

Company No. 8008628

**THE COMPANIES ACT 2006**  
**PRIVATE COMPANY LIMITED BY SHARES**  
**WRITTEN RESOLUTION**  
**OF**  
**SWIFT ACQUISITIONS LIMITED**

On *11 FEBRUARY* 2016 the following special resolution was duly passed as a written resolution of the Company pursuant to section 288 of the Companies Act 2006

**SPECIAL RESOLUTION**

That the articles of association in the attached form, and for the purpose of identification marked "A", be approved and adopted as the articles of association of the Company in substitution for and to the exclusion of the existing articles of association of the Company

  
Director



"A"

Company No. 08008628

**The Companies Act 2006**  
**Private Company Limited by Shares**

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**ARTICLES OF ASSOCIATION**

**of**

**SWIFT ACQUISITIONS LIMITED**

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(adopted by Special Resolution on 11 FEBRUARY 2016)

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THE COMPANIES ACT 2006

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PRIVATE COMPANY  
LIMITED BY SHARES

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ARTICLES OF ASSOCIATION

of

SWIFT ACQUISITIONS LIMITED

(adopted by Special Resolution passed on 11 FEBRUARY 2016)

1 Definitions and interpretation

1.1 In these Articles, unless the context otherwise requires

**A1 Share** means an A1 Share of £1 in the capital of the Company

**A2 Share** means an A2 Share of £1 in the capital of the Company

**A2 Shareholder Majority** means the holders of 50% or more in number of the A2 Shares

**A3 Share** means an A3 Share of £1 in the capital of the Company

**Acquisition Documents** means the Share Purchase Agreement and the documents referred to in, or to be entered into pursuant to, or to satisfy any conditions precedent set out in the Share Purchase Agreement

**acting in concert** has the meaning ascribed to it by the City Code on Takeovers and Mergers as in force and construed on the Adoption Date

**Adoption Date** means the date on which these Articles are adopted

**Asset Sale** means the completion of any transaction or series of transactions whereby any person or group of persons purchases the whole or substantially the whole of the business and assets of the Group

**Auditors** means the auditors for the time being of the Company

**B Share** means a B Share of £0.0002 in the capital of the Company

**Bad Leaver** means a Manager who ceases to be either an employee or director

(a) in circumstances where the Company is entitled to terminate his employment by way of summary dismissal, or

- (b) as a result of his resignation from such employment or engagement prior to the fifth anniversary of such Manager becoming a Member (other than if such resignation is as a result of permanent incapacity due to ill health)

unless the Board determines that the Manager be treated as a Good Leaver for the purposes of these Articles

**Bank** means HSBC Bank plc

**Banking Facilities** means the term loan and working capital facilities provided or to be provided to the Company and/or to any other member(s) of the Group by the Bank or any other bank or financial institution other than the Rollover Shareholders

**Board** means the board of directors of the Company (or the directors present at a duly convened meeting of the directors at which a quorum is present) as from time to time constituted

**Board Invitees** means

- (a) any person or persons (being employees or officers of any member of the Group), and/or
- (b) the EBT, and/or
- (c) the Company

or any combination thereof selected by the Board with the written approval of a Rollover Majority in accordance with Article 14 11

**Business Day** means any day on which banks are open for business in London (excluding Saturdays, Sundays and public holidays)

**CA 2006** means the Companies Act 2006

**Called Shares** has the meaning ascribed to it in Article 15 3

**Called Shareholders** has the meaning ascribed to it in Article 15 2

**Chairman** means the chairman of the Board from time to time appointed or designated as such by a Rollover Majority in accordance with clause 8 3 of the Shareholders Agreement

**Change of Control** means the acquisition whether by purchase, transfer, renunciation or otherwise (but excluding a transfer of Shares made in accordance with Article 10 (Lien)) by any Third Party Buyer of any interest in any Shares if, upon completion of that acquisition, the Third Party Buyer, together with persons acting in concert or connected with him, would hold more than 50% of the voting rights at a general meeting of the Company attached to the issued Shares for the time being

**Commencement Date** means, in relation to the Manager in question, either

- (a) the date on which he first becomes a director or employee of a Group Company, or
- (b) the Investment Date,

whichever is the later to occur

**Company Communication Provisions** means sections 1144 to 1148 of and Schedules 4 and 5 to the CA 2006)

**connected with** has the meaning ascribed to it in sections 1122 and 1123 of the Corporation Tax Act 2010 save that there shall be deemed to be control for that purpose whenever either section 450, 451 or 1124 of that act would so require

**Consent** means the consent of the Board and subject to any conditions which the Board may impose in relation to such Consent

**Counter Indemnity** has the meaning ascribed to it in the Shareholders Agreement

**Debt Service Cover** has the meaning given to that term in the Facility Agreement

**Deed of Adherence** has the meaning ascribed to it in the Shareholders Agreement

**Deemed Transfer Notice** has the meaning ascribed to it in Article 14 2

**Deemed Transfer Shares** means in relation to a Relevant Member, all Shares

- (a) held by the Relevant Member immediately before the occurrence of the Transfer Event
- (b) held immediately before the occurrence of the Transfer Event by any persons who acquired the Shares while they were a Manager, Rollover Privileged Relations and/or Family Trusts (other than Shares which the Board is satisfied were not acquired by those persons either
  - (i) directly or indirectly from the Member, or
  - (ii) by reason of their connection with the Member,and the decision of the Board in this respect will be final), and
- (c) acquired by the Relevant Member or Manager, Rollover Privileged Relations and/or Family Trusts or his personal representatives after the occurrence of the Transfer Event under any Share Option Scheme, or any other option scheme or other arrangement which was made before the occurrence of the Transfer Event

**Drag Sale Price** means the price payable per Share equal to that offered or paid by the Third Party Buyer or its nominees for the Shares being sold resulting in the Change of Control adjusted to reflect and give effect to the provisions of Article 7 (Provisions on Realisation)

**Eligible Director** means a director who would have been entitled to vote on any matter at a meeting of directors (but excluding any director whose vote is not to be counted in respect of the particular matter)

**EBT** means a trust approved in writing by a Rollover Majority and whose beneficiaries are employees of the Group

**Facility Agreement** means the facilities agreement made between, amongst others, the Company and the Bank dated 18 July 2012, as amended from time to time

**Family Trust** means a trust that permits the settled property or the income from it to be applied only for the benefit of the settler and/or a Rollover Privileged Relation of that settler and, in addition, under which no power of control is capable of being exercised over the votes

of any Shares that are held in the trust by any person other than the trustees, the settler or the Rollover Privileged Relations of the settler

**Good Leaver** refers to a Manager who ceases to be a director or employee

- (a) as a result of death, or permanent disability or permanent incapacity through ill health, or
- (b) in any other circumstances where such person is not a Bad Leaver, or
- (c) where the Board determines that such person be treated as a Good Leaver for the purposes of these Articles

**Group** means the Company and all its subsidiaries and subsidiary undertakings for the time being and **member of the Group** shall be construed accordingly

**Intercreditor Agreement** means the intercreditor agreement entered into between, amongst others, the Company, the holder of the Rollover Loan Notes and the Bank dated 18 July 2012, as amended from time to time

**Investment Date** means the date of allotment of the first B Share (excluding the subscriber share)

**Issue Price** means the amount paid up or credited as paid up on the Shares concerned (including any premium)

**Leases** means the leases for

- (a) the Gate 2/3 site at Cottingham between Swift Holdings UK Limited and Swift Group Limited dated 12 June 2012,
- (b) the units at Swinton Meadows Mexborough (1,2 and 6) between Swift Holdings UK Limited and Swift Group Limited dated 12 June 2012, and
- (c) the premises at Station Road Burstwick between Swift Holdings UK Limited and Burstwick Freight Services Limited dated 12 June 2012,

in each case as amended or varied from time to time, and together with any addendum entered into from time to time,

**Leverage** has the meaning given to that term in the Facility Agreement

**Liquidation** means the solvent liquidation or Winding Up of the Company

**Listing** means either

- (a) the admission by the UK Listing Authority to listing, together with admission by the London Stock Exchange to trading, on the Official List of any of the issued equity Share capital of the Company, and such admission becoming effective,
- (b) the admission by the London Stock Exchange of any of the issued equity Share capital of the Company to trading on the Alternative Investment Market, and such admission becoming effective, or

- (c) any equivalent admission to any other Recognised Investment Exchange becoming unconditionally effective in relation to any of the issued equity Share capital of the Company

**Listing Shares** means the issued equity share capital of the Company (excluding any equity share capital to be subscribed and issued on such Listing other than new shares to be paid up by way of capitalisation of reserves or arising from any sub-division, consolidation or conversion of shares)

**Listing Value** means the market value of the Listing Shares determined by reference to the price per share at which such shares are to be offered for sale, placed or otherwise marketed pursuant to the arrangements relating to the Listing, all as determined by the financial advisers to the Company or, if none, the broker appointed by the Board to advise in connection with the Listing

**Manager** means a holder of A2 Shares and/or A3 Shares for the time being including a Manager who has transferred all such A2 Shares and/or A3 Shares to a Permitted Transferee

**Market Value** has the meaning ascribed to it in Article 14.6

**Member** means any registered holder of a Share for the time being

**member of the same group** means, in relation to a particular Member that is a body corporate, any subsidiary or holding company of that Member, or a subsidiary of such a holding company

**Model Articles** means the model articles for private companies limited by shares prescribed by Schedule 1 to the Companies (Model Articles) Regulations 2008 (SI 2008/3229) (including any amendments thereto) as in force on the date on which these Articles become part of the constitution of the Company

**Offer Notice** has the meaning ascribed to it in Article 13.6

**Permitted Transfer** means a transfer of a Share permitted without pre-emption under Article 12

**Permitted Transferee** means a person to whom a Permitted Transfer has been, or may be, made

**Realisation** means an Asset Sale, a Share Sale or a Listing

**Realisation Value** means the value of the issued Shares (which shall include shares deriving therefrom since their date of issue, including shares deriving therefrom following any capital reorganisation effected prior to and/or conditional on the Realisation) calculated as follows and on the basis that the relevant Realisation has been effected in accordance with its terms

- (a) in the event of a Listing, the Listing Value,
- (b) in the event of a Share Sale
  - (i) if the Shares of the Company are to be sold by private treaty (as distinct from a public offer) and the consideration is a fixed cash sum payable in full on completion of the Share Sale, the total amount of such cash sum,



- (ii) if a written offer has been made for a cash consideration or, if the Share Sale is pursuant to any other public cash offer or public offer accompanied by a cash alternative, the total cash consideration or cash alternative price (regardless of whether or not the cash alternative is capable of being accepted in respect of all the Shares of the Company) for all the shares of the Company for which the offer is made,
- (iii) if the Share Sale is by private treaty or public offer and the consideration is the issue of securities (not accompanied by a cash alternative)
  - (A) if the securities will rank pari passu with a class of securities already admitted to the Official List maintained by the UKLA or any other Recognised Investment Exchange (in the case of a sale by private treaty) the value attributed to such consideration in the related sale agreement setting out the terms of such sale or, (in the case of a Share Sale following a public offer or failing any such attribution in the sale agreement) by reference to the value of such consideration determined by reference to the average middle market quotation of such securities over the period of five Business Days ending three days prior to the day on which the Share Sale is completed, or
  - (B) if the securities are not of such a class, the value of the relevant consideration as agreed between the holders of 75% of the A1 Shares, A2 Shares and A3 Shares (treated as if they were one class of Share) and the holders of 75% of the B Shares, or, in the absence of such agreement prior to the Realisation, such value as is reported on by a Valuer, in a report obtained for the purpose and addressed to (and at the cost of, pro rata to their holdings immediately prior to the Realisation) the holders of the Shares,
- (iv) to the extent that the Share Sale includes an element of deferred consideration, its value shall be determined in accordance with the provisions of Article 7.3 taking into account the form that the deferred consideration takes, and
- (v) if and to the extent that any part of the consideration for the Sale Shares is not covered by the provisions of (i) to (iv) above, the value of the relevant consideration shall be that agreed between the holders of 75% of the A1 Shares, A2 Shares and A3 Shares (treated as if they were one class of Share) and the holders of 75% of the B Shares or, in the absence of such agreement prior to the Realisation such value as it is reported on by a Valuer, in a report obtained for the purpose and addressed to (and at the cost of, pro rata to their holdings immediately prior to the Realisation) the holders of the Shares,

(c) in the event of a Liquidation the return in the Liquidation on the Shares

**Recognised Investment Exchange** shall have the meaning ascribed to it in section 285(1)(a) of the Financial Services and Markets Act 2000

**Relevant Member** has the meaning ascribed to it in Article 14.2

**Relevant Period** has the meaning given to that term in the Facility Agreement

**Relevant Proportion** means that proportion which is determined, by reference to the time period which has expired between the Commencement Date and the Termination Date in respect of the Manager, in accordance with the following table

Period from Commencement Date to Termination Date	Relevant Proportion for A2 Shares	Relevant Proportion for A3 Shares
Up to 1 year	0%	0%
More than 1 year but not more than 2 years	20%	0%
More than 2 years but not more than 3 years	40%	25%
More than 3 years but not more than 4 years	60%	50%
More than 4 years but not more than 5 years	80%	75%
More than 5 years	100%	100%

**Relevant Rollover Entity** means

- (a) any Rollover Shareholder,
- (b) any body corporate in which any of the Rollover Shareholders hold for the time being or have ever held or are or may become obliged (whether or not contingently) to make or acquire any investment (whether debt, equity or otherwise), and
- (c) Swift Property (East Yorkshire) Limited, company number 8008566

