versa, words importing persons shall include bodies corporate, unincorporated associations and partnerships
- 2 5 The headings to each of the Articles are inserted for ease of reference only and shall not affect the construction or interpretation of these Articles
- 2 6 A references in these Articles to an **"Article"** followed by a particular number is a reference to the relevant Article of these Articles bearing that number A reference in these Articles to a **"Model Article"** followed by a particular number is a reference to the relevant article of the Model Articles bearing that number A reference in these Articles to a **"Model PLC Article"** followed by a particular number is a reference to the relevant article of the Model PLC Articles bearing that number
- 2 7 Where provisions of the Model PLC Articles are expressly incorporated into these Articles, words and expressions ascribed a particular meaning by the Model PLC Articles shall have the same meanings in these Articles in relation thereto
- 2 8 Any phrase introduced by the terms **"including"**, **"include"**, **"in particular"** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms

3 **SHARE CAPITAL**

In these Articles, unless the context requires otherwise, references to "B" Ordinary Shares shall include "B" Ordinary Shares issued after the date of adoption of these Articles

4 SHARE RIGHTS

The "B" Ordinary Shares shall have, and be subject to, the following rights and restrictions

4 1 Income

4 1 1 The distribution of any profits of the Company shall require the prior approval of the Members by special resolution

4 1 2 Subject to the provisions of Article 5 1, the profits of the Company which the Company may so resolve to distribute shall be distributed amongst the holders of "B" Ordinary Shares *pari passu* in proportion to the amounts paid up or credited as paid up in relation to the nominal value only of the "B" Ordinary Shares held by them respectively

4 1 3 No dividend shall be payable unless an Investor Majority consents in writing (such consent not to be unreasonably withheld or delayed)

4 1 4 Notwithstanding the foregoing, in order to comply with the Legislation, no single company which is a holder of "B" Ordinary 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 expressions "**participator**" and "**loan creditor**" shall bear the meanings respectively given 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 5 Model Articles 30 to 34 (inclusive) shall be subject to this Article 4 1

4 2 Capital

4 2 1 On a return of assets on a liquidation or capital reduction or similar, the assets of the Company remaining after the payment of its liabilities and after providing for the amount payable to the Deferred Shareholders pursuant to Article 5 1 3 shall be distributed amongst the holders of "B" Ordinary Shares *pari passu* in proportion to the amounts paid up or credited as paid up in relation to the nominal value only of the "B" Ordinary Shares held by them respectively,

4 2 2 Subject to the provisions of Article 4 2 3, the proceeds of any Sale of the Company shall be distributed amongst the holders of the "B" Ordinary Shares and of the Deferred Shares in the same priority as set out in Article 4 2 1 as if the proceeds of such Sale represented all of the assets of the Company available for distribution to the holders For the avoidance of doubt, in the event of a Sale, this Article 4 2 2 shall apply notwithstanding anything to the contrary in the terms of such Sale, whether in the agreement for Sale or otherwise

4 2 3 If the effect of the application of Article 4 2 2 is to give the Investors who at the relevant date hold "B" Ordinary Shares (the "Relevant Investors") an amount equal to or greater

than the "B" Ordinary Share Specified Total Return on or before the forty second month after the Effective Date, a proportion of the proceeds of the Sale which is equal to the Sale Value shall be distributed between the Relevant Investors and the Deferred Shareholders (between the relevant class in proportion to the amounts paid up or credited as paid up in relation to the nominal value only of such shares held by them respectively) in the Specified Proportions

- 4 2 4 If the effect of the application of Article 4 2 2 is to give the Relevant Investors the "B" Ordinary Share Specified Total Return, any part of the Sale Value which would otherwise have been distributed to the Relevant Investors shall be distributed between the Relevant Investors and the Deferred Shareholders (in proportion to the amounts paid up or credited as paid up in relation to the nominal value only of such shares held by them respectively, but subject to the provisions of the final paragraph of Article 4 2 6) in the Specified Proportions
- 4 2 5 If, however, the Offeror becomes a Lightsource Associate at any time within the period of three years after the application of Article 4 2 3 or Article 4 2 4 (or if it is subsequently discovered that the Offeror was a Lightsource Associate at that time), then the Deferred Shareholders (whose obligations in this shall be joint and several) shall account to the Investors for any proceeds which they have received but which they would not have received were it not for the application of the foregoing Article 4 2 3 or (as the case may be) Article 4 2 4
- 4 2 6 For the purposes of Article 4 2 3 and Article 4 2 4, "**Specified Proportions**" shall mean, as between the Deferred Shareholders and the Investors, the respective proportions to be calculated by reference to the following provisions of this Article 4 2 6
- 4 2 6 1 if the Investors holding "B" Ordinary Shares have achieved a Total Return on or before the last day of the forty second month after the Effective Date of at least £1 15, the percentage attributable to the Investors (which shall be distributed between them *pari passu* in proportion to the amounts paid up or credited as paid up in relation to the nominal value only of the "B" Ordinary Shares held by them respectively) shall be 20% and the percentage attributable to the holders of the Deferred Shares shall be 80% (which shall be distributed between such holders on a like basis),
- 4 2 6 2 if the Investors holding "B" Ordinary Shares have achieved a Total Return on or before the last day of the forty second month after the Effective Date which exceeds the "B" Ordinary Share Specified Total Return but is less than £1 15, the percentage attributable to the holders of the Deferred Shares shall be determined by reference to the following formula (and the balance shall then be attributable to the Investors (and shall be distributed between them on the basis set out in Article 4 2 4 but subject to the provisions of the final paragraph of this Article 4 2 6)),