**Rollover Shareholders** means the holders of A1 and B Shares for the time being

**Rollover Director(s)** has the meaning ascribed to it in Article 23 1(a)

**Rollover Loan Notes** means the £4,000,000 unsecured Rollover Loan Notes 2013 of the Company constituted by the Rollover Loan Notes Instrument

**Rollover Majority** means the holders of 50% or more in number of the A1 Shares and the B Shares when taken together (including after the death of a Rollover Shareholder the personal representatives of his estate)

**Rollover Privileged Relation** means (in respect of a Rollover Shareholder or deceased Rollover Shareholder) their spouse, widow or widower or civil partner and their children who are direct lineal descendants of the Rollover Shareholder but excluding step and adopted children of that Rollover Shareholder

**Rollover Shares** has the meaning ascribed to it in Article 15 1

**Share Purchase Agreement** means the share purchase agreement between Peter Smith and Others (1) and the Company (2) entered into on 18 July 2012 relating to the acquisition by the Company of Swift Leisure Group Limited

**Share Sale** means the completion of any transaction or series of transactions resulting in a Change of Control, including in accordance with the provisions of Articles 15 (Drag Along) and 16 (Tag Along) of the Articles

**Share Option Scheme** means any share option scheme of the Company or any other Member of the Group that has been established with the written consent of the Rollover Majority

**Shareholders Agreement** means the shareholders agreement dated 18 July 2012 and made between the Company (1), the Managers (2) and the Rollover Shareholders (as defined therein) (3), as such agreement is amended, waived, restated, modified or supplemented from time to time

**Shares** means shares of any class in the capital of the Company

**Surrenders** means the contract to surrender, the landlord's contracting out notice, and the tenant's declaration in relation to the proposed surrender of lease of premises at Gate 2/3 Site Dunswell Road Cottingham East Yorkshire HU16 4JX

**Termination Date** has the meaning ascribed to it at Article 14 21

**Third Party Buyer** means any person acquiring Shares on arm's length terms

**Transfer Event** has the meaning ascribed to it at Article 14 1

**Transfer Notice** has the meanings described to it in Article 13 1

**UK Listing Authority** means the Financial Services Authority or its successors as the competent authority for listing in the United Kingdom under Part VI of the Financial Services and Markets Act 2000

**Underperformance Event** means any of the matters listed in Articles 18 1(a) to (d)

**Valuers** means (i) a firm of chartered accountants, (ii) a chartered accountant or (iii) a firm of corporate finance advisers which employs a chartered accountant, in any such case selected by the Board with the consent of a Rollover Majority. If the Rollover Majority does not consent to a firm or person proposed by the Board acting as the Valuer, the Board shall propose an alternative firm or person until the Board and the Rollover Majority agree upon the identity of the Valuer

**Winding Up** means the passing of any resolution for the winding up of the Company, or any other return on capital (on liquidation, capital reduction or otherwise)

- 1 2 A reference in these Articles to a numbered **regulation** is to the article so numbered in the Model Articles
- 1 3 In these Articles, words importing a gender include every gender and references to persons shall include bodies corporate, unincorporated associations and partnerships
- 1 4 Words and expressions defined in or for the purposes of the CA 2006 or the Model Articles shall, unless the context otherwise requires, have the same meaning in these Articles
- 1 5 The headings in these Articles shall not affect their construction or interpretation
- 1 6 Whenever under these Articles it is desired or necessary for any two or more persons to give any notice, consent or approval in writing, the same may be done by them executing two or more documents either in identical form or adapted only for execution
- 1 7 The courts of England have exclusive jurisdiction to settle any dispute arising from or connected with these Articles or otherwise arising between the Company and any of its

members (or any former member or any person claiming title or interest under or by virtue of any member or former member) (each a **Disputant**) relating in any way to the past or present or alleged membership of the Company or otherwise under the articles of association for the time being of the Company or under the CA 2006 (a **Dispute**), including a dispute regarding the existence, validity or termination of membership of the Company or the consequences of its nullity

1 8 The Company and each Disputant agree that the courts of England are the most appropriate and convenient courts to settle any Dispute and, accordingly, that they will not argue to the contrary

1 9 Notwithstanding Article 1 7 and Article 1 8, this Article does not prevent the Company from taking proceedings relating to a Dispute (**Proceedings**) in any other courts with jurisdiction To the extent allowed by law, the Company may take concurrent Proceedings in any number of jurisdictions

1 10 Unless the context otherwise requires, reference in these Articles to any English term for any action, remedy, method of judicial proceeding, legal document, legal status, Court, legislation, official or any legal concept or thing shall, in respect of any jurisdiction other than England and Wales, be deemed to include what most nearly approximates in that jurisdiction to the relevant English term

## **2 Application of the Model Articles etc**

2 1 These Articles and the regulations of the Model Articles (subject to any modifications set out in these Articles and, in particular, in Article 39) shall constitute all the articles of association of the Company

2 2 Regulations 8, 14(1) to 14(5) (inclusive), 19(3)(b), 21, 26(1), 26(5), 41(1), 44(2) to 44(4) (inclusive), 52 and 53 do not apply to the Company

## **3 Share Capital**

3 1 Save with the prior consent of a Rollover Majority, the issued share capital of the Company shall not exceed £1,009,232 divided into 340,000 A1 Shares, 508,500 A2 Shares, 151,500 A3 Shares and 46,160,000 B Shares

3 2 In these Articles, unless the context requires otherwise, references to Shares of a particular class shall include Shares created and/or issued after the Investment Date and ranking ~~pari~~ ~~passu~~ in all respects (or in all respects except only as to the date from which those Shares rank for dividend) with the Shares of the relevant class then in issue but, for the avoidance of doubt, A1 Shares, A2 Shares and A3 Shares shall only be treated as being Shares of the same class to the extent and for the purposes expressly stated in these Articles

3 3 The Company may pay any person a commission in consideration for that person

- (a) subscribing, or agreeing to subscribe, for Shares, or
- (b) procuring, or agreeing to procure, subscriptions for Shares

3 4 Any such commission may be paid

- (a) in cash, or in fully paid or partly paid Shares or other securities, or partly in one way and partly in the other, and

- (b) in respect of a conditional or an absolute subscription

#### **4 Dividends**

- 4 1 Any distributable profits of the Company in respect of any financial year shall be applied first in paying dividends to the holders of the B Shares then in issue in accordance with Article 4 2 and then, subject to the payment in full of all dividends declared on the B Shares and consent of the Rollover Majority, in distributing such remaining distributable profits to the holders of A1 Shares, A2 Shares and A3 Shares (in each case pro rata as between such holders as to their respective holdings of the relevant classes as if such Shares constituted a single class) as the Company sees fit
- 4 2 The Company shall pay to each holder of B Shares, in priority to the holder of any other class of Share, a cash dividend of 6% of the Issue Price per annum (reduced pro rata for any period of less than 1 year) in respect of each B Share held by him (**B Dividend**) and the following provisions shall apply in respect of the payment of such dividend
- (a) the B Dividend shall accrue from day to day from and including the Adoption Date, and shall be paid in two equal instalments by way of an interim dividend on 1 April and a final dividend on 1 October in each year, the first such payment (being in respect of the period from 1 September 2015 to 31 August 2016) to be made on 1 April 2016,
  - (b) unless the Company is prohibited from paying dividends by the CA 2006, the Banking Facilities or the Intercreditor Agreement, the B Dividend shall (notwithstanding any other provision of these Articles and in particular notwithstanding that there has not been a resolution of the Board or resolution of the Company in general meeting) be paid immediately on the due date and if not then paid shall be a debt due by the Company and be payable in priority to any later B Dividend, and
  - (c) where the Company is prohibited by the CA 2006, the Banking Facilities or the Intercreditor Agreement from paying in full any B Dividend due on the date specified in Article 4 2(a) then, in respect of any B Dividend which would otherwise require to be paid pursuant to these Articles on that date, the Company shall pay, on that date, to the holders of the B Shares on account of the B Dividend the maximum sum (if any) which can then, consistently with the CA 2006, the Banking Facilities and the Intercreditor Agreement, be paid by the Company and, as soon as the Company is no longer prohibited from doing so, the Company shall in respect of the B Shares pay on account of the balance of the B Dividend for the time being remaining outstanding and until all amounts outstanding on the B Dividend have been paid in full, the maximum amount of B Dividend which can, consistently with the CA 2006, the Banking Facilities and the Intercreditor Agreement as though such provisions still applied, properly be paid by the Company at that time

#### **5 Return of capital**

On a return of capital whether on liquidation or capital reduction or otherwise (other than a purchase of Shares made in accordance with these Articles) the surplus assets of the Company remaining after the payment of its liabilities shall be applied as if they were the proceeds from a Realisation under Article 7

#### **6 Voting**

- 6 1 Save as provided in Article 29 12 and subject to Article 14 3, each holder of an A1 Share, A2 Share or A3 Share (as the case may be) shall be entitled to receive notice of, and to attend

and vote at, general meetings of the Company On a show of hands every holder of an A1 Share, A2 Share or A3 Share (as the case may be) who (being an individual) is present in person or by proxy or (being a corporation) is present by a duly authorised representative or by proxy shall have one vote and on a poll every holder of an A1 Share, A2 Share or A3 Share (as the case may be) so present in person or by proxy shall have one vote for each A1 Share and/or A2 Share and/or A3 Share held by him

6 2 The B Shares shall not entitle their holders to receive notice or to exercise voting rights

## 7 Provisions on Realisation

7 1 On a Realisation or Liquidation, the provisions of this Article 7 shall apply to determine the allocation of the proceeds of such Realisation

7 2 On a Share Sale or on a Liquidation the members selling or holding Shares shall pay the Realisation Value (but for the avoidance of doubt there shall be excluded and no payment shall be required into the bank account referred to below in respect of any repayment of any indebtedness to bank funders to the Company and the definition of Realisation Value shall be construed accordingly) into a joint account at a UK clearing bank nominated by the holders of 51% of the Shares being sold (**Proceeds**) immediately upon the happening of the Share Sale or immediately upon such distribution being made pursuant to the Liquidation The Proceeds shall be distributed as soon as practicable and, in any event, within five Business Days of payment of the Proceeds into the relevant account in the manner and order of priority as set out below

(a) first, in paying to the holders of B Shares the Issue Price for each B Share that they hold which is being sold pursuant to the Share Sale or participating in the Liquidation

In the event that the Proceeds are less than the Issue Price being sold pursuant to the Share Sale or participating in the Liquidation then the full amount of the Proceeds shall be paid to the holders of the B Shares pro rata to the number of B Shares held by them which are being sold pursuant to the Share Sale or participating in the Liquidation

After such distribution the holders of B Shares shall have no further rights to the Proceeds

(b) second, in paying to the holders of B Shares all accrued but unpaid B Dividend pursuant to Article 4 2

(c) third in paying the balance (if any) of the Proceeds (**Proceeds Balance**) to the holders of A1 Shares, A2 Shares and A3 Shares (pari passu as if they constituted one class of Share) pro rata to the number of A1 Shares, A2 Shares and A3 Shares held by them which are being sold pursuant to the Share Sale or participating in the Liquidation

The obligation to make payment into a bank account may be waived if holders of 51% of the issued Shares so direct provided that the Proceeds are in any event distributed in accordance with this Article 7 2

7 3 Any deferred consideration in respect of the Share Sale or Liquidation, when received, shall be distributed in accordance with the provisions of Article 7 2 as if it had been paid at the same time as the initial consideration and taking into account the payments already made to the holders of any B Shares sold pursuant to the Share Sale or participating in the Liquidation to which the deferred consideration relates such that if the holders of A1 Shares, A2 Shares

and A3 Shares received any payment on the Share Sale pursuant to Article 7.2 then the holders of the B Shares shall have no entitlement to participate in any such deferred consideration

7.4 In the event of an Asset Sale unless the holders of 75% of the A1 Shares, A2 Shares and A3 Shares (treated as if they were one class of Share) and the holders of 75% of the B Shares agree otherwise, the holders of Shares shall as soon as reasonably practicable pass a resolution for the Winding Up of the Company

7.5 Subject to Article 7.2 above immediately prior to and conditionally upon a Listing, the Members shall enter into such reorganisation of the share capital of the Company as the holders of 75% of the A1 Shares, A2 Shares and A3 Shares (treated as if they were one class of Share) and the holders of 75% of the B Shares may specify so that the equity percentage of the share capital held by each of the Members following such reorganisation is the same as the percentage of the proceeds on a Share Sale payable to each such Member after the reallocations specified in Article 7.2 above. If any Member defaults in complying with the terms of any such reorganisation then the holders of 75% of the A1 Shares, A2 Shares and A3 Shares (treated as if they were one class of Share) and the holders of 75% of the B Shares shall authorise some person to execute on behalf of that Member any necessary transfers and/or resolutions. Such reorganisation shall take place so as to ensure that the Realisation Value is reallocated between the Members in the same proportions as the preceding provisions of Article 7.2 would provide on a Share Sale at that Realisation Value and, to the extent necessary or desirable for such purpose, the appropriate number and classes of the Shares (other than the subscriber share) are liable to be converted into deferred shares and the rights attached to the deferred shares arising as a result of the reorganisation under this Article 7.5 are as follows -