$$X = A \times 80\%$$

Where

X = the percentage attributable to the holders of the Deferred Shares

A = (the Total Return to the holders of the "B" Ordinary Shares - 1 12/0 03)

For the avoidance of doubt, in the above formula, "Z" shall be £nil if the Total Return to the holders of the "B" Ordinary Shares is less than £1 12

In addition, any such payments as are referred to in (a) or (b) of the definition of Sale Value shall, for the purposes of the application of the provisions of this article 4 2 6, be treated as if they represented a payment to the recipients concerned of an equivalent amount on account of their Specified Proportion of the proceeds of the Sale in question and the respective entitlements of the holders of the "B" Ordinary Shares and of the Deferred Shares under this Article 4 2 6 shall be adjusted accordingly

For the purpose of applying the provisions of this Article 4 2 6, the Total Return shall be rounded up or (as the case may be) down to the two nearest decimal places

As between the "B" Ordinary Shareholders, the proportion of such excess proceeds which is attributable to the holders of "B" Ordinary Shares shall be reduced so that any such excess proceeds which become attributable to the holders of the Deferred Shares as a result of the Investors holding "B" Ordinary Shares having achieved a Total Return which exceeds the "B" Ordinary Share Specified Total Return as above shall operate to reduce the proportion of such excess proceeds to which the "B" Ordinary Shareholders are entitled

4 2 7 If, and to the extent that, at the date of a Sale, the Company has profits available for distribution but remaining undistributed and such profits are not distributed to the Members but the amount thereof may otherwise reasonably be regarded as being reflected in the proceeds of the Sale, then the proceeds of the Sale shall be deemed to be reduced by the amount in question for the purposes of the application of Articles 4 2 2, 4 2 3 and 4 2 4, and the whole of the amount in question shall be distributed between the Investors

4 2 8 Notwithstanding any of the foregoing, in order to comply with the Legislation, no single company which is a holder of "B" Ordinary 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 a 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 Voting

Subject to the special rights or restrictions as to voting attached to any shares

4 3 1 on a show of hands every holder of "B" Ordinary Shares who (being an individual) is present in person or (being a corporation) is present by a representative shall have one vote,

4 3 2 on a poll every Ordinary Shareholder who is present in person or by a proxy or (being a corporation) by a representative shall have one vote for every "B" Ordinary Share of which he is the holder, and

4 3 3 notwithstanding the foregoing, in order to comply with the Legislation, no single company which is a holder of "B" Ordinary 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

5 DEFERRED SHARES

- 5 1 The Deferred Shares shall
 - 5 1 1 in respect of each financial year of the Company, carry the right to receive a fixed preferential dividend from the revenue profits of the Company which are available for distribution and which the Directors determine to distribute by way of dividend in priority to any dividend payable on the "B" Ordinary Shares at the rate of 1p per annum to be paid (in aggregate) amongst the holders of Deferred Shares as a class but confer no other right to a dividend,
 - 5 1 2 not confer any right to receive notice of, or to attend or vote at, general meetings, and
 - 5 1 3 on a winding up confer a preferential right to be paid out of the assets of the Company available for distribution an amount equal to 1p in aggregate for all of the Deferred Shares prior to the surplus being distributed to the holders of "B" Ordinary Shares, but do not confer any right to participate in any surplus assets of the Company
- 5 2 The Company shall not be obliged to
 - 5 2 1 issue share certificates in respect of the Deferred Shares,
 - 5 2 2 give any prior notice to the holders of Deferred Shares that such shares are to be purchased in accordance with Article 5 4, or
 - 5 2 3 account to any holder of Deferred Shares for the purchase monies in respect of such shares
- 5 3 The Deferred Shares may not be transferred other than with the consent of an Investor Majority
- 5 4 If the "B" Ordinary Share Specified Total Return is not achieved on or prior to the forty second month after the Effective Date, the Company shall be entitled at any time to purchase all of the Deferred Shares for an aggregate consideration of 1p and the Company shall do so if directed to do so by an Investor Majority For the purposes of this Article 5 4, the Directors may authorise any person to execute on behalf of and as agent for the holders of Deferred Shares an appropriate contract and may deliver it on their behalf