- (a) the deferred shares shall not confer on the holders of them any right to receive payment of any dividend,
- (b) the deferred shares shall not confer on the holders of them any right to receive notice of, or to attend and vote at, any general meeting of the Company,
- (c) on a return of assets on a Winding Up or otherwise the deferred shares shall entitle the holders thereof only to payment of 0.1 pence for each deferred share held after the repayment of the Issue Price on each Share (excluding for these purposes deferred shares deriving from these Articles) and the payment of £100,000 on each Share (excluding for these purposes deferred shares deriving from these Articles), and
- (d) the Company shall have irrevocable authority at any time to appoint any person to execute on behalf of the holders of all or any of the deferred shares a transfer thereof (and/or an agreement to transfer the same) to such person(s) as the Company may determine as custodian thereof and/or to purchase the same itself (in accordance with the provisions of the CA 2006), in any such case for not more than 0.1 pence for each deferred share held by any Member, without further obtaining the sanction of the holder or holders thereof and pending such transfer and/or purchase to retain the certificate for the deferred shares

## **8 Variation of class rights**

Whenever the capital of the Company is divided into different classes of Shares, the special rights attached to any class may only be varied or abrogated, either whilst the Company is a going concern or during or in contemplation of a Winding Up, with the consent in writing of the

holders of three quarters of the issued Shares of that class or with the sanction of a special resolution passed at a separate meeting of the holders of the issued Shares of that class, but not otherwise. To every such separate meeting, all the provisions of these Articles relating to general meetings of the Company shall apply (with such amendments as may be necessary to give such provisions efficacy)

## 9 Issue of Shares

9.1 Subject to Article 9.4, and the consent required under clause 6.2 of the Shareholders Agreement, the directors may offer, allot, grant rights or warrants to subscribe for, grant options over, or otherwise deal with or dispose of unissued Shares in the Company to such persons and generally on such terms in such manner and at such times as they may determine

9.2 Subject to Article 9.4, and the consent required under clause 6.2 of the Shareholders Agreement, the directors of the Company are hereby authorised pursuant to section 551 of the CA 2006 generally and unconditionally to exercise all the powers of the Company to allot Shares in the capital of the Company and to grant rights to subscribe for or to convert any security into such Shares (**Allotment Rights**), but so that this authority shall expire on the day immediately preceding the fifth anniversary of the date of the resolution adopting these Articles

This authority revokes all (if any) prior unexercised authorities vested in the directors to allot Shares or to grant Allotment Rights

9.3 By virtue of section 567(1) of the CA 2006, the provisions of sections 561 and 562 of the CA 2006 shall not apply to an allotment made by the Company of equity securities (as defined in section 560(1) of the CA 2006), instead the provisions of Article 9.4 below shall apply

9.4 No shares of any class may be allotted by the Company unless they are first offered to all holders of Shares in the proportion as nearly as possible to the numbers of Shares held by them. But, subject to clause 6.10 of the Shareholders Agreement, the Company does not have to make an offer under this Article 9.4 if

(a) and for so long as an Underperformance Event is subsisting, during which shares of any class may be allotted by the Company to the holders of the A1 shares and/or B Shares in proportion as nearly as possible to the number of A1 shares and/or B Shares held by them (the **First Offer**) provided that within 30 days of the shares that are subject of the First Offer having been subscribed for by the holders of the A1 shares and/or B Shares, then the holders of the A2 Shares and A3 Shares shall be offered shares (the **Second Offer**) for the same subscription price as the First Offer, in the same proportion (i) as nearly as possible to the number of Shares held by them and (ii) such that the same proportionate number of Shares shall be issued to them as were issued pursuant to the First Offer in order to enable them to maintain their respective equity entitlements prior to the First Offer, or

(b) the proposed issue is on the exercise of options granted under a Share Option Scheme

provided that if it was a condition of the First Offer that accepting shareholders must also subscribe for any other securities (debt or equity) (**Further Securities**) it shall be a term of an offer made pursuant to this Article 9.4 that the acceptors shall also subscribe for the same proportion of Further Securities which the number of shares to be subscribed for under the



Second Offer bears to the number of shares subscribed for under the First Offer, unless the Board (with the prior written consent of the Rollover Majority) determine otherwise

9 5 An offer under Article 9 4 shall be open for acceptance for at least 21 days after notice of it is given to the Members and in respect of such offer

(a) Members who accept all the equity securities offered to them (**acceptors**) shall be entitled to indicate whether they would accept shares not accepted by other offerees (**Excess Shares**), and any such Excess Shares shall be allotted to such acceptors in the numbers in which they have been accepted by such acceptors or, if the number of Excess Shares is insufficient for all such acceptors to be allocated all the Excess Shares they have indicated they would accept, then the Excess Shares shall be allocated as nearly as practicable in the proportion that the number of Excess Shares each such acceptor has indicated he would accept bears to the aggregate number of Excess Shares applied for by all such acceptors and if it is not possible to allocate any of the Excess Shares without involving fractions, they shall be allocated amongst each acceptor in such a manner as the Board shall think (acting reasonably), and

(b) should any Excess Shares then remain, such Excess Shares shall be at the disposal of the directors who may (within the period of three months from the expiry of the last offer made under Article 9 4) allot, grant options over or otherwise dispose of those shares to any person and on any terms, but the price per share and other terms offered to such a person cannot be more favourable than the price and terms offered to the Members

9 6 Article 9 4 will also apply (with the necessary changes) to the grant of any right to subscribe for shares of any class, other than a grant of options under a Share Option Scheme

9 7 Where the Board proposes to make a rights issue it may under the terms of such rights issue permit the Company, subject to the written consent of the Rollover Majority, to allot Shares or equity securities in response to an acceptance received before the period for responding shall have expired and regardless of whether any other Member shall yet have responded to the offer The Board may allot Shares accordingly

9 8 Nothing in Article 9 shall permit any allotment without the consent required under clause 6 2 of the Shareholders Agreement

## 10 Lien

All Shares to be sold in the enforcement of the Company's lien or rights of forfeiture shall be offered in accordance with Article 14 (Compulsory Transfers) as if a Deemed Transfer Notice were deemed given in respect of such Shares

## 11 Transfer of Shares

11 1 The Board shall not register the transfer of any Share or any interest in any Share unless the transfer

(a) is permitted by Article 12 (Permitted Transfers), or

(b) is made in accordance with Article 13 (Voluntary Transfers), Article 14 (Compulsory Transfers), Article 15 (Drag Along Option), or Article 16 (Tag Along),

in addition, in any such case, is not prohibited under Article 17 (Prohibited transfers)

- (a) For the purpose of ensuring that a transfer of Shares is in accordance with these Articles or that no circumstances have arisen whereby a Member may be bound to give or be deemed to have given a Transfer Notice the Board may from time to time require any Member or any person named as transferee in any transfer lodged for registration to furnish to the Board such information and evidence as they reasonably deem relevant for such purpose
  - (b) Failing such information or evidence being furnished to their reasonable satisfaction within a reasonable time after request under Article 11 2(a) the Board may (with the approval of a Rollover Majority) in their absolute discretion refuse to register the transfer in question or (with the approval of a Rollover Majority where no transfer is in question) require by notice in writing to the Member(s) concerned that a Transfer Notice be given in respect of the Shares concerned
  - (c) If the Board refuse to register a transfer of a Share they shall, as soon as practicable and in any event within two months after the date on which the transfer was lodged with the Company, send to the transferee notice of, and the reasons for, the refusal
  - (d) If such information or evidence requested under Article 11 2(a) discloses to the reasonable satisfaction of the Board (with the approval of a Rollover Majority) that circumstances have arisen whereby a Member may be bound to give or be deemed to have given a Transfer Notice the Board may (with the approval of a Rollover Majority) by notice in writing to the Member(s) concerned require that a Transfer Notice be given in respect of the Shares concerned
- 11 3 An obligation to transfer a Share under these Articles shall be deemed an obligation to transfer the entire legal and beneficial interest in such Share free from any lien, charge or other encumbrance
- 11 4 The directors may at any time give notice requiring any transmittee to elect either to be registered himself in respect of the Share or to transfer the Share and, if the notice is not complied with within 60 days, the directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the Share until the requirements of the notice shall have been complied with Nothing in these Articles releases the estate of a deceased holder from any liability in respect of a Share solely or jointly held by that holder

## **12 Permitted Transfers**

### **12 1 Permitted Transfers**

- (a) Any Member holding A2 Shares or A3 Shares may, with Consent and the prior written consent of the Rollover Majority, at any time (save where a Transfer Notice has been served or deemed served in respect of such Shares pursuant to these Articles) during his lifetime transfer all or some of the A2 Shares or A3 Shares held by him to another Manager
- (b) Any Rollover Shareholder may, with Consent, at any time (save where a Transfer Notice has been served or deemed served in respect of such Shares pursuant to these Articles) during his lifetime transfer any A1 Shares and/or B Shares held by him to,
  - (i) a Rollover Privileged Relation, or

- (ii) trustees to be held on a Family Trust of which they are the settler
- (c) On the death of a Rollover Shareholder the A1 Shares and B Shares held by him may be transferred to the personal representatives of his estate (**PRs**) and/or (either directly or from the PRs) to the beneficiaries of his estate provided that such beneficiaries are
  - (i) Rollover Privileged Relations, or
  - (ii) trustees of a Family Trust of which the deceased Rollover Shareholder is the settler
- (d) Any Member may, with Consent and the prior written consent of the Roller Majority, at any time (save where a Transfer Notice has been served or deemed served in respect of such Shares pursuant to these Articles) during his lifetime transfer any Shares held by him to the Company, subject to compliance by the Company with the CA 2006

## 12 2 Transfers by EBT

- (a) Where any Shares are held by trustees of the EBT
  - (i) on any change of trustees, the Shares may be transferred to the new trustees of the EBT,
  - (ii) the Shares may be transferred at any time to any beneficiary of the EBT if the Board has approved the transfer, and
  - (iii) the Shares may be transferred at any time to the Company if the Board has approved the transfer, and subject always to compliance by the Company with the CA 2006
- (b) The EBT may transfer any Shares it holds in accordance with the provisions of clause 4 3 of the Shareholders Agreement

## 12 3 Transfers of unencumbered interest

A transfer of any Share pursuant to this Article 12 shall only be treated as a permitted transfer for the purposes of these Articles if it is a transfer free from any lien, charge or other encumbrance

## 13 Voluntary Transfers

13 1 Except as permitted under Article 12 (Permitted Transfers) or as contemplated in Article 15 (Drag Along Option) or 16 (Tag Along), any Member who wishes to transfer any Shares or any interest in them (a **Seller**) shall before transferring or agreeing to transfer such Share or any interest in it, serve notice in writing (a **Transfer Notice**) on the Company of his wish to make that transfer

13 2 In the Transfer Notice the Seller shall specify

- (a) the number and class of Shares (**Sale Shares**) which he wishes to transfer,
- (b) the identity of the person (if any) to whom the Seller wishes to transfer the Sale Shares,

- (c) the price per Share at which the Seller wishes to transfer the Sale Shares (the **Sale Price**), and
- (d) whether the Transfer Notice is conditional upon all (and not part only) of the Sale Shares being sold pursuant to the following provisions of this Article 13 (a **Total Transfer Condition**)

13 3 Each Transfer Notice shall

- (a) relate to one class only,
- (b) constitute the Company as the agent of the Seller for the sale of the Sale Shares on the terms of this Article 13,
- (c) be irrevocable, and
- (d) be deemed not to contain a Total Transfer Condition unless the Transfer Notice expressly states otherwise

13 4 The Sale Shares shall be offered for purchase in accordance with this Article 13

- (a) at the Sale Price, if agreed by the Rollover Majority,
- (b) in the absence of the consent of the Rollover Majority, such other price as may be agreed between the Board and the Seller, with the consent of a Rollover Director,
- (c) in the absence of agreement, the lower of the Sale Price and the Market Value

13 5 The Board shall at least 10 Business Days after and no more than 20 Business Days after the Transfer Notice is served give an Offer Notice to all Members to whom the Sale Shares are to be offered in accordance with these Articles

13 6 An Offer Notice shall

- (a) specify the Sale Price,
- (b) contain the other relevant details included in the Transfer Notice, and
- (c) invite the relevant offerees to respond in writing, before expiry of the Offer Notice, to purchase the numbers of Sale Shares specified by them in their application,

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in addition, shall expire 35 Business Days after its service

13 7

- (a) A B Share (or any interest in a B Share) may not be offered to a person who is not a holder of B Shares (other than as may be agreed in writing by a Rollover Majority and the holders of a majority of the A2 Shares and A3 Shares (as if they were one class of Share) from time to time)
- (b) A1 Shares (other than as may be agreed in writing by a Rollover Majority from time to time) may only be offered to holders of A1 Shares on a pro rata basis
- (c) A2 Shares (other than as agreed in writing by a Rollover Majority from time to time) may only be offered to holders of A2 Shares and A3 Shares (as if they were one class of Share) on a pro rata basis

- (d) A3 Shares (other than as agreed in writing by a Rollover Majority from time to time) may only be offered to holders of A2 Shares and A3 Shares (as if they were one class of Share) on a pro rata basis
- 13 8 After the expiry date of the Offer Notice, the Board shall, in the priorities and in respect of each class of persons set out in Article 13 7, allocate the Sale Shares in accordance with the valid applications received save that
- (a) if there are applications from any class of offerees for more than the number of Sale Shares available for that class of offerees, they shall be allocated to those applicants in proportion (as nearly as possible but without allocating to any Member more Sale Shares than the maximum number applied for by him) to the number of Shares of the class which entitles them to receive such offer then held by them respectively,
  - (b) if it is not possible to allocate any of the Sale Shares without involving fractions, they shall be allocated amongst the applicants of each class in such manner as the Board shall think fit (acting reasonably), and
  - (c) if the Transfer Notice contained a valid Total Transfer Condition, no allocation of Sale Shares shall be made unless all the Sale Shares are allocated
- 13 9 The Board shall, within five Business Days of the expiry date of the Offer Notice, give notice in writing (an **Allocation Notice**) to the Seller and to each person to whom Sale Shares have been allocated (each a **Buyer**) specifying the name and address of each Buyer, the number and class of Sale Shares agreed to be purchased by him and the aggregate price payable by him for them and the date for completion (being no earlier than five nor later than 15 Business Days after the date of service of the Allocation Notice)
- 13 10 Completion of a sale and purchase of Sale Shares pursuant to an Allocation Notice shall take place at the registered office of the Company at the time specified in the Allocation Notice when the Seller shall, upon payment to him by a Buyer of the Sale Price in respect of the Sale Shares allocated to that Buyer, transfer those Sale Shares and deliver the relative share certificate(s) or indemnities for lost share certificate(s), as appropriate to that Buyer
- 13 11 The Seller may, during the period of 30 Business Days commencing 20 Business Days after the expiry date of the Offer Notice, sell all or any of those Sale Shares for which an Allocation Notice has not been given by way of bona fide sale to the proposed transferee (if any) named in the Transfer Notice or, if none was so named, to any transferee, in either case at any price per Sale Share which is not less than the Sale Price, without any deduction, rebate or allowance to the proposed transferee and subject always to Article 17, provided that - - -
- (a) the Seller may not transfer such Share and the Board shall not register any transfer to a transferee who is not at that date a Member unless such transferee is first approved in writing by a Rollover Majority, and
  - (b) if the Transfer Notice contained a Total Transfer Condition, the Seller shall not be entitled, save with the written consent of the Rollover Majority and the Board, to sell only some of the Sale Shares under this Article 13 11
- 13 12 If a Seller fails for any reason (including death) to transfer any Sale Shares when required pursuant to these Articles, the Board may authorise any director of the Company (who shall be deemed to be irrevocably appointed as the attorney of the Seller for the purpose) to execute each necessary transfer of such Sale Shares and deliver it on the Seller's behalf The Company may receive the purchase money for such Sale Shares from the Buyer and shall upon receipt (subject, if necessary, to the transfer being duly stamped) register the

Buyer as the holder of such Sale Shares The Company shall hold such purchase money in a separate bank account on trust for the Seller but shall not be bound to earn or pay interest on any money so held The Company's receipt for such purchase money shall be a good discharge to the Buyer who shall not be bound to see to the application of it, and after the name of the Buyer has been entered in the register of Members in purported exercise of the power conferred by this Article 13 12 the validity of the proceedings shall not be questioned by any person

## 14 Compulsory Transfers

### *Transfer Events*

14 1 In this Article 14, a **Transfer Event** occurs, in relation to any Member

#### *Ceasing to be director or employee of the Group*

- (a) if either
  - (i) a Manager who is at any time a director or employee of, or a consultant to, a member of the Group shall cease to hold such office, employment or position, or
  - (ii) the member of the Group of which such Manager is a director, employee or consultant ceases for any reason to be a member of the Group

and the Manager does not remain or thereupon immediately become a director or employee of another company which is still a member of the Group (in which case the Board shall notify the Rollover Majority of the Manager ceasing to hold such office, employment or position, or the relevant member of the Group ceasing to be a member of the Group (as the case may be) within three months of the date of such event) and the Rollover Majority notifies the Company in writing (a **Transfer Event Notification**) that such event is a Transfer Event in relation to that Member for the purposes of this Article 14 at any time within the period of six months following the date on which the Manager ceases to hold such office, employment or position, or the relevant member of the Group ceases to be a member of the Group,

#### *Privileged Relations, Spouses, Legal Partners and Family Trusts*

- (b) if any Shares are transferred by a Manager to another Manager, or by a Rollover Shareholder to a Rollover Privileged Relation or to trustees to be held on a Family Trust and
  - (i) the relevant transferee ceases to be a Manager, Rollover Privileged Relation or the trust in question ceases to be a Family Trust in relation to such Member, or
  - (ii) there ceases to be any beneficiaries of the Family Trust (or no beneficiaries other than charities)

and within the following six months, a Rollover Majority notifies the Company in writing (a **Transfer Event Notification**) that such event is a Transfer Event in relation to that Member for the purposes of this Article 14

*Unauthorised attempted transfer*

- (c) if a Member shall attempt to deal with or dispose of any Share or any interest in it otherwise than in accordance with these Articles and whether or not for value and within the following six months a Rollover Majority notifies the Company in writing (a **Transfer Event Notification**) that such event is a Transfer Event in relation to that Member for the purposes of this Article 14, or

*Failure to serve Transfer Notice under specified provisions*

- (d) if a Member shall for any reason not give a Transfer Notice in respect of any Shares or transfer any Shares (as the case may be) as required by any express provision of these Articles and within the following six months a Rollover Majority notifies the Company in writing (a **Transfer Event Notification**) that such event is a Transfer Event in relation to that Member for the purposes of this Article 14

**Deemed Transfer Notice**

14 2

- (a) Upon the making of a Transfer Event Notification, the Member in respect of whom the Transfer Event has occurred (**Relevant Member**) and any other holder of any Deemed Transfer Shares shall be deemed to have immediately given a notice in respect of all the Deemed Transfer Shares then held by such Member(s) (**Deemed Transfer Notice**) and the Board will notify the relevant Member within 10 Business Days of receipt by the Board of such Transfer Event Notification. If the Member holds more than one class of Deemed Transfer Shares, he shall be deemed to serve a separate Deemed Transfer Notice in respect of each class of his holding
- (b) A Deemed Transfer Notice shall supersede and cancel any then current Transfer Notice insofar as it relates to the Deemed Transfer Shares except for Shares that have then been validly transferred pursuant to that Transfer Notice
- (c) For the purpose of this Article 14 2
  - (i) any Shares received by way of rights or on a capitalisation at any time by any person to whom Deemed Transfer Shares may have been transferred (directly or by means of a series of two or more permitted transfers) shall also be treated as Deemed Transfer Shares,
  - (ii) a Deemed Transfer Notice pursuant to Article 14 1(a) where the relevant Manager is Anthony Collins Miskin shall only relate to the A2 Shares comprised in the Deemed Transfer Shares

**Disenfranchisement of Deemed Transfer Shares**

- 14 3 Notwithstanding any other provision of these Articles, no Member shall be entitled to receive notice of or attend at, and shall have no voting rights at, general meetings of the Company or to receive or to have any voting rights in respect of, any written resolutions of the Company in respect of Deemed Transfer Shares (and of any Shares received thereafter by way of rights or on a capitalisation in respect of those Deemed Transfer Shares) on and from
- (a) in the case of a Manager who ceases to be a director or employee of, or consultant to, a member of the Group in accordance with Article 14 1(a), the date on which such

Manager ceases to hold such office, employment or position or the date on which the relevant member of the Group ceases to be a member of the Group, and

(b) in all other cases, the date of the relevant Deemed Transfer Notice

(or, in respect of any Shares received after the date of the Deemed Transfer Shares, the date upon which he receives the Shares) until the entry in the register of members of the Company of another person as the holder of those Deemed Transfer Shares

14 4 Each Deemed Transfer Notice shall

(a) constitute the Company as the agent of the Relevant Member for the sale of the Deemed Transfer Shares on the terms of this Article 14, and

(b) be irrevocable

***Deemed Sale Price***

14 5 The Deemed Transfer Shares shall subject to Article 14 6 be offered for purchase in accordance with this Article 14 at a price per Deemed Transfer Share (**Deemed Sale Price**) agreed between the Relevant Member and the Board (with the approval of a Rollover Director) If the Relevant Member and the Board (with the approval of a Rollover Director) have not reached agreement on the Deemed Sale Price by the end of the 10th Business Day after the date of service of the Deemed Transfer Notice, the Deemed Sale Price shall be determined by the Valuer in accordance with this Article 14

14 6 If the Relevant Member and the Board (with the approval of a Rollover Director) have not reached agreement on the Deemed Sale Price within the period of 10 Business Days after the date of service of the Deemed Transfer Notice, the Board shall instruct the Valuers to provide their written opinion of the open market value of each Deemed Transfer Share (the **Market Value**) as at the date of service of the Deemed Transfer Notice (in which case for the purposes of these Articles the Deemed Sale Price shall be deemed to have been determined on the date of the receipt by the Company of the Valuer's report)

14 7 The Deemed Sale Price for any Deemed Transfer Shares as a consequence of a Transfer Event falling within Article 14 1(a) shall

(a) subject to Article 14 7(b), in any case where the Relevant Member is a Good Leaver, be their Market Value in respect of the Relevant Proportion of the Deemed Transfer Shares and the lower of the Issue Price and the Market Value in respect of the balance of such Deemed Transfer Shares, or

(b) in any case where (i) the Relevant Member is a Good Leaver by reason of death, permanent incapacity or ill health and (ii) the Relevant Proportion is less than 100%, the Deemed Sale Price shall be the greater of (a) the amount determined in accordance with Article 14 7(a) and (b) an amount equal to £1 multiplied by the number of Deemed Transfer Shares, or

(c) in any case where the Relevant Member is a Bad Leaver, be the lower of their Issue Price and their Market Value

14 8 If instructed to report on their opinion of Market Value under this Article 14 the Valuers shall

(a) act as expert and not as arbitrator and their written determination shall be final and binding on the Members, and



- (b) proceed on the basis that
  - (i) the open market value of each Deemed Transfer Share shall be calculated by following the below steps
    - (A) calculate the sum which a willing buyer would agree with a willing seller to be the purchase price for the entire issued share capital of the Company on arm's length terms for cash payable in full on completion,
    - (B) then identify the amount of such total sum, which would be payable to the holders of Shares comprised in that class that would be applicable as provided for under Article 7, and
    - (C) finally calculate the entitlement of the Deemed Transfer Shares to the sum noted at sub-paragraph (B) above in accordance with the number of Deemed Transfer Shares held in that class and subsequently calculate the price for each Deemed Transfer Share
  - (ii) there shall be no addition of any premium or subtraction of any discount by reference to the size of the holding the subject of the Deemed Transfer Notice or in relation to any restrictions on the transferability of the Deemed Transfer Shares, and
  - (iii) any difficulty in applying either of the foregoing bases shall be resolved by the Valuers as they think fit (acting reasonably) in their absolute discretion

14 9 The Company will use its reasonable endeavours to procure that the Valuers deliver their written opinion of the Market Value to the Board and to the Relevant Member within 28 days of being requested to do so

14 10 The Valuers' fees for reporting on their opinion of the Market Value shall be borne as the Valuers shall specify in their valuation having regard to the conduct of the parties and the merit of their agreements in respect of the matters in dispute or otherwise (in the absence of any such specification by the Valuers) by the Company unless the Valuers' opinion of the Market Value is equal to or less than the Deemed Sale Price which has been put forward in writing by the Board to the Relevant Member at any time in the period of 10 Business Days following the date of the Deemed Transfer Notice, in which cases the Relevant Member shall pay all the Valuers' fees

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#### ***Board Invitees***

14 11 In the period of month immediately following the date on which the Deemed Sale Price is agreed or determined in accordance with this Article 14, the Board (with the written approval of a Rollover Majority) shall determine the Board Invitee(s) in respect of the Deemed Transfer Shares

#### ***First Round Offer***

14 12 The Board shall give a notice (a **First Round Offer Notice**) to all persons specified in column (2) in the table below that corresponds to the class of shares specified in column (1) of which the Deemed Transfer Shares form part (the **First Offerees**) no more than 10 Business Days after

- (a) Board Invitee(s) are determined in respect of all the Deemed Transfer Shares, or

- (b) a Rollover Majority waives the requirement to offer Deemed Transfer Shares to Board Invitees, or
- (c) the period of one month following the date on which the Deemed Sale Price is agreed or determined expires without Board Invitees having been found in respect of all the Deemed Transfer Shares

(1) Class of Sale Shares	(2) First Round Offer	(3) Second Round Offer	(4) Third Round Offer	(5) Fourth Round Offer
A1 Share	Board Invitees	Members holding A1 Shares on a pro rata basis	N/A	N/A
A2 Share	Board Invitees	Members holding A2 Shares and A3 Shares on a pro rata basis as if they were one class of Share	Members holding A1 Shares on a pro rata basis	Members holding B Shares on a pro rata basis
A3 Share	Board Invitees	Members holding A2 Shares and A3 Shares on a pro rata basis as if they were one class of Share	Members holding A1 Shares on a pro rata basis	Members holding B Shares on a pro rata basis
B Shares	Board Invitees	Members holding B Shares on a pro rata basis	Members holding A1 Shares on a pro rata basis	Members holding A1 Shares, A2 Shares and A3 Shares on a pro rata basis as if they were one class of Share

**14 13 A First Round Offer Notice shall**

- (a) specify the Deemed Sale Price,
- (b) specify the numbers and class of Deemed Transfer Shares,
- (c) invite the relevant offerees to respond in writing, before expiry of the First Round Offer Notice, to purchase the numbers of Deemed Transfer Shares specified by them in their application, and
- (d) expire 15 Business Days after its service

**14 14 After the expiry date of the First Round Offer Notice, the Board shall allocate the Deemed Transfer Shares in accordance with the valid applications received save that**