6 **ISSUE OF SHARES**

- 6 1 Subject to Articles 6 2, 6 3 and 6 4, any new shares shall before they are issued be offered to the "B" Ordinary Shareholders in proportion to the number of "B" Ordinary Shares held by them

The offer shall be made by notice in writing and shall specify the number and class of shares offered and 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 After the expiration of such time, or on the receipt of an indication from the person to whom the offer is made that he declines to accept the shares offered or any of them, the Directors shall offer the shares declined in like manner to the "B" Ordinary Shareholders who have agreed to subscribe for all the shares offered to them If the shares comprised in such further offers are declined or deemed to be declined the further offers shall be withdrawn
- 6 2 The provisions of Article 6 1 may be disapplied in relation to any class of shares by special resolution (subject to Article 7 3 9)

- 6 3 Subject to this Article 6 and to the provisions of Section 549 of the Act, the shares in the capital of the Company shall be at the disposal of the Directors who may issue, 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 no shares shall be issued at a discount and that
- 6 3 1 no shares to which Article 6 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 6 1 unless the procedure set out in Article 6 1 is repeated in respect of such shares (and so that the time limit set out in this Article 6 3 1 shall apply equally to any repetition of that procedure), and
- 6 3 2 no shares shall be issued at a price less than that at which they were offered to the Members in accordance with Article 6 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, and
- 6 3 3 no shares shall be issued to any person who is not already a party to the Investment Agreement unless that person has first executed and delivered to the Company a deed of adherence (as referred to in the Investment Agreement), and
- 6 4 The provisions of Section 561(1) and 562(1) to (6) of the Act shall not apply to the Company
- 6 5 Any new shares shall take the form of "B" Ordinary Shares

7 VARIATION OF CLASS RIGHTS

- 7 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
- 7 1 1 in the case of the holders for the time being of the issued "B" Ordinary Shares, with the consent in writing of the holders of at least 50% of the issued shares of that class or with the sanction of an ordinary resolution passed at a meeting of the holders of the class, and
- 7 1 2 in the case of the Deferred Shareholders with the consent in writing of all of the Deferred Shareholders or with the sanction of a unanimous resolution passed at a meeting of the holders of Deferred Shares
- 7 2 To every such separate meeting referred to in Articles 7 1 1 and 7 1 2, all the provisions of these Articles relating to general meetings of the Company shall apply (mutatis mutandis) except that
- 7 2 1 the necessary quorum shall be at least two persons 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
- 7 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

- 7 3 Without prejudice to the generality of this Article, it is a term of issue of the "B" Ordinary 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 7 1 1
- 7 3 1 any alteration or variation of any of the rights attached to any of the shares for the time being in the capital of the Company,
- 7 3 2 any resolution to wind-up the Company or any subsidiary of the Company,
- 7 3 3 any increase in the issued capital of the Company other than the issue of "B" Ordinary Shares on the date of adoption of these Articles,
- 7 3 4 any reduction or sub-division or consolidation of the issued share capital of the Company or the creation or variation of any restriction on the number of shares the Company may issue,
- 7 3 5 the grant by the Company of a right to subscribe for or to convert securities into shares in the capital of the Company or pursuant to the Investment Agreement,
- 7 3 6 the application by way of capitalisation of any sum in or towards paying up any debenture or debenture stock of the Company,
- 7 3 7 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,
- 7 3 8 any alteration of the Company's articles of association,
- 7 3 9 the passing of any special resolution, or
- 7 3 10 the calling of a meeting of the Company to effect or approve any matter which would by virtue of this Article 7 3 be a variation of such class rights,
- 7 3 11 reregistration as a public company,
- 7 3 12 the subscription for or other acquisition of shares in any company, the acquisition of all or substantially all of the assets of any other company or of any unincorporated business, the disposal of any share in any other company, the disposal of the Company's undertaking and assets or any substantial part thereof or the making of any capital investment in any partnership or the disposal of any such interest,
- 7 3 13 any act or transaction committed or proposed to be committed by a Director within the terms of Article 21 8
- 7 4 Without prejudice to the generality of this Article, it is a term of issue of the Deferred 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 7 1
- 7 4 1 any amendment to (or any deletion of) Articles 4, 5, 6, 7, 10, 12 or 16,
- 7 4 2 the issue of any further Deferred Shares or the conversion of any shares of any other class into Deferred Shares,
- 7 4 3 the issue of any shares of any class other than "B" Ordinary Shares,