- (a) if there are applications from offerees for more than the number of Deemed Transfer Shares available, they shall be allocated to those applicants in proportion (as nearly as possible but without allocating to any Member more Deemed Transfer Shares than the maximum number applied for by him) to the number of Shares of the class which entitles them to receive such offer then held by them respectively,
  - (b) if it is not possible to allocate any of the Deemed Transfer Shares without involving fractions, they shall be allocated amongst the applicants in such manner as the Board (acting reasonably) shall think fit, and
  - (c) any allocation of Deemed Transfer Shares between two or more Board Invitees shall be entirely at the discretion of the Board with a Rollover Majority's approval
- 14 15 The Board shall, within 10 Business Days of the expiry date of the First Round Offer Notice, give notice in writing (a **Deemed Allocation Notice**) to the Relevant Member and to each person to whom Deemed Transfer Shares have been allocated (each a **Buyer**) specifying the name and address of each Buyer, the number and class of Deemed Transfer Shares agreed to be purchased by him, the aggregate price payable by him for them and the date for completion (being no earlier than five Business Days nor later than 10 Business Days after the date of service of the Deemed Allocation Notice)

#### ***Second Round Offer***

- 14 16 If and to the extent that any Deemed Transfer Shares have not been applied for by the First Offerees following the expiry of the First Round Offer Notice, the Board shall give a notice (the **Second Round Offer Notice**) to all persons specified in the line in column (3) in the table at Article 14 12 above that corresponds to the class of shares specified in column (1) of which the Deemed Transfer Shares part (the **Second Offerees**) by no later than 30 Business Days after the expiry of the First Round Offer Notice
- 14 17 A Second Round Offer Notice shall
- (a) specify the Deemed Sale Price,
  - (b) specify the numbers and class of Deemed Transfer Shares that have not been applied for following expiry of the First Round Offer (the **Second Round Deemed Transfer Shares**), and
  - (c) invite the relevant offerees to respond in writing, before expiry of the Second Round Offer Notice, to purchase the numbers of Second Round Deemed Transfer Shares specified by them in their application, and
  - (d) expire 15 Business Days after its service
- 14 18 After the expiry date of the Second Round Offer Notice, the Board shall allocate the Second Round Deemed Transfer Shares in accordance with the valid applications received save that
- (a) if there are applications from offerees for more than the number of Second Round Deemed Transfer Shares available, they shall be allocated to those applicants in proportion (as nearly as possible but without allocating to any Member more Second Round Deemed Transfer Shares than the maximum number applied for by him) to the number of Shares of the class which entitles them to receive such offer then held by them respectively, and

- (b) if it is not possible to allocate any of the Second Round Deemed Transfer Shares without involving fractions, they shall be allocated amongst the applicants in such manner as the Board (acting reasonably) shall think fit

14 19 The Board shall, within 10 Business Days of the expiry date of the Second Round Offer Notice, serve a Deemed Allocation Notice on the Relevant Member and on each person to whom Second Round Deemed Transfer Shares have been allocated (each a **Buyer**) specifying the name and address of each Buyer, the number and class of Second Round Deemed Transfer Shares agreed to be purchased by him, the aggregate price payable by him for them and the date for completion (being no earlier than five Business Days nor later than 10 Business Days after the date of service of the Deemed Allocation Notice)

### ***Third Round Offer***

14 20 If and to the extent that some or all of the Deemed Transfer Shares (where such Deemed Transfer Shares are A2 Shares, A3 Shares or B Shares) have not been applied for following the expiry of the Second Round Offer Notice, the Board shall give a notice (the **Third Round Offer Notice**) to all persons specified in the line in column (4) in the table at Article 14 12 above that corresponds to the class of shares specified in column (1) of which the Deemed Transfer Shares part (the **Third Offerees**) by no later than 30 Business Days after the expiry of the Second Round Offer Notice

14 21 A Third Round Offer Notice shall

- (a) specify the Deemed Sale Price,
- (b) specify the numbers and class of Deemed Transfer Shares that have not been applied for following expiry of the Second Round Offer (the **Third Round Deemed Transfer Shares**), and
- (c) invite the relevant offerees to respond in writing, before expiry of the Third Round Offer Notice, to purchase the numbers of Third Round Deemed Transfer Shares specified by them in their application, and
- (d) expire 15 Business Days after its service

14 22 After the expiry date of the Third Round Offer Notice, the Board shall allocate the Third Round Deemed Transfer Shares in accordance with the valid applications received save that

- (a) if there are applications from offerees for more than the number of Third Round Deemed Transfer Shares available, they shall be allocated to those applicants in proportion (as nearly as possible but without allocating to any Member more Third Round Deemed Transfer Shares than the maximum number applied for by him) to the number of Shares of the class which entitles them to receive such offer then held by them respectively, and
- (b) if it is not possible to allocate any of the Third Round Deemed Transfer Shares without involving fractions, they shall be allocated amongst the applicants in such manner as the Board (acting reasonably) shall think fit

14 23 The Board shall, within 10 Business Days of the expiry date of the Third Round Offer Notice, serve a Deemed Allocation Notice on the Relevant Member and on each person to whom Third Round Deemed Transfer Shares have been allocated (each a **Buyer**) specifying the name and address of each Buyer, the number and class of Third Round Deemed Transfer Shares agreed to be purchased by him, the aggregate price payable by him for them and the

date for completion (being no earlier than five Business Days nor later than 30 Business Days after the date of service of the Deemed Allocation Notice)

#### ***Fourth Round Offer***

14 24 If and to the extent that some or all of the Deemed Transfer Shares (where such Deemed Transfer Shares are A2 Shares, A3 Shares or B Shares) have not been purchased following the expiry of the Third Round Offer Notice, the Board shall give a notice (the **Fourth Round Offer Notice**) to all persons specified in the line in column (5) in the table at Article 14 12 above that corresponds to the class of shares specified in column (1) of which the Deemed Transfer Shares part (the **Fourth Offerees**) by no later than 10 Business Days after the expiry of the Third Round Offer Notice

14 25 A Fourth Round Offer Notice shall

- (a) specify the Deemed Sale Price,
- (b) specify the numbers and class of Deemed Transfer Shares that have not been applied for following expiry of the Third Round Offer (the **Fourth Round Deemed Transfer Shares**), and
- (c) invite the relevant offerees to respond in writing, before expiry of the Fourth Round Offer Notice, to purchase the numbers of Fourth Round Deemed Transfer Shares specified by them in their application, and
- (d) expire 15 Business Days after its service

14 26 After the expiry date of the Fourth Round Offer Notice, the Board shall allocate the Fourth Round Deemed Transfer Shares in accordance with the valid applications received save that

- (a) if there are applications from offerees for more than the number of Fourth Round Deemed Transfer Shares available, they shall be allocated to those applicants in proportion (as nearly as possible but without allocating to any Member more Fourth Round Deemed Transfer Shares than the maximum number applied for by him) to the number of Shares of the class which entitles them to receive such offer then held by them respectively, and
- (b) if it is not possible to allocate any of the Fourth Round Deemed Transfer Shares without involving fractions, they shall be allocated amongst the applicants in such manner as the Board (acting reasonably) shall think fit

14 27 The Board shall, within 10 Business Days of the expiry date of the Fourth Round Offer Notice, serve a Deemed Allocation Notice on the Relevant Member and on each person to whom Fourth Round Deemed Transfer Shares have been allocated (each a **Buyer**) specifying the name and address of each Buyer, the number and class of Fourth Round Deemed Transfer Shares agreed to be purchased by him, the aggregate price payable by him for them and the date for completion (being no earlier than five Business Days nor later than 10 Business Days after the date of service of the Deemed Allocation Notice)

#### ***Additional offers***

14 28 If and to the extent that some or all of the Deemed Transfer Shares have not been applied for following

- (a) the expiry of the Fourth Round Offer Notice (in the case of Deemed Transfer Shares that are A2 Shares, A3 Shares or B Shares), or
- (b) the expiry of the Second Round Offer Notice (in the case of Deemed Transfer Shares that are A1),

the Rollover Majority may, by written notice to the Board at any time thereafter (a **Re-Offer Notice**), require that such remaining Deemed Transfer Shares (the **Re-Offered Shares**) are offered for purchase in accordance with the provisions in Articles 14 12 to 14 27 The Board shall notify the Relevant Member in writing within 10 Business Days of receipt of a Re-Offer Notice that the Re-Offered Shares shall be re-offered for purchase The Re-Offered Shares will be offered for purchase at the price agreed between the Relevant Member and the Board (with the approval of a Rollover Director), or in the absence of agreement within 10 Business Days after the date of the notice from the Board to the Relevant Member, shall be based upon the Market Value as at the date of the Re-Offer Notice The provisions of article 14 6 to 14 10 (inclusive) shall apply *mutatis mutandis* to the determination of the Market Value for the Re-Offered Shares

#### **Completion arrangements**

14 29 Completion of a sale and purchase of Deemed Transfer Shares pursuant to a Deemed Allocation Notice shall take place at the registered office of the Company at the time specified in the Deemed Allocation Notice when the Relevant Member shall, upon payment to him by a Buyer of the Deemed Sale Price in respect of the Deemed Transfer Shares allocated to that Buyer, transfer those Deemed Transfer Shares and deliver the relative share certificate(s) or indemnities for lost share certificates(s), as appropriate to that Buyer

14 30 If a Relevant Member fails for any reason (including death) to transfer any Deemed Transfer Shares when required pursuant to these Articles, the Board may authorise any director of the Company (who shall be deemed to be irrevocably appointed as the attorney of the Relevant Member for the purpose) to execute each necessary transfer of such Deemed Transfer Shares and deliver it on the Relevant Member's behalf The Company may receive the purchase money for such Deemed Transfer Shares from the Buyer and shall upon receipt (subject, if necessary, to the transfer being duly stamped) register the Buyer as the holder of such Deemed Transfer Shares The Company shall hold such purchase money in a separate bank account on trust for the Relevant Member but shall not be bound to earn or pay interest on any money so held The Company's receipt for such purchase money shall be a good discharge to the Buyer who shall not be bound to see to the application of it, and after the name of the Buyer has been entered in the register of Members in purported exercise of the power conferred by this Article 14 19 the validity of the proceedings shall not be questioned by any person

14 31 A dispute as to whether Article 14 7(a), Article 14 7(b) or Article 14 7(c) applies to any Deemed Transfer Shares shall not affect the validity of a Deemed Transfer Notice but (if the Issue Price is lower than the Market Value) any person who acquires Deemed Transfer Shares (**Buyer**) pursuant to a Deemed Transfer Notice while such a dispute is continuing shall pay to the Relevant Member the lower of their Issue Price and their Market Value and shall pay a sum equal to the difference between their Issue Price and their Market Value to the Company The Company shall hold that amount in a separate interest-bearing bank deposit account as trustee to pay it, and interest earned thereon, upon final determination of the dispute

- (a) to the Relevant Member in respect of any Deemed Transfer Shares determined to be sold for their Market Value, and

- (b) to the Buyer(s) in respect of any Deemed Transfer Shares determined to be sold at their Issue Price,

provided always that if the Relevant Member and Buyer(s) otherwise agree in writing and notify such agreement to the Company it shall instead hold and deal with the monies paid into such account and interest as such agreement and notice may specify whether or not the dispute has been resolved

14 32 For the purpose of Article 14 1 the date upon which a Manager ceases to hold office as an employee or director (**Termination Date**) shall

- (a) where the Group Company terminates or purports to terminate a contract of employment or engagement by giving notice to the employee or director of the termination of the employment or engagement, whether or not the same constitutes a wrongful or unfair dismissal, be the later of the date of that notice and the date (if any) for the termination expressly stated in such notice (whether or not a payment is made by the employer in lieu of all or part of the notice period required to be given by the Group Company in respect of such termination),
- (b) where the employee or director terminates or purports to terminate a contract of employment or engagement by giving notice to the Group Company of the termination of the employment or engagement (whether or not he is lawfully able so to do), be the later of the date of that notice and the date (if any) for the termination expressly stated in such notice,
- (c) where the Group Company (on the one hand) or employee or director (on the other hand) wrongfully repudiates the contract of employment or engagement and the other respectively accepts that the contract of employment or engagement has been terminated, be the date of such acceptance by the Group Company, or employee or director (as the case may be),
- (d) where a contract of employment or engagement is terminated under the doctrine of frustration, be the date of the frustrating event, or
- (e) where a contract of employment or engagement is terminated in any other circumstance other than set out in Articles 14 32(a) to 14 32(d), be the date on which the person actually ceases to be employed or engaged by the Group Company

14 33 Once a Deemed Transfer Notice shall under these Articles be given in respect of any Share then no permitted transfer under Article 12 (Permitted Transfers) may be made in respect of such Share unless and until an Offer Notice shall have been served in respect of such Share and the period of allocation permitted under Article 13 (Voluntary Transfers) shall have expired without such allocation

14 34 Where any period of time stated in this Article 14 includes any Business Days which fall in the Company's fixed annual holiday periods, the applicable time period shall be extended by that number of Business Days equal to the number of Business Days which fall within the Company's fixed annual holiday periods

## 15 Drag Along Option

15 1 If Members constituting a Rollover Majority (together the **Selling Shareholders**) wish to transfer all their A1 Shares and B Shares (together **Rollover Shares**) to a Third Party Buyer, the Selling Shareholders shall have the option (**Drag Along Option**) to require any or all of

the other holders of Shares to transfer all their Shares with full title guarantee to the Third Party Buyer or as the Third Party Buyer shall direct in accordance with this Article 15

- 15 2 The Selling Shareholders may exercise the Drag Along Option at any time before the registration of the transfer of the Shares in the Company held by the Selling Shareholders by giving notice to that effect (**Drag Along Notice**) to all other Members (**Called Shareholders**) A copy of the Drag Along Notice shall, for information only, also be given to the Company at its registered office (but so that any failure or delay in giving such copy shall in no way prejudice the operation of this Article 15)
- 15 3 A Drag Along Notice shall specify that the Called Shareholders are required to transfer all their Shares in the Company (**Called Shares**) pursuant to Article 15 1 to the Third Party Buyer, the Drag Sale Price, the proposed date of transfer (if known), and the identity of the Third Party Buyer The notice provisions in Article 30 1(a) shall apply to any Drag Along Notice served save that any Drag Along Notice shall be stamped first class
- 15 4 A Drag Along Notice may be revoked by the Rollover Majority at any time prior to completion of the sale of the Called Shares and any such revocation notice shall be served in the manner prescribed for a Drag Along Notice in Article 15 2
- 15 5 Completion of the sale of the Called Shares shall take place on the same date as the date of actual completion of the sale of the Rollover Shares unless all of the Called Shareholders and the Selling Shareholders agree otherwise
- 15 6 Each Called Shareholder shall on service of the Drag Along Notice be bound to accept the sale specified in such Drag Along Notice in respect of its entire shareholding in the Company and to comply with its obligations assumed by virtue of such acceptance
- 15 7 If any Called Shareholder fails to comply with their obligations in connection with the sale specified in the Drag Along Notice, each Called Shareholder shall be deemed to have irrevocably appointed each of the Selling Shareholders severally to be his attorney to execute any stock transfer and covenant for full title guarantee in respect of the Called Shares registered in the name of such Called Shareholders and to do such other things as may be reasonably necessary or desirable to accept, transfer and complete the sale of the Called Shares pursuant to this Article 15
- 15 8 Save for Article 7, the rights of pre-emption and other restrictions contained in these Articles shall not apply on any sale and transfer of Shares by the Selling Shareholders, the Called Shareholders or any other Member to the Third Party Buyer named in a Drag Along Notice
- 15 9 Upon any person, following the issue of a Drag Along Notice, becoming a holder of Shares in the capital of the Company pursuant to the exercise of pre-existing option to acquire Shares in the Company (whether pursuant to a Share Option Scheme or otherwise howsoever), a Drag Along Notice, on the same terms as the previous Drag Along Notice, shall be deemed to have been served upon such Member immediately upon such acquisition and such person shall thereupon be bound to sell and transfer all such Shares acquired by him to the Third Party Buyer or as the Third Party Buyer may direct and the provisions of this Article 15 shall apply mutatis mutandis to each such Member save that completion of the sale of such Shares shall take place forthwith upon the Drag Along Notice being deemed served on such Member or, if later, upon the date of completion under the previous Drag Along Notice
- 15 10 The Selling Shareholders shall not serve a Drag Along Notice unless either
- (a) the period of five years has expired since the Investment Date, or



- (b) any Underperformance Events are subsisting

## **16 Tag Along**

- 16 1 Subject to Article 15 (Drag Along Option) and save in the case of a Permitted Transfer, but otherwise notwithstanding any other provision in these Articles, no sale or other disposition of any Shares (**Specified Shares**) shall have any effect if it would result in a Change of Control unless before the transfer is lodged for registration the Third Party Buyer has made a bona fide offer in accordance with these Articles to purchase at the specified price (defined in Article 16 3) all the Shares held by Members who are not acting in concert or otherwise connected with the Third Party Buyer (**Uncommitted Shares**)
- 16 2 An offer made under Article 16 1 shall be in writing and shall be open for acceptance for at least fifteen Business Days, and shall be deemed to be rejected by any Member who has not accepted it in accordance with its terms within the time period prescribed for acceptance and the consideration thereunder shall be settled in full on completion of the purchase
- 16 3 For the purposes of Article 16 the expression **specified price** means the price payable per Share equal to that offered or paid by the Third Party or its nominees for the Shares being sold resulting in the Change of Control adjusted to reflect and give effect to the provisions of Article 7 (Proceeds on Realisation)
- 16 4 Save for Article 7, the rights of pre-emption and other restrictions contained in these Articles shall not apply on any sale or transfer to a Third Party Buyer provided that the provisions of this Article 16 have been complied with

## **17 Prohibited transfers**

Notwithstanding any other provision of these Articles, no transfer of any Share shall be made or registered if it is to

- (a) any minor, undischarged bankrupt, trustee in bankruptcy or person of unsound mind, or a charity, or
- (b) any person (other than an existing Member or Third Party Buyer where the provisions set out in Articles 15 and 16 have been complied with) who has not executed a Deed of Adherence to, and in the manner required by, any Shareholders Agreement for the time being in force

## **18 Underperformance Rights**

- 18 1 If any of the following matters occur,
- (a) there is any material breach on the part of the Company (excluding a breach by the Company approved by the Rollover Directors) or one more of the Managers of the terms of the Shareholders Agreement or Rollover Loan Notes, which to the extent remediable remains unremedied despite at least 28 days' notice to remedy,
- (b) any breach by the Company of any of the covenants or obligations set out in the Banking Facilities or if the Rollover Majority (acting reasonably), conducts a test (which it may conduct at any time) and determines (acting reasonably) that there would be a default of such covenants and obligations within six months of the date of such test,
- (c) Debt Service Cover in respect of any Relevant Period is less than 1.51, and

- (d) Leverage in respect of any Relevant Period specified in column 1 below exceeds the ratio set out in column 2 below opposite that Relevant Period

Column 1 - Relevant Period ending on or about the last Friday of	Column 2 – Ratio
November 2012	2 5 1
February 2013	2 5 1
May 2013	2 5 1
August 2013	2 25 1
November 2013	2 25 1
February 2014	2 25 1
May 2014	2 10 1
August 2014	2 10 1
November 2014	2 00 1
February 2015	2 00 1
May 2015	2 00 1
August 2015	2 00 1
February, May, August and November in each Financial Year thereafter	2 00 1

(in each case, an **Underperformance Event**)

and the Rollover Directors have given written notice to the Board that the provisions of this Article 18 should have effect then until such time as written notice is given by the Rollover Director that the provisions of this Article 18 shall cease to have effect (which will be given as soon as the relevant circumstances(s) prompting the giving of the notice is/are no longer applicable) then,

- (e) the Rollover Directors 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 Rollover Directors are opposed or which exceeds the votes cast against a resolution which the Rollover Directors have proposed, or
- (f) a Rollover Majority shall be entitled to serve notice on the Company that the votes attached to the A1 Shares be enhanced so as to entitle the holders of such A1 Shares as a class to exercise on a poll or in respect of any written resolution circulated to the Members 20 times the total number of votes attached to all Shares of any other class in issue on any resolution at any general meeting of the Company and the holders of any other Shares in issue shall be deemed to grant any consent in respect of any matters to be consented to in respect of any such meetings or

resolutions where a Rollover Majority has so consented, and shall not otherwise be entitled to give or withhold any such consent

## **19 General Meetings**

Without prejudice to the powers of the Board, a Rollover Director may, acting alone, call a general meeting of the Company

## **20 Proceedings at general meetings and adjournment**

20 1 No business shall be transacted at any general meeting unless a quorum of members is present at the time the meeting proceeds to business. Two persons entitled to vote upon the business to be transacted (one being a holder of A1 Shares or a proxy for such person and the other being a holder of A2 Shares or A3 Shares or a proxy for such person) shall be a quorum for these purposes

20 2 If within 20 minutes from the time appointed for a general meeting a quorum is not present or, if during a meeting a quorum ceases to be present, the meeting, if convened upon the request of the Members in accordance with the CA 2006, shall be dissolved, in any other case, it shall stand adjourned

20 3 If a quorum is not present at any such adjourned meeting within ten minutes from the time appointed for that meeting, the meeting shall be dissolved

## **21 Poll votes**

21 1 A poll may be demanded at any general meeting by

(a) the Chairman, or

(b) any qualifying person (as such term is defined in section 318 of the CA 2006) present and entitled to vote at the meeting

21 2 A demand for a poll may be withdrawn before the poll is taken, but only with the consent of the Chairman. A demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made

21 3 Subject to these Articles, polls at general meetings must be taken when, where and in such manner as the chairman of the meeting directs. The chairman of the meeting may appoint scrutineers (who need not be holders) and decide how and when the result of the poll is to be declared

21 4 The result of a poll shall be the decision of the meeting in respect of the resolution on which the poll was demanded

21 5 A poll on the election of the Chairman or a question of adjournment must be taken immediately. All other polls must be taken within thirty days of their being demanded

21 6 A demand for a poll does not prevent a general meeting from continuing, except as regards the question on which the poll was demanded

21 7 No notice need be given of a poll not taken immediately if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case, at least

seven days' notice must be given specifying the time and place at which the poll is to be taken

- 21 8 The omission or failure by any proxy to vote in accordance with any instructions given to him by his appointor shall not invalidate any vote cast by him or any resolution passed at the general meeting concerned

## **22 Number of directors**

The number of directors shall not be less than five and there shall be no maximum number

## **23 Appointment of Directors**

- 23 1 So long as any Rollover Shareholder or its nominee is the registered holder or beneficial owner of any Shares

- (a) a Rollover Majority may at any time and on more than one occasion appoint up to two persons to be directors of the Company and, subject to Article 23 1(b), at any time and on more than one occasion remove any such person from office (each a **Rollover Director** and together the **Rollover Directors**),
- (b) the identity of a replacement Rollover Director, shall require the prior consent of the board of Swift Group Limited, who shall be entitled to withhold their consent in respect of up to a maximum of two potential replacement appointees put forward by the Rollover Majority and such that if they so withhold this consent twice no consent will be required in respect of this replacement proposal, and
- (c) a Rollover Director in office for the time being shall at the request of the Rollover Majority be appointed a director of any other Group Companies specified in such request (but shall not be entitled to any additional fee in respect of it)

- 23 2 The first Rollover Directors shall be Peter Smith and Keith Brayshaw

- 23 3 One of the Rollover Directors as determined by the Rollover Majority shall also be the Chairman of the Company and the first such appointee shall be Peter Smith

- 23 4 It is acknowledged that the remit of the Board will principally be to review business direction, strategy and in respect of the senior employees of the Group, their remuneration and other employment terms

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## **24 Alternate directors**

- 24 1 A director (other than an alternate director) may, by notice in writing delivered to the Company, or in any other manner approved by the directors, appoint any person willing to act to be his alternate

- 24 2 The appointment of an alternate director who is not already a director or alternate director

- (a) shall (save in the case of an alternate to a Rollover Director) require the approval of the directors, and
- (b) shall not be effective until his consent to act as a director in the form prescribed by the CA 2006 has been received by the Company

- 24 3 If an alternate director is himself a director and/or participates in any proceeding of the directors or at any committee as an alternate director for more than one director, his voting rights shall be cumulative but he shall only be counted once in deciding whether a quorum is present. An alternate director shall (subject to his giving to the Company an address within the United Kingdom at which notices may be served on him) have the same rights in relation to any decision of the directors as his appointor and in particular shall (without limitation) be entitled to receive notice of all meetings of the directors and all committees of which his appointor is a member and, in the absence from such meetings of his appointor, to attend and vote at such meetings and to exercise all the powers, rights, duties and authorities of his appointor (other than the power to appoint an alternate director).
- 24 4 A person who is an alternate director but not a director
- (a) may be counted as participating for the purposes of determining whether a quorum is participating (but only if that person's appointor is not participating), and
  - (b) may participate in a unanimous decision of the directors (but only if that person's appointor is not participating)
- 24 5 A director acting as alternate director shall have a separate vote for each director for whom he acts as alternate in addition to his own, but he shall count as only one for the purpose of determining whether a quorum is present. A person (not himself a director) who acts as alternate director for more than one director shall have a separate vote for each director for whom he acts as alternate, but he shall count as only one for the purpose of determining whether a quorum is present.
- 24 6 An alternate director shall be entitled to contract and be interested in and benefit from contracts or arrangements with the Company and to be repaid expenses and to be indemnified in the same way and to the same extent as a director. However, he shall not be entitled to receive from the Company any fees for his services as alternate, except only such part (if any) of the fee payable to his appointor as such appointor may by notice to the Company direct. Subject to this Article 24, the Company shall pay to an alternate director such expenses as might properly have been paid to him if he had been a director.
- 24 7 Every person acting as an alternate director shall be an officer of the Company, shall alone be responsible to the Company for his own acts and defaults and shall not be deemed to be the agent of the director appointing him.
- 24 8 An alternate director shall cease to be an alternate director
- (a) if his appointor revokes his appointment by notice in writing delivered to the Company, or in any other manner approved by the directors, or
  - (b) if his appointor ceases for any reason to be a director, or
  - (c) if any event happens in relation to him which causes his office as director to be vacated or (if not himself a director) would do so if he were himself a director

## **25 Acts of directors**

Subject to the provisions of the CA 2006, all acts done by in any proceedings of directors or by a person acting as a director shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any director or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every

such person had been duly appointed and was qualified and had continued to be a director and had been entitled to vote

## **26 Retirement of directors**

26 1 The directors shall not be subject to retirement by rotation

26 2 The office of a director (other than a Rollover Director) who is at any time an employee of the Company or of any member of the Group shall automatically be vacated if he ceases to be an employee (as described in Article 14 21) of the Company or of a member of the Group without being appointed as or continuing to be an employee of the Company or of another member of the group

## **27 Proceedings of directors**

27 1 Regulation 7 of the Model Articles applies to the Company as modified by the express provisions of these Articles but so that reference in that Regulation 7 to "a decision taken in accordance with article 8" shall have effect as if replaced by "a decision taken in accordance with Article 27 8 of these Articles"

27 2 The quorum for the transaction of business of the Board shall be two directors One of the directors in the quorum shall be a Rollover Director unless either

(a) a Rollover Director or a Rollover Majority has previously agreed to the contrary in writing in respect of the meeting and business in question, or