- 7 4 4 any alteration or variation of any of the rights attached to any of the shares for the time being in the capital of the Company,
- 7 4 5 any sale of by the Company or any subsidiary of the Company of its undertaking and all (or a substantial part of) its assets,
- 7 4 6 any resolution to wind-up the Company or any subsidiary of the Company, or
- 7 4 7 any reduction of the Company's share capital or the making of any other return of capital by the Company to its members

8 **LIEN**

- 8 1 The Company shall have a first and paramount lien on every share (whether or 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
- 8 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
- 8 3 The Directors may at any time decide that a share which is or would otherwise be subject to the Company's lien shall not be subject to it, either wholly or in part
- 8 4 Model PLC Article 53 shall apply to the Company and shall govern the enforcement of the Company's lien, save that
 - 8 4 1 in Model PLC Article 53(2)(c), the word "clear" shall be inserted between the words "14" and "days", and
 - 8 4 2 in Model PLC Article 53(4)(b), the words "a suitable indemnity" shall be deleted and replaced by the words "an indemnity in a form reasonably satisfactory to the Directors" and the words "over the shares before the sale for any money payable in respect of the shares" shall be deleted and replaced by the words "for any money payable (whether payable immediately or at some time in the future) as existed upon the shares before the sale in respect of all shares registered in the name of such person (whether as the sole registered holder or as one of several joint holders)"

9 **REGISTRATION OF TRANSFERS**

- 9 1 The Directors shall be required (subject only to Article 9 2 and Article 9 3) to register promptly any transfer of shares made in accordance with the provisions of these Articles provided in all cases a deed of adherence (as referred to in the Investment Agreement) duly executed by all relevant parties is laid before the meeting at which the transfer is to be approved, but shall not register any transfer of shares otherwise Model Article 26(5) shall not apply to the Company
- 9 2 For so long as any of the Investors is a member of the Company, the Directors shall not register a transfer of "B" Ordinary Shares unless they have prior written consent to approve the transfer from an Investor Majority in a form reasonably acceptable to them
- 9 3 In addition to the circumstance set out in Model Article 21, the Directors may refuse to register a transfer of a share to a bankrupt, a minor or a person of unsound mind

10 **PERMITTED TRANSFERS**

10 1 Subject to the provisions of Article 9, any "B" Ordinary Shares may at any time be transferred by any Member pursuant to acceptance of any offer made to that Member under the requirements of Article 15 (Tag Along) or as contemplated by Article 16 (Drag Along)

10 2 Subject to the provisions of Article 9

10 2 1 any of the Investors may transfer any "B" Ordinary Shares to any other person,

10 2 2 any "B" Ordinary 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 "B" Ordinary 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 "B" Ordinary Shares have been transferred as a nominee ceases to hold such "B" Ordinary Shares as nominee for the Beneficial Owner only he shall forthwith transfer such "B" Ordinary 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 "B" Ordinary Shares

11 **PRE-EMPTION RIGHTS**

11 1 The right to transfer "B" Ordinary Shares or any interest therein shall (subject to and without prejudice to the provisions of Articles 9 and 10) be subject to the following restrictions, save that such restrictions shall not apply to any transfer of "B" Ordinary Shares pursuant to the acceptance of an offer made pursuant to Article 15 or to the proposed sale of "B" Ordinary Shares where the Vendors (as defined in Article 16) procure the making of a Drag Along Right pursuant to Article 16

11 2 Before transferring or disposing of any "B" Ordinary Shares (or any interest in "B" Ordinary Shares) the Proposing Transferor shall serve a notice on the Company specifying the number of "B" Ordinary Shares in question and the proposed price for such shares, and the Transfer Notice shall constitute the Company his agent for the sale of those "B" Ordinary Shares at the Prescribed Price to any Member or Members 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

11 3 A Transfer Notice shall, if the Proposing Transferor has received any offer to purchase "B" Ordinary 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 of "B" Ordinary Shares concerned and the price offered in respect of each such "B" Ordinary Share A Transfer Notice may not be given by an Excluded Person unless required by the Directors under Article 12 1 or Article 14

11 4 The Directors will endeavour to agree the Prescribed Price with the Transferor If the Directors fail to agree the Prescribed Price with the 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 appoint the Auditors on behalf of the Company 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 their opinion of the value of each Sale Share calculated on the following basis
 - 11 5 1 1 by determining the sum which a willing purchaser would offer to a willing vendor for the entire issued share capital of the Company,
 - 11 5 1 2 by dividing the resultant figure between the "B" Ordinary Shares and the Deferred Shares by applying the provisions of Article 4 2 2 as if that sum were the proceeds of a Sale, and
 - 11 5 1 3 by dividing the sum attributable to the "B" Ordinary Shares by the number of "B" Ordinary Shares in issue
- 11 6 The Auditors' certificate as to the Prescribed Price shall be final and binding
- 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 Articles 11 8 and 11 9 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. A copy of such offer shall at the same time be sent by the Company to the Proposing Transferor
- 11 8 The Company shall offer the Sale Shares to the "B" Ordinary Shareholders in proportion to the number of "B" Ordinary Shares held by them
- 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 "B" Ordinary 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 this Article and Article 11 8, the Purchasers shall be bound to purchase the Sale Shares properly allocated to them under the provisions of this Article 11 9 at the Prescribed Price in accordance with the provisions of Article 11 12
- 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 some only 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 2 (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 9 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 9 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 11 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,
- 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 14 (if applicable), and
- 11 16 4 no "B" Ordinary 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 as the Auditors may direct
- 11 18 The restrictions imposed by this Article 11 may be waived in relation to any proposed transfer of "B" Ordinary 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 Article 11 9

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 If the Auditors are unwilling or unable to act to certify the Prescribed Price in accordance with the provisions of this Article 11 or if the "B" Ordinary Shareholders so specify in writing, then the Prescribed Price shall instead be certified by an independent firm of chartered accountants appointed by the Directors with the approval of the "B" Ordinary Shareholders and references in this Article 11 to the Auditors shall be deemed to be references to such firm

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 not later than 90 days after the Directors receive notice from the person concerned that he has become so entitled, 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 If a Transfer Notice is deemed to have been given pursuant to Article 12 1, the shares subject to the deemed Transfer Notice shall then be offered in accordance with the provisions of Article 11 7

13 **EVIDENCE OF COMPLIANCE**

In any case where the Directors may 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 "B" Ordinary 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

14 **EVIDENCE OF AUTHORISATION**

For the purpose of ensuring that a transfer of "B" Ordinary 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 "B" Ordinary 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 "B" Ordinary Shares the Directors may by notice in writing require that a Transfer Notice be given in respect of the "B" Ordinary Shares concerned.

15 TAG ALONG

15 1 Notwithstanding the provisions of Article 11 but subject to the provisions of Article 4, no sale or transfer of the legal or beneficial interest in any "B" Ordinary Shares ("the **Relevant Transaction**") (other than one made pursuant to Article 10 2) 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 shall have procured a written offer complying with the provisions of Article 15 3 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 "B" Ordinary Shares to acquire their entire holding of "B" Ordinary Shares.

15 2 For the purpose of this Article 15

15 2 1 the expression "a **Relevant Interest**" shall mean an interest in 50% or more of the "B" Ordinary Shares in issue for the time being,

15 2 2 the expressions "**transfer**" and "**transferee**" shall include respectively the renunciation of a renounceable letter of issue and the renounee under any such letter of issue, and

15 2 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 3 The offer referred to in Article 15 1 above shall be on terms that

15 3 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 3 2 each Member to whom it is made shall be entitled to receive for each of the "B" Ordinary Shares held by him a sum per share equal to the Specified Price,

15 3 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 3 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 3)

15 4 the expression "the **Specified Price**" shall mean

15 4 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 4 1 1 the amount offered or paid or payable by the proposed transferee or transferees or his or their nominees respectively for each of the "B" Ordinary Shares comprised in the Relevant Interest to the holder or holders thereof or, if higher, the highest amount paid or payable for a "B" Ordinary 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 4 1 2 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 "B" Ordinary 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 4 2 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 Articles 4 2 2 and 4 2 3 as if the Sale Value were the proceeds of a Sale
- 15 5 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 (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 provided that the Investors have achieved the "B" Ordinary Share Specified Total Return (or would achieve the "B" Ordinary Share Specified Total Return following the sale of their entire holdings of "B" Ordinary Shares) in accordance with the provisions of this Article 16 1), at any time after the third anniversary of the Effective Date, one or more members of the Company holding between them not less than 75% of the Deferred Shares, or

16 1 2 provided that the Investors have not achieved the "B" Ordinary Share Specified Total Return, at any time after the forty second month after the date of adoption of these Articles, one or more Members holding between them not less than 70% of the "B" Ordinary Shares for the time being in issue

("the **Vendors**") propose to sell the legal or beneficial interest in their entire holdings of shares in the capital of the Company to any person or one or more such persons acting in concert ("the **Offeror**") then the Vendors shall have the right to require the holders of all other issued shares in the capital of the Company ("the **Called Shareholders**") to sell and transfer their entire holdings of shares in the capital of the Company to the Offeror (or as the Offeror shall direct) in accordance with this Article 16 ("the **Drag Along Right**") at a price per share ("the **Drag Along Price**") to be determined on the basis set out in Article 15 4 (save that the total aggregate consideration which each Member shall be entitled to receive from such sale shall be determined by applying the provisions of Articles 4 2 2 and 4 2 3) and otherwise on the terms specified in Articles 15 3 3 and 15 3 4 (as if the Vendors' proposed sale was a Relevant Transaction), provided that the