(b) there is no Rollover Director in office at that time,

(c) the business of the meeting includes the proposed exercise by the directors of the authority conferred by section 175 of the CA 2006 (or any subsequent amendment or revocation of such authorisation) and the Rollover Director is the director in question or otherwise interested in the matter, in which case the Rollover Director shall not be part of the quorum on that business, or

(d) any of the circumstances in Article 27 8 apply

27 3 Any director or his alternate may validly participate in a meeting of the Board or a committee of the Board by conference telephone or other form of communication equipment if all persons participating in the meeting are able to hear and speak to each other throughout the meeting A person so participating shall be deemed to be present in person at the meeting and shall accordingly be counted in a quorum and be entitled to vote Such a meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no group that is larger than any other group, where the Chairman then is

27 4 Save with the consent of a Rollover Director

(a) the Board shall not delegate any of its powers to a committee other than as specified in the Shareholders Agreement, and

(b) meetings of the Board shall not be held outside the United Kingdom

27 5 In respect of a matter to be considered by the Board each Rollover Director shall be entitled to two votes each and each other director shall be entitled to one vote each

27 6 The Chairman shall have a second or casting vote at a meeting of the Board

27 7 The Rollover Majority will have the right at any time to appoint (in addition to the Rollover Directors) up to two people to attend observe and speak but not vote at meetings of the Board Any person so appointed will not be a Rollover Director

27 8 Notwithstanding any provision to the contrary in this Article or Article 29 should an event arise which gives, or may reasonably give the Company a right to bring any claim or to exercise any other right or remedy under the Share Purchase Agreement, any other Acquisition Document, including the Leases and Surrenders or if a dispute arises as to any amounts due or claimed under the Counter Indemnity, then the Rollover Directors will be prevented from voting on any resolution of the Board

## **28 Unanimous decision of the directors and written resolutions**

28 1 A decision of the directors is taken in accordance with this Article 27 8 when sufficient Eligible Directors indicate by any means that they share a common view on a matter

28 2 Such a decision may take the form of a resolution in writing, where each Eligible Director has signed one or more copies of it, or to which each Eligible Director has otherwise indicated agreement in writing A proposed directors' written resolution is adopted when each of the Eligible Directors who would have been entitled to vote on the resolution at a directors' meeting have signed at least one copy or duplicate copy of it

28 3 A decision may not be taken in accordance with Article 27 8 if the Eligible Directors would not have formed a quorum had the matter been proposed as a resolution at a directors' meeting

28 4 Unless the context otherwise requires, reference in these Articles to any meeting of the directors (or of any committee) includes any other proceedings or process by which any decision complying with Article 27 8 is reached

## **29 Directors' declarations of interest and conflict situations**

29 1 A director who to his knowledge is in any way, whether directly or indirectly, interested in any actual or proposed contract, transaction or arrangement with the Company shall in the circumstances and to the extent that the same is required by the provisions of the CA 2006 declare the nature and extent of his interest in the relevant matter (or in any of the relevant matters) permitted in such circumstances A director who has declared such an interest may (to the greatest extent permitted by law) vote at any such meeting on any resolution concerning a matter in which he has, directly or indirectly, an interest and (whether he votes or not) may be counted towards any quorum

29 2 To avoid doubt and without prejudice to the generality of Article 29 1, a director shall not be precluded from voting or (whether he votes or not) from counting in the quorum on any board resolution to convene any general or class meeting or to approve and issue any written resolution of the members of the Company (or of any class) because he may benefit from or otherwise be affected by any authorisation (or the revocation of, or amendment of, any authorisation) in the context of his duty under section 175 of the CA 2006 which would be effected or permitted by such resolution, if passed

29 3 For the purposes of section 175 of the CA 2006 and subject to Article 27 8 and, where relevant, to Article 29 4, the directors shall have the power at any time when there is a Rollover Director in office (but not otherwise) to authorise, on such terms (including as regards duration and revocation) and subject to such limits or conditions (if any) as they may determine (**Conflict Authorisation**), any matter proposed to them in accordance with these Articles which would, or might, if not so authorised, constitute or give rise to a situation in

which a director (a **Relevant Director**) has, or could have, a direct or indirect interest which conflicts, or possibly may conflict, with the interests of the Company (a **Conflict Situation**)

29 4 Save where the Rollover Director is the director in question or otherwise interested in the matter or there is no Rollover Director in office, authorisation by the Board under the power conferred by section 175 of the CA 2006 (and any subsequent amendment or revocation of any such authorisation) will be effective only if a Rollover Director votes in favour of, or consents in writing to the same

29 5 Where directors give a Conflict Authorisation under the power conferred by section 175 of the CA 2006

- (a) the terms of such Conflict Authorisation shall be recorded in writing (but the authorisation shall be effective whether or not the terms are so recorded),
- (b) the directors may revoke or vary such Conflict Authorisation at any time but this will not affect anything done by the Relevant Director prior to such revocation or variation in accordance with the terms of such authorisation, and
- (c) the Relevant Director shall be obliged to act in accordance with any terms, limits or conditions to which such Conflict Authorisation is made subject

29 6 Any terms to which a Conflict Authorisation is made subject (**Conflict Authorisation Terms**) may include (without limitation to Article 29 1) provision that

- (a) where the Relevant Director obtains (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) information that is confidential to a third party, he will not be obliged to disclose it to the Company or to use it 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/or
- (b) the Relevant Director may (but shall be under no obligation to) absent himself from the discussion of, and/or the making of decisions relating to, the relevant matter (whether at any meeting of the directors or otherwise) and be excused from reviewing documents and information prepared by or for the directors to the extent that they relate to that matter, and/or
- (c) the Relevant Director be excluded from the receipt of documents and information, the participation in discussion and/or the making of decisions (whether at directors' meetings or otherwise) related to the relevant matter,

and the Company will not treat anything done (or omitted to be done) by the Relevant Director in accordance with any such provision (or otherwise in accordance with any Conflict Authorisation Terms given under Article 29 1) as a breach by him of his duties under sections 172 to 174 of the CA 2006

29 7 Subject to Article 27 8 and Article 29 8, authorisation is given by the members of the Company for the time being on the terms of these Articles to each director in respect of any Conflict Situation that exists as at the date of adoption of these Articles 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 Relevant Group (**Group Conflict Authorisation**) The Conflict Authorisation Terms applicable to the Group Conflict



Authorisation (**Group Conflict Authorisation Terms**) are automatically set by this Article 29 7 so that the director concerned

- (a) 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
- (b) may (but shall be under no obligation to)
  - (i) absent himself from the discussions of, and/or the making of decisions,
  - (ii) make arrangements not to receive documents and information,relating to the Conflict Situation concerned,
- (c) 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 CA 2006

29 8 A Group Conflict Authorisation given or deemed given under Article 29 7 may be revoked, varied or reduced in its scope or effect only by special resolution

29 9 In this Article 29 **Relevant Group** comprises

- (a) the Company,
- (b) each (if any) body corporate which is for the time being a wholly owned subsidiary of the Company,
- (c) each (if any) body corporate of which the Company is for the time being a wholly owned subsidiary (**Parent**), and
- (d) each (if any) body corporate (not falling within any preceding paragraph of this definition) which is for the time being a wholly owned subsidiary of the Parent

29 10 If and for so long as any Rollover Shareholder (or the custodian or nominee of any Rollover Shareholder) shall be the holder of any Shares, authorisation is given by the members of the Company for the time being on the terms of these Articles to each Rollover Director for the time being (including any alternate) in respect of any Conflict Situation that exists as at the date of adoption of these Articles 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, or has been appointed by any Relevant Rollover Entity (**Relevant Rollover Conflict Authorisation**) The Conflict Authorisation Terms applicable to the Relevant Rollover Conflict Authorisation (**Relevant Rollover Conflict Authorisation Terms**) are automatically set by this Article 29 10 so that the director

- (a) 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 in any other capacity that would otherwise oblige him to

disclose it to the Company) in any situation to which the Relevant Rollover 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

- (b) may (but shall be under no obligation to)
  - (i) absent himself from the discussions of, and/or the making of decisions,
  - (ii) make arrangements not to receive documents and information,relating to the Conflict Situation concerned,
- (c) and the Company will not treat anything done (or omitted to be done) by the director concerned in accordance with the Relevant Rollover Conflict Authorisation Terms as a breach by him of his duties under sections 172 to 174 of the CA 2006

29 11

- (a) Any Conflict Authorisation (whether under Article 29 3 or Article 29 7) shall (subject to any express contrary wording in its terms) be automatically deemed to extend to any actual or possible conflict of interest which may reasonably be expected to arise out of the Conflict Situation so authorised
- (b) Nothing in this Article 29 shall relieve any director from any duty he may otherwise have to declare and to update any declaration of any interest but no failure, delay or inaccuracy in making or updating such declaration shall prejudice or invalidate any Conflict Authorisation (whether under Article 29 3 or Article 29 7)

29 12 On any shareholder resolution (whether in general meeting or by written resolution or extra statutory agreement or otherwise)

- (a) to confer, revoke or vary any authorisation for any Rollover Director or Chairman of the Board but for which a Rollover Director or the Chairman of the Board would be or may in the future become in breach of his duty to the Company under section 175 of the CA 2006, or
- (b) to amend or delete this Article 29

29 13 only the A1 Shares shall confer votes on their holders

29 14 A director is not required, by reason of being a director, to account to the Company for any profit, remuneration or other benefit which he derives from or in connection with

- (a) a Conflict Situation which has been authorised by the directors pursuant to Article 29 3, or by the Members whether in these Articles or otherwise (subject to any terms, limits or conditions attaching to such authorisation),
- (b) being interested in any contract, arrangement, transaction or proposal with the Company or in which the Company is otherwise interested,
- (c) holding any other office or place of profit under the Company, except that of auditor, in conjunction with the office of director and acting by himself or through his firm in a professional capacity for the Company (and being entitled to remuneration as the

directors may arrange, either in addition to or in lieu of any remuneration provided for by any other article), and

- (d) being a director or other officer of, or employed by, or a party to any contract, arrangement, transaction or proposal with or otherwise interested in, any body corporate promoted by the Company or in which the Company is otherwise interested or as regards which the Company has any powers of appointment

29 15 The Company will not treat the receipt by the director of any profit, remuneration or other benefit referred to in Article 29 14 as a breach of duty under section 176 of the CA 2006 No such contract, arrangement, transaction or proposal shall be avoided on the grounds of any such interest, profit, remuneration or other benefit

### **30 Notices**

30 1 Any notice, document or information (including a share certificate) which is sent or supplied by the Company

- (a) in hard copy form, or in electronic form but to be delivered other than by electronic means, and which is sent by pre-paid post and properly addressed shall be deemed to have been received by the intended recipient at the expiration of twenty-four hours (or, where first class mail is not used, 48 hours) after the time it was posted, and in proving such receipt it shall be sufficient to show that such notice, document or information was properly addressed, pre-paid and posted,
- (b) by electronic means shall be deemed to have been received by the intended recipient twenty-four hours after it was transmitted, and in proving such receipt it shall be sufficient to show that such notice, document or information was properly addressed, and
- (c) by means of a website shall be deemed to have been received when the material was first made available on the website or, if later, when the recipient received (or is deemed to have received) notice of the fact that the material was available on the website

30 2 Subject to the CA 2006 other than those contained in the Company Communications Provisions, any accidental failure on the part of the Company to send, or the non-receipt by any person entitled to, any notice of or other document or information relating to any meeting or other proceeding shall not invalidate the relevant meeting or proceeding This Article shall have effect in place of the Company Communications Provisions relating to deemed delivery of notices, documents or information

30 3 For the purposes of calculating the time when any notice, document or information sent or supplied by the Company is deemed to have been received by the intended recipient for the purposes of these Articles (regardless of whether the period is expressed in hours or days) full account shall be taken of any day, and any part of a day, that is not a working day This Article 30 3 shall have effect in place of the Company Communications Provisions regarding the calculation of the time when any such notice, document or information is deemed to have been received by the intended recipient

### **31 Indemnity, insurance, gratuities and pensions**

31 1 Subject to the CA 2006, the Company

- (a) shall, without prejudice to any other indemnity to which the person concerned may otherwise be entitled, indemnify every relevant officer out of the assets of the Company against all costs, charges, losses, expenses and liabilities incurred by him
  - (i) in relation to the actual or purported execution and discharge of the duties of such office, and
  - (ii) in relation to the Company's (or associated company's) activities in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the CA 2006),
- (b) may provide any relevant officer with funds to meet his defence expenditure in respect of any civil or criminal proceedings or regulatory investigation or other regulatory action or in connection with any application for any category of relief permitted by the CA 2006 and may do anything to enable him to avoid incurring any such expenditure,
- (c) 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

31 2 In this Article 31

- (a) companies are **associated** if one is a subsidiary of the other or both are subsidiaries of the same body corporate,
- (b) a relevant officer means any director, secretary or other officer of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined in section 235(6) of the CA 2006) but excluding in each case any person engaged by the Company (or associated company) as auditor (whether or not he was also a director, secretary or other officer) to the extent he acts in his capacity as auditor),
- (c) a relevant loss means any loss or liability which has been or may be incurred by a relevant officer in connection with that officer's duties or powers in relation to the Company, any associated company or any pension fund or employees' share scheme of the Company or associated company

31 3 The directors may exercise all the powers of the Company to purchase and maintain for every director or other officer insurance against any liability for negligence, default, breach of duty or breach of trust or any other liability which may be lawfully insured against

31 4 The directors may, on behalf of the Company, exercise all the powers of the Company to provide benefits, whether by the payment of gratuities or pensions or by insurance or in any other manner (whether similar to the foregoing or not), for any director or former director or any relation, connection or dependant of any director or former director who holds or has held any executive office or employment with the Company or with any body corporate which is or has been a subsidiary of the Company or with a predecessor in business of the Company or of any such subsidiary and may contribute to any fund and pay premiums for the purchase or provision of any such benefit No director or former director shall be accountable to the Company or the members for any benefit permitted by this Article 31 4 and the receipt of any such benefit shall not disqualify any person from being or becoming a director of the Company

### **32 Share certificates etc**

The Company may in any manner permitted by the applicable provisions of Part 4 of the CA 2006 execute any share certificate, warrant or other document creating or evidencing any security allotted by the Company or any right or option to subscribe granted by the Company

### **33 Subsidiary undertakings and reserves**

33 1 The Board shall exercise all voting and other rights or powers of control exercisable by the Company in relation to itself and its subsidiary undertaking so as to secure (but as regards its subsidiary undertakings only in so far as by the exercise of such rights or powers of control the Board can secure) that

- (a) no shares or other securities are issued or allotted by any such subsidiary and no rights are granted which might require the issue of any such shares or securities otherwise than to the Company or to one of its wholly-owned subsidiaries, and
- (b) none of its subsidiaries transfers or disposes of any shares or securities of any subsidiary of the Company or any interest therein or any rights attached thereto otherwise than to the Company or one of its wholly-owned subsidiaries,

without in either case the previous consent in writing of a Rollover Majority

33 2 The Company shall procure that (save as otherwise specified by either a Rollover Director or a Rollover Majority) each of its subsidiaries which has profits available for distribution shall from time to time, and to the extent that it may lawfully do so, declare and pay to the Company the dividends necessary to permit lawful and prompt payment by the Company of amounts payable to Members pursuant to these Articles

### **34 Data protection**

34 1 Each of the Members and directors of the Company (from time to time) consent to the processing of their personal data by the Company, its Members and directors (each a **Recipient**) for the purpose of due diligence exercises, compliance with applicable laws, regulations and procedures and the exchange of information among themselves. A Recipient may process the personal data either electronically or manually. The personal data which may be processed under this Article shall include any information which may have a bearing on the prudence or commercial merits of investing, or disposing of any Shares (or other investment or security) in the Company

34 2 Other than as required by law, court order or other regulatory authority, that personal data may not be disclosed by a Recipient or any other person except to a member of the same group as that Recipient (**Recipient Group Companies**) and to employees, directors and professional advisers of that Recipient Group Companies and funds managed by any of the Recipient Group Companies. Each of the Members and directors of the Company (from time to time) consent to the transfer of relevant personal data to persons acting on behalf of the Recipient and to the offices of any Recipient both within and outside the European Economic Area for the purposes stated above, where it is necessary or desirable to do so

### **35 Relationship to Banking Facilities**

35 1 The provisions of these Articles are subject to the following provisions of this Article 35

35 2 Notwithstanding any other provisions of these Articles, no payment shall be made by the Company by way of dividend or other distribution, purchase, redemption, reduction or return

of Shares or capital or by addition to or repayment of any dividend reserve if and to the extent that such payment is prohibited or restricted by the terms of the Banking Facilities and/or the Intercreditor Agreement. No dividends or other distributions payable in respect of Shares, whether pursuant to the provisions of these Articles or otherwise shall constitute a debt enforceable against the Company unless it is permitted to be paid in accordance with the Banking Facilities and/or the Intercreditor Agreement for so long as the same shall remain in force and effect (although any interest which may be prescribed to accrue on any such dividends or distributions pursuant to these Articles shall accrue with effect from the date upon which the same would otherwise have been a debt due and enforceable but for the provisions of this Article 35 and the Banking Facilities until the date on which payment is actually made)

- 35 3 Where any dividend, redemption or other payment is not made because of the provisions of Article 35 2 or the Banking Facilities, such payment, subject to Article 4 2(d) in the case of the B Dividend, shall be made upon the necessary consent being obtained or the prohibition thereon ceasing to apply

### 36 Change of name

The Company may change its name by decision of the directors provided that either

- (a) a Rollover Director votes in favour of the resolution or otherwise consents to such change in writing, or
- (b) (if there is no Rollover Director in office) the change is approved in advance by a Rollover Majority

### 37 Partly paid Shares etc

- 37 1 The Company has a lien (**Company's lien**) over every Share which is partly paid for any part of

- (a) that Share's nominal value, and
- (b) any premium at which it was issued,

which has not been paid to the Company, and which is payable immediately or at some time in the future, whether or not a call notice has been sent in respect of it

- 37 2 The Company's lien over a Share

- (a) takes priority over any third party's interest in that Share, and
- (b) 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

- 37 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

- 37 4 Subject to the provisions of this Article 37, if

- (a) a lien enforcement notice has been given in respect of a Share, and
- (b) the person to whom the notice was given has failed to comply with it,

the Company may sell that Share in such manner as the directors decide

37 5 A lien enforcement notice

- (a) may only be given in respect of a Share which is subject to the Company's lien, in respect of which a sum is payable and the due date for payment of that sum has passed,
- (b) must specify the Share concerned,
- (c) must require payment of the sum payable within 14 days of the notice,
- (d) must be addressed either to the holder of the Share or to a person entitled to it by reason of the holder's death, bankruptcy or otherwise, and
- (e) must state the Company's intention to sell the Share if the notice is not complied with

37 6 Where Shares are sold under this Article 37

- (a) the directors may authorise any person to execute an instrument of transfer of the Shares to the purchaser or a person nominated by the purchaser, and
- (b) the transferee is not bound to see to the application of the consideration, and the transferee's title is not affected by any irregularity in or invalidity of the process leading to the sale

37 7 The net proceeds of any such sale (after payment of the costs of sale and any other costs of enforcing the lien) must be applied

- (a) first, in payment of so much of the sum for which the lien exists as was payable at the date of the lien enforcement notice,
- (b) second, to the person entitled to the Shares at the date of the sale, but only after the certificate for the Shares sold has been surrendered to the Company for cancellation or a suitable indemnity has been given for any lost certificates, and subject to a lien equivalent to the Company's lien over the Shares before the sale for any money payable in respect of the Shares after the date of the lien enforcement notice

37 8 A statutory declaration by a director that the declarant is a director and that a Share has been sold to satisfy the Company's lien on a specified date

- (a) is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the Share, and
- (b) subject to compliance with any other formalities of transfer required by the Articles or by law, constitutes a good title to the Share

37 9 Subject to the Articles and the terms on which Shares are allotted, the directors may send a notice (a **call notice**) to a member requiring the member to pay the Company a specified sum of money (a **call**) which is payable in respect of Shares which that member holds at the date when the directors decide to send the call notice

37 10 A call notice

- (a) may not require a member to pay a call which exceeds the total sum unpaid on that member's Shares (whether as to the Share's nominal value or any amount payable to the Company by way of premium),
- (b) must state when and how any call to which it relates it is to be paid, and
- (c) may permit or require the call to be paid by instalments

37 11 A member must comply with the requirements of a call notice, but no member is obliged to pay any call before 14 days have passed since the notice was sent

37 12 Before the Company has received any call due under a call notice the directors may

- (a) revoke it wholly or in part, or
  - (b) specify a later time for payment than is specified in the notice,
- by a further notice in writing to the member in respect of whose Shares the call is made

37 13 Liability to pay a call is not extinguished or transferred by transferring the Shares in respect of which it is required to be paid

37 14 Joint holders of a Share are jointly and severally liable to pay all calls in respect of that Share

37 15 Subject to the terms on which Shares are allotted, the directors may, when issuing Shares, provide that call notices sent to the holders of those Shares may require them

- (a) to pay calls which are not the same, or
- (b) to pay calls at different times

37 16 A call notice need not be issued in respect of sums which are specified, in the terms on which a Share is issued, as being payable to the Company in respect of that Share (whether in respect of nominal value or premium)

- (a) on allotment,
- (b) on the occurrence of a particular event, or
- (c) on a date fixed by or in accordance with the terms of issue

37 17 But if the due date for payment of such a sum has passed and it has not been paid, the holder of the Share concerned is treated in all respects as having failed to comply with a call notice in respect of that sum, and is liable to the same consequences as regards the payment of interest and forfeiture

37 18 If a person is liable to pay a call and fails to do so by the call payment date

- (a) the directors may issue a notice of intended forfeiture to that person, and
- (b) until the call is paid, that person must pay the Company interest on the call from the call payment date at the relevant rate

37 19 For the purposes of this Article 37



the **call payment date** is the time when the call notice states that a call is payable, unless the directors give a notice specifying a later date, in which case the call payment date is that later date,

the **relevant rate** is

- (a) the rate fixed by the terms on which the Share in respect of which the call is due was allotted,
- (b) such other rate as was fixed in the call notice which required payment of the call, or has otherwise been determined by the directors, or
- (c) if no rate is fixed in either of these ways, 5 % per annum

37 20 The relevant rate must not exceed by more than 5 percentage points the base lending rate most recently set by the Monetary Policy Committee of the Bank of England in connection with its responsibilities under Part 2 of the Bank of England Act 1998(2)

37 21 The directors may waive any obligation to pay interest on a call wholly or in part

### **38 Forfeiture and surrender**

38 1 A notice of intended forfeiture

- (a) may be sent in respect of any Share in respect of which a call has not been paid as required by a call notice,
- (b) must be sent to the holder of that Share or to a person entitled to it by reason of the holder's death, bankruptcy or otherwise,
- (c) must require payment of the call and any accrued interest by a date which is not less than 14 days after the date of the notice,
- (d) must state how the payment is to be made, and
- (e) must state that if the notice is not complied with, the Shares in respect of which the call is payable will be liable to be forfeited

38 2 If a notice of intended forfeiture is not complied with before the date by which payment of the call is required in the notice of intended forfeiture, the directors may decide that any Share in respect of which it was given is forfeited, and the forfeiture is to include all dividends or other moneys payable in respect of the forfeited Shares and not paid before the forfeiture

38 3 Subject to the Articles, the forfeiture of a Share extinguishes

- (a) all interests in that Share, and all claims and demands against the Company in respect of it, and
- (b) all other rights and liabilities incidental to the Share as between the person whose Share it was prior to the forfeiture and the Company

38 4 Any Share which is forfeited in accordance with the Articles

- (a) is deemed to have been forfeited when the directors decide that it is forfeited,
- (b) is deemed to be the property of the Company, and

- (c) subject to Article 10 may be sold, re-allotted or otherwise disposed of as the directors think fit

38 5 If a person's Shares have been forfeited

- (a) the Company must send that person notice that forfeiture has occurred and record it in the register of members,
- (b) that person ceases to be a member in respect of those Shares,
- (c) that person must surrender the certificate for the Shares forfeited to the Company for cancellation,
- (d) that person remains liable to the Company for all sums payable by that person under the Articles at the date of forfeiture in respect of those Shares, including any interest (whether accrued before or after the date of forfeiture), and
- (e) the directors may waive payment of such sums wholly or in part or enforce payment without any allowance for the value of the Shares at the time of forfeiture or for any consideration received on their disposal

38 6 At any time before the Company disposes of a forfeited Share, the directors may decide to cancel the forfeiture on payment of all calls and interest due in respect of it and on such other terms as they think fit

38 7 If a forfeited Share is to be disposed of by being transferred, the Company may receive the consideration for the transfer and the directors may authorise any person to execute the instrument of transfer

38 8 A statutory declaration by a director that the declarant is a director and that a Share has been forfeited on a specified date

- (a) is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the Share, and
- (b) subject to compliance with any other formalities of transfer required by the Articles or by law, constitutes a good title to the Share

38 9 A person to whom a forfeited Share is transferred is not bound to see to the application of the consideration (if any) nor is that person's title to the Share affected by any irregularity in or invalidity of the process leading to the forfeiture or transfer of the Share

38 10 If the Company sells a forfeited Share, the person who held it prior to its forfeiture is entitled to receive from the Company the proceeds of such sale, net of any commission, and excluding any amount which

- (a) was, or would have become, payable, and
- (b) had not, when that Share was forfeited, been paid by that person in respect of that Share,

but no interest is payable to such a person in respect of such proceeds and the Company is not required to account for any money earned on them

38 11 A member may surrender any Share

- (a) in respect of which the directors may issue a notice of intended forfeiture,
- (b) which the directors may forfeit, or
- (c) which has been forfeited

38 12 The directors may accept the surrender of any such Share

38 13 The effect of surrender on a Share is the same as the effect of forfeiture on that Share

38 14 A Share which has been surrendered may be dealt with in the same way as a Share which has been forfeited

### **39 Miscellaneous amendments to Model Articles**

39 1 The words "make any rule" in regulation 16 shall be deleted and substituted with the words "make, vary, relax or repeal any rule"

39 2 In regulation 18(f), the words "as a director" shall be included after the words "the director is resigning"

39 3 Regulation 19(3) shall be amended by the deletion of the word "and" at the end of regulation 19(3)(a)

39 4 Regulation 20 shall be amended by the insertion of the words "(including alternate directors) and the secretary" before the words "properly incur"

39 5 In regulation 24(2)(c), the words "that the Shares are fully paid" shall be substituted with the words "the amounts paid up on them"

39 6 In regulation 25(2)(c), the words "payment of a reasonable fee as the directors decide" shall be substituted with the words "payment of reasonable expenses"

39 7 Regulation 29 shall be amended by the insertion of the words ", or the name of any person nominated under regulation 27(2)," after the words "the transmittee's name"