Drag Along Right contained in Article 16 1 1 may not be exercised if the Offeror is Lightsource or a Lightsource Associate and may only be exercised if the proposed sale to the Offeror is a bona fide sale on arm's length terms

- 16 2 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' "B" Ordinary Shares to the Offeror
- 16 3 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 4 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 "B" Ordinary 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 5 Subject to Article 16 4, each of the Called Shareholders shall be bound to sell his entire holding of "B" Ordinary Shares and to transfer such shares in accordance with the provisions of the Drag Along Notice
- 16 6 If any Called Shareholder fails to complete the sale of any of his shares pursuant to the Drag Along Notice or otherwise fails to take any action required of him under the terms of the Drag Along Right, the Directors (or any of them) may authorise any person to undertake on his behalf any action required under the terms of the Drag Along Right. In particular (but without limitation) the Directors shall have the same rights as given to them under Article 11 13
- 16 7 Upon any person, following the giving of a Drag Along Notice becoming a member of the Company pursuant to the exercise of a pre-existing option to subscribe for or otherwise acquire "B" Ordinary 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 8 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 nor to have complied with the provisions of Article 15

17 **PROCEEDINGS AT GENERAL MEETINGS**

17 1 Save as herein otherwise provided at any general meeting, two "B" Ordinary Shareholders present in person or by proxy (or, being a corporation, by representative) 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 meeting shall be dissolved, unless the meeting was adjourned for thirteen days or more and due notice in such regard was given to the Members within five days of the adjournment whereupon the quorum at any such adjourned meeting shall be any two Members present in person or by proxy (or, being a corporation, by representative) Model Article 41(5) shall be varied accordingly

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**

18 1 Model PLC Article 25 shall apply to the Company, however, any meeting of the Directors shall not be invalid because notice thereof or of any business to be transacted at that meeting was not given to any alternate director if his appointor attends such meeting

18 2 No director other than an Investor Director shall be entitled to appoint an alternate director

19 **APPOINTMENT AND REMOVAL OF DIRECTORS**

19.1 No person shall be appointed as a director without the prior written approval of the Investor Director and Model Article 17(1) shall be modified accordingly

19 2 Any director, other than the Investor Director, may be removed from office at any time by a resolution passed by Members holding a majority of "B" Ordinary Shares

20 **DIRECTORS AND THEIR POWERS**

20 1 Unless otherwise determined by ordinary resolution, the maximum number of directors shall not be more than eight

20 2 Model Article 5(1) shall be amended by the insertion of the words "as they resolve to do, subject to approval by the Investor Director" in place of the words "as they think fit" and Model Article 5(1)(c) shall be amended by the insertion of the words "(including collaterally with or to the exclusion of their own powers)" at the end of that Model Article

20 3 No alteration of the Articles invalidates anything which the directors have done which would have been valid had that alteration not been made

21 **PROCEEDINGS OF DIRECTORS**

- 21 1 In relation to any proposal to authorise a Conflicting Situation pursuant to Article 21 11 (*Actual or Potential Conflicts*) if, other than the director(s) to which the Conflicting Situation relates, there is only one director in office, the quorum shall be one eligible director
- 21 2 Directors may waive their entitlement to notice of a director's meeting at any time and in Model Article 9(4)) the words "not more than 7 days after the date on which the meeting is held" shall be deleted and replaced with the words "at any time"
- 21 3 If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting shall not have a casting vote Model Article 13 shall not apply to the company
- 21 4 Model Article 8(3) shall not apply to the Company and references in Model Article 8 to "eligible directors" shall be to such term as defined in Article 1
- 21 5 The number of Directors shall not be less than two nor more than eight
- 21 6 Subject to Articles 21 8 the quorum necessary for the transaction of business of the Directors shall be two, at least one of whom shall be the Investor Director (or his alternate) if at the time of the meeting an Investor Director has been appointed
- 21 7 At any meeting of the Directors each Director (or his alternate director) present at the meeting shall be entitled to one vote
- 21 8 Subject to the provisions of the Act, and to Article 7 and provided that he has disclosed to the Directors the nature and extent of any interest of his, a Director notwithstanding his office
- 21 8 1 may be a party to or otherwise interested in any transaction or arrangement with the Company or in which the Company is in any way interested,
- 21 8 2 may be a director or other officer of or employed by or be a party to any transaction or arrangement with or otherwise interested in any body corporate promoted by the Company or in which the Company is in any way interested,
- 21 8 3 may, or any firm or company of which he is a member or director may, act in a professional capacity for the Company or any body corporate in which the Company is in any way interested,
- 21 8 4 shall not by reason of his office be accountable to the Company for any benefit which he derives from such office, service or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit, and
- 21 8 5 shall be entitled to vote on any resolution and (whether or not he shall vote) be counted in the quorum on any matter referred to in any of Articles 20 8 1 to 20 8 4 (inclusive) or on any resolution which in any way concerns or relates to a matter in which he has, directly or indirectly, any kind of interest whatsoever and if he shall vote on any resolution as aforesaid his vote shall be counted
- 21 9 For the purposes of Article 21 8

- 21 9 1 a general notice to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such transaction of the nature and extent so specified,
- 21 9 2 an interest of which a Director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his, and
- 21 9 3 an interest of a person who is Connected with a Director shall be treated as an interest of the Director and in relation to an alternate Director an interest of his appointor shall be treated as an interest of the alternate Director without prejudice to any interest which the alternate Director has otherwise
- 21 10 Model Article 14 shall not apply to the Company Save as otherwise specified in these Articles or the Act and subject to any limitations, conditions or terms attaching to any authorisation given by the Directors for the purposes of Section 175(4)(b) of the Act, a Director may vote on, and be counted in the quorum in relation to, any resolution relating to a matter in which he has, or can have
- 21 10 1 a direct or indirect interest or duty which conflicts, or possibly may conflict, with the interests of the Company, and
- 21 10.2 a conflict of interest arising in relation to an existing or a proposed transaction or arrangement with the Company
- 21.11 If a Conflict Situation arises, the Directors may authorise it for the purposes of Section 175(4)(b) of the Act by a resolution of the Directors made in accordance with that section and these Articles At the time of the authorisation, or at any time afterwards, the Directors may impose any limitations or conditions or grant the authority subject to such terms as (in each case) they consider appropriate and reasonable in all circumstances Any authorisation may be revoked or varied at any time at the discretion of the Directors
- 21 12 It is recognised that an Investor Director
- 21 12 1 may be an employee, consultant, director, member or other officer of an Investor or of an Investor Affiliate,
- 21 12 2 may be taken to have, through previous or existing dealings, a commercial relationship with the Investor or with an Investor Affiliate,
- 21 12 3 may be a director or other officer of, or be employed by, or otherwise involved in the business of other entities in which the Investor or an Investor Affiliate has or may have an interest from time to time, and
- 21 12 4 shall not, by reason of his office, be accountable to the Company for any benefit which he derives from any such other directorship, membership, office, employment, relationship or his involvement with the Investor, with an Investor Affiliate or with any entity referred to in Article 21 12 3

and he shall not be in breach of the duties he owes to the Company as a result of any Conflict Situation which arises from the relationships contemplated by this Article, including (without limitation) in relation to proposals for financing or otherwise

- promoting the business of (whether in competition with the Company or not) any such other entity
- 21 13 In the circumstances contemplated by Article 21 11 and notwithstanding any other provision of these Articles, each Director affected shall
- 21 13 1 be entitled to receive any papers or other documents in relation to, or concerning, matters to which the Conflict Situation relates,
- 21 13 2 not be excluded from those parts of meetings of the Directors or meetings of a committee of the Directors at which matters to which the Conflict Situation relates are discussed,
- 21 13 3 be entitled to vote (and form a part of the quorum) at any such meeting
- 21 14 Any information which a Director obtains, other than in his capacity as a Director of the Company, which is confidential in relation to an entity referred to in Article 21 12 need not be disclosed or used for the benefit of the Company where such disclosure or use would constitute a breach of confidence
- 21 15 Model Article 9 shall be amended by adding the following sentence as sub paragraph 5
- "It shall not be necessary to give notice of a meeting to a director who is absent from the United Kingdom" the following sentence "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"
- 22 THE INVESTOR DIRECTOR**
- 22 1 Notwithstanding any other provisions of these Articles, so long as any of the Investors holds any "B" Ordinary Shares in the Company, they have the right to appoint (acting by Investor Majority if more than one) one person as a Director of the Company and to remove from office any person so appointed and (subject to such removal) to appoint another person in his place
- 22 2 The Investor Director shall not be required to hold any shares
- 22 3 Any appointment or removal of an Investor Director 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 of Directors
- 22 4 For so long as any of the Investors hold "B" Ordinary Shares, on any resolution to remove the Investor Director the shares held by the "B" 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 Act the "B" Ordinary Shareholders who appointed such director may reappoint him or any other person as their Investor Director
- 22 5 Notwithstanding any other provisions of these Articles, so long as any of the Investors holds any "B" Ordinary Shares, the Investors concerned it shall have the right to appoint one person as an observer at board meetings of the Company and to remove from office any person so appointed and (subject to such removal) to appoint another person in his place

22 6 Such observer shall be entitled to receive the same information concerning the business and affairs of the Company, as the directors of the Company receive, and at the same time, but shall not be entitled to vote at meetings of the directors and shall not be counted towards the quorum

22 7 Any appointment or removal of such observer 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 of Directors

23 **STEP IN RIGHTS**

23 1 If

23 1 1 any one or combination of the Directors (excluding the Investor Director) or the Company are in breach of any of their obligations in the Investment Agreement, or, in the case of the Directors only, of their service agreements, (which in any case, if capable of remedy has not been remedied within 14 days of the Directors receiving notice to remedy the same from the Investor Director) the consequences of which may be (in the opinion of the Investor Director) to the material detriment of the Company, or

23 1 2 there is a material breach of the Articles of association of the Company in force from time to time, or

23 1 3 the cash assets of the Company fall to less than £20,000, or such other sum as may be agreed half yearly after the date hereof between the Investors and the Company and for the purposes of this Article 23 the cash assets of the Company 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 the Investor Director has given written notice to the Directors that the provisions of this Article 23 should have effect until such times as written notice is given by the Investor Director that the provisions of this Article 23 shall cease to have effect in relation to the matter in question (which will be given as soon as the relevant circumstances(s) prompting the giving of the notice is/are no longer applicable) 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 are opposed or which exceeds the votes cast against a resolution which the Investor Director has proposed

24 **DIRECTORS' BORROWING POWERS**

24 1 Subject as hereinafter provided, and as set out in the 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 549 of the Act) of issuing debentures

24 2 Except with the prior sanction of the Investors no mortgage or charge shall be created on any part of the undertaking, property, assets or uncalled capital of the Company or any subsidiary of the Company except for the purpose of securing money borrowed from bankers together with interest thereon and costs and expenses relating thereto

25 **NOTICES**

25 1 Without prejudice to the provisions of Model Article 48, the Company may also give notice to a Member by e-mail to an e-mail address or by facsimile to a facsimile number supplied by the Member for such purposes

25 2 Where a notice is sent by facsimile a transmission report showing that the facsimile was transmitted in full to the correct number shall be conclusive evidence that the notice was given and the notice shall be deemed to have been given at the time of transmission

26 **WRITTEN RESOLUTIONS**

26 1 Written resolutions of the company may be proposed by the directors in accordance with Section 291 of the Act. The Members may require the company to circulate a written resolution in accordance with Section 292 to 295 of the Act

26 2 For the purposes of Section 297 of the Act, a written resolution will lapse if it is not passed before the end of such period as the directors may determine (provided such period is detailed on the copy of the resolution circulated pursuant to Section 291 of the Act), but in the absence of such determination the period shall be 28 days beginning with the circulation date of the resolution

26 3 In the case of a Member which is a body corporate, the signature of a director or the secretary and, in the case of joint holders of a share, the signature of any one of such joint holders, shall be sufficient for the purpose of signifying a Member's agreement to a written resolution

27 **INDEMNITY & INSURANCE**

27 1 Without prejudice to any indemnity to which a relevant officer is otherwise entitled

27 1 1 each Relevant Officer shall be indemnified out of the company's assets against all costs, charges, losses, expenses and liabilities incurred by him or her as a Relevant Officer in the actual or purported execution and/or discharge of his or her duties, or in relation to them and in relation to the any Relevant Company's activities as trustee of an occupational pension scheme (as defined in Section 235(6) of the Act), including (in each case) any liability incurred by him or her in defending any civil or criminal proceedings, in which judgment is given in his or her favour or in which he or she is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his or her part or in connection with any application in which the court grants him or her, in his or her capacity as a Relevant Officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to any Relevant Company's affairs, and

27 1 2 the Company may provide any Relevant Officer with funds to meet expenditure incurred or to be incurred by him or her in connection with any proceedings or application referred to in Article 27 1 1 and otherwise may take any action to enable any such Relevant Officer to avoid incurring such expenditure

27 2 The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any Relevant Officer in respect of any Relevant Loss

27 3 Model Article 52 (save for Model Article 52(2)) and Model Article 53 shall not apply to the company

27 4 In this Article 27

"Relevant Company"

means the company, any holding company or parent undertaking (as defined in Sections 1159 and 1162 of the Act) from time to time of the company or in which the company or any such holding company or parent undertaking or any of the predecessors of the company or of any such holding company or parent undertaking has or had at any time any interest, whether direct or indirect, or which is or was at any time in any way allied to or associated with the company or any subsidiary or subsidiary undertaking (as defined in Section 1159 and Section 1162 of the Act) of the company or of such other company or undertaking,

"Relevant Loss"

means any loss or liability which has been or may be incurred by a Relevant Officer in connection with that Relevant Officer's duties or powers in relation to any Relevant Company or any pension fund or employees' share scheme of any Relevant Company, and

"Relevant Officer"

means any director or other officer or former director or other officer of any Relevant Company (including any company which is a trustee of an occupational pension scheme (as defined by Section 235(6) of the Act), but excluding in each case any person engaged by the Relevant Company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor).