

Company No. 08644182

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

THURSDAY



On 15 July 2019 the following ordinary and special resolutions were duly passed as written resolutions of the Company pursuant to section 288 of the Companies Act 2006:

**SPECIAL RESOLUTIONS**

**1 Articles of Association**

THAT the articles of association in the attached form be 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.

**2 Disapplication of Pre-emption Rights**

THAT the existing shareholders' pre-emption rights under article 13 of the Company's articles of association (or otherwise) be disapplied in relation to:

- (a) the issue and allotment of 70,028 Series D Preferred Shares of £0.01 each in the capital of the Company at a price of £28.56 per share up to an aggregate nominal value of £700.28 (**Preferred Shares**).
- (b) the issue and allotment of 7,002 A Ordinary Shares of £0.01 each in the capital of the Company at a price of £28.56 per share up to an aggregate nominal value of £70.02 (**New A Shares**).
- (c) the issue and allotment of 44,681 B Ordinary Shares of £0.01 each in the capital of the Company at a price of £28.56 per share up to an aggregate nominal value of £446.81 (**New B Shares**).
- (d) the grant of options to subscribe for 36,578 C Ordinary Shares of £0.01 each in the capital of the Company up to an aggregate nominal value of £365.78 (**Option Pool**) and the issue and allotment of such C Ordinary Shares pursuant to such options.

**ORDINARY RESOLUTION**

**3 Authority to Allot**

The directors of the Company are authorised pursuant to section 551 CA 2006 to allot and issue (and, in the case of the C Ordinary Shares, grant options in respect of):

- (a) the Preferred Shares up to the maximum number of shares as set out above in resolution 2(a);
- (b) the New A Shares up to the maximum number of shares as set out above in resolution 2(b);
- (c) the New B Shares up to the maximum number of shares as set out above in resolution 2(c);
- (d) C Ordinary Shares up to the maximum amount of the Option Pool as set out above in resolution 2(d),

**THE COMPANIES ACT 2006**  
**COMPANY LIMITED BY SHARES**  
**NEW**  
**ARTICLES OF ASSOCIATION**  
**of**  
**AISTEMOS LIMITED**  
(company number 08644182)

(Adopted by a special resolution passed on 15 July 2019)

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**THE COMPANIES ACT 2006**

**COMPANY LIMITED BY SHARES**

**NEW**

**ARTICLES OF ASSOCIATION**

**of**

**AISTEMOS LIMITED**

(Adopted by a special resolution passed on **15 July** 2019)

**1. Introduction**

- 1.1 The model articles for private companies limited by shares contained or incorporated in Schedule 1 to the Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended prior to the date of adoption of these articles (the "**Model Articles**") shall apply to the Company, save insofar as they are varied or excluded by, or are inconsistent with, the following Articles.
- 1.2 In these Articles and the Model Articles any reference to any statutory provision shall be deemed to include a reference to each and every statutory amendment, modification, re-enactment and extension thereof for the time being in force.
- 1.3 In these Articles:
- (a) article headings are used for convenience only and shall not affect the construction or interpretation of these Articles;
  - (b) words denoting the singular include the plural and vice versa and reference to one gender includes the other gender and neuter and vice versa;
  - (c) Articles 8(2), 9(4), 10(3), 11(2), 13, 14, 17(2), 17(3), 19, 21, 26(5), 27, 28, 29, 30(5) to (7) (inclusive), 44(4), 51, 52 and 53 of the Model Articles shall not apply to the Company;
  - (d) reference to "**issued Shares**" of any class shall exclude any Shares of that class held as Treasury Shares from time to time, unless stated otherwise; and
  - (e) reference to the "**holders**" of Shares or a class of Share shall exclude the Company holding Treasury Shares from time to time, unless stated otherwise.
- 1.4 Where there is reference to Series D Shares under these Articles, this reference shall be treated, where appropriate in the context, on an as converted basis if the Conversion Ratio has been adjusted.

**2. Definitions**

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

**"A Ordinary Shares"** means the A ordinary shares of £0.01 each in the capital of the Company from time to time;

**"Act"** means the Companies Act 2006 (as amended from time to time);

**"Acting in Concert"** has the meaning given to it in The City Code on Takeovers and Mergers published by the Panel on Takeovers and Mergers (as amended from time to time);

**"Actions"** shall have the meaning given in Article 6.3;

**"Anti-Dilution Shares"** shall have the meaning given in Article 10.1;

**"Arrears"** means in relation to any Share, all arrears of any dividend or other sums payable in respect of that Share, whether or not earned or declared and irrespective of whether or not the Company has had at any time sufficient Available Profits to pay such dividend or sums, together with all interest and other amounts payable on that Share;

**"Asset Sale"** means the disposal by the Company of all or substantially all of its undertaking and assets (where disposal may include, without limitation, the grant by the Company of an exclusive licence of intellectual property constituting all or substantially all of its undertaking and assets not entered into in the ordinary course of business);

**"Associate"** in relation to any person means:

- (a) any person who is an associate of that person and the question of whether a person is an associate of another is to be determined in accordance with section 435 of the Insolvency Act 1986 and (whether or not an associate as so determined);
- (b) any Member of the same Group;
- (c) any Member of the same Fund Group;

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

**"Available Profits"** means profits available for distribution within the meaning of part 23 of the Act;

**"B Ordinary Director"** means the directors appointed pursuant to Article 27 4;

**"B Ordinary Majority"** means holder(s) from time to time of more than fifty (50%) of the B Ordinary Shares in issue from time to time, voting together as a single class;

**"B Ordinary Shares"** means the B ordinary shares of £0.01 each in the capital of the Company from time to time;

**"Bad Leaver"** means a Founder who:

- (a) ceases to be an Employee at any time as a consequence of that person's dismissal as an Employee for cause, where **"cause"** shall mean the lawful termination of that person's contract of employment or consultancy without notice or payment in lieu of notice as a consequence of:
  - (i) that person's gross misconduct;

(ii) the commission by that person of any criminal offence (other than an offence under any road traffic legislation for which a fine or non-custodial penalty is imposed), or

(iii) the commission of any act of fraud,

in each case where the cause of dismissal is reasonably likely to have a material effect on the economic value of the Beringea Funds' investment in the Company; or

(b) breaches the terms of any of the Restrictive Covenants to the extent that such breach is reasonably likely to have a material effect on the economic value of the Beringea Funds' investment in the Company;

**"Beringea Funds"** means Proven Growth and Income VCT Plc and Proven VCT Plc;

**"Board"** means the board of Directors and any committee of the board constituted for the purpose of taking any action or decision contemplated by these Articles;

**"Bonus Issue"** or **"Reorganisation"** means any return of capital, bonus issue of shares or other securities of the Company by way of capitalisation of profits or reserves (other than a capitalisation issue in substitution for or as an alternative to a cash dividend which is made available to the Series D Shareholders) or any consolidation or sub-division or redenomination or any repurchase or redemption of shares (other than Series D Shares) or any variation in the subscription price or conversion rate applicable to any other outstanding shares of the Company in each case other than shares issued as a result of the events set out in Article 13.11;

**"Business Day"** means a day on which English clearing banks are ordinarily open for the transaction of normal banking business in the City of London (other than a Saturday or Sunday);

**"C Ordinary Shares"** means the C ordinary shares of £0.01 each in the capital of the Company from time to time;

**"Civil Partner"** means in relation to a Shareholder, a civil partner (as defined in the Civil Partnership Act 2004) of the Shareholder;

**"Commencement Date"** means the Date of Adoption;

**"Company"** means Aisternos Limited;

**"Conditions"** has the meaning given in Article 9.1,

**"Controlling Interest"** means an interest in shares giving to the holder or holders control of the Company within the meaning of section 1124 of the CTA 2010;

**"Conversion Date"** has the meanings given in Article 9.1 and Article 9.4 (as applicable),

**"Conversion Ratio"** has the meaning given in Article 9.5;

**"CTA 2010"** means the Corporation Tax Act 2010;

**"Date of Adoption"** means the date on which these Articles were adopted,

**"Deferred Shares"** means deferred shares of £0.01 each in the capital of the Company from time to time;

**"Director(s)"** means a director or directors of the Company from time to time;

**"Down Round"** means an allotment of new shares in the capital of the Company to either the existing Shareholders or a third party investor (or both) for an amount per share which is less than the Issue Price, but excluding (i) the conversion of Series D Shares pursuant to Article 9, (ii) the conversion of Founder Shares pursuant to Article 19 or (iii) any of the circumstances set out in Article 13 11;

**"Effective Termination Date"** means the date on which a Founder's employment or consultancy terminates such that he is no longer an Employee;

**"electronic address"** has the same meaning as in section 333 of the Act;

**"electronic form"** and **"electronic means"** have the same meaning as in section 1168 of the Act;

**"Eligible Director"** means a Director who would be entitled to vote on a matter had it been proposed as a resolution at a meeting of the Directors,

**"Employee"** means an individual who is employed by or who provides consultancy services to, the Company or any member of the Group;

**"Encumbrance"** means any mortgage, charge, security, interest, lien, pledge, assignment by way of security, equity, claim, right of pre-emption, option, covenant, restriction, reservation, lease, trust, order, decree, judgment, title defect (including without limitation any retention of title claim), conflicting claim of ownership or any other encumbrance of any nature whatsoever (whether or not perfected other than liens arising by operation of law);

**"Equity Securities"** has the meaning given in sections 560(1) to (3) inclusive of the Act and for the avoidance of doubt an allotment of Equity Securities includes a transfer of shares which immediately before such transfer were held by the Company as Treasury Shares;

**"Exercising Investor"** means any Investor who exercises its rights to acquire Anti-Dilution Shares in accordance with Article 10.1;

**"Exit"** means a Share Sale, an Asset Sale or an IPO;

**"Expert Valuer"** is as determined in accordance with Article 17 1(a);

**"Fair Value"** is as determined in accordance with Article 17;

**"Family Trusts"** means as regards any particular individual member or deceased or former individual member, trusts (whether arising under a settlement, declaration of trust or other instrument by whomsoever or wheresoever made or under a testamentary disposition or on an intestacy) under which no immediate beneficial interest in any of the shares in question is for the time being vested in any person other than the individual and/or Privileged Relations of that individual; and so that for this purpose a person shall be considered to be beneficially interested in a share if such share or the income thereof is liable to be transferred or paid or applied or appointed to or for the benefit of such person or any voting or other rights attaching thereto are exercisable by or as directed by such person pursuant to the terms of the relevant trusts or in consequence of an exercise of a power or discretion conferred thereby on any person or persons,

**"Financial Year"** has the meaning set out in section 390 of the Act;

**"Founder Directors"** means the directors appointed pursuant to Article 27.3;

**"Founder Shares"** means:

(i) in relation to Steve Harris, the SH Founder Shares; and

(ii) in relation to Nigel Swycher, the NS Founder Shares,

in each case held by:

(a) the Founder in question; and

(b) any Permitted Transferee of that Founder other than those Shares held by those persons that an Investor Majority declares itself satisfied were not acquired directly or indirectly from the Founder or by reason of that person's relationship with the Founder;

**"Founders"** means Nigel Swycher and Steve Harris;

**"Fractional Holders"** has the meaning given in Article 9.9;

**"Fund Manager"** means a person whose principal business is to make, manage or advise upon investments in securities;

**"Group"** means the Company and its Subsidiary Undertaking(s) (if any) from time to time and **"Group Company"** shall be construed accordingly;

**"hard copy form"** has the same meaning as in section 1168 of the Act;

**"Holding Company"** means a newly formed holding company

(a) pursuant to which the membership, pro rata shareholdings and classes of shares comprised in such holding company matches that of the Company (excluding Treasury Shares); and

(b) which has entered into a shareholders' agreement and has adopted articles of association which in each case reflect the terms of the Company's then existing shareholders' agreement and articles of association,

immediately prior to the transfer of the issued share capital of the Company to such holding company;

**"Intermediate Leaver"** means a Founder who ceases to be an Employee at any time during the Relevant Period as a consequence of that Founder's resignation as an Employee, except in circumstances which constitute a constructive, wrongful or unfair dismissal (save in the case that unfair dismissal is as a result only of a procedural defect);

**"Investor Director Consent"** means the prior written consent of the Lead Investor Director, provided that if the Lead Investor has not appointed a Lead Investor Director, it shall mean the consent of the Lead Investor,

**"Investor Majority"** means the holder(s) from time to time of more than 50% of the Series D Shares (including the Lead Investor) from time to time, voting together as a single class;

**"Investor Majority Consent"** means the prior written consent of the Investor Majority,



**"Investors"** has the meaning set out in the Subscription Agreement,

**"IPO"** means the admission of all or any of the Shares or securities representing those shares (including without limitation depositary interests, American depositary receipts, American depositary shares and/or other instruments) on NASDAQ or the Official List of the United Kingdom Listing Authority or the AIM Market operated by the London Stock Exchange Plc or any other recognised investment exchange (as defined in section 285 of the Financial Services and Markets Act 2000);

**"ITEPA"** means Income Tax (Earnings and Pensions) Act 2003;

**"Issue Price"** means, in relation to a Share, a price per share equal to the amount paid up or credited as paid up (including premium) for such Share together with a sum equal to any Arrears;

**"Lead Investor"** means together the Beringea Funds and their respective Permitted Transferees;

**"Lead Investor Director"** means the director appointed by the Lead Investor pursuant to Article 27.1;

**"a Member of the same Fund Group"** means if the Shareholder is a fund, partnership, company, syndicate or other entity whose business is managed by a Fund Manager (an **"Investment Fund"**) or is a nominee of that Investment Fund

- (a) any participant or partner in or member of any such Investment Fund or the holders of any unit trust which is a participant or partner in or member of any Investment Fund (but only in connection with the dissolution of the Investment Fund or any distribution of assets of the Investment Fund pursuant to the operation of the Investment Fund in the ordinary course of business);
- (b) any Investment Fund managed or advised by that Fund Manager;
- (c) any Parent Undertaking or Subsidiary Undertaking of that Fund Manager, or any Subsidiary Undertaking of any Parent Undertaking of that Fund Manager; or
- (d) any trustee, nominee or custodian of such Investment Fund and vice versa;

**"Leaver's Percentage"** means, in relation to and for the purposes of determining the number of Founder Shares that are required to be converted into Deferred Shares as a result of a Founder ceasing to be an Employee in circumstances in which he is (i) a Bad Leaver or (ii) an Intermediate Leaver within the period commencing on the Commencement Date and ending on the Effective Termination Date, the percentage (rounded to the nearest two decimal places) as calculated using the formula below.

$$100 - ((1/36 \times 100) \times NM),$$

where NM = number of full calendar months from the Commencement Date to the Effective Termination Date such that the Leaver's Percentage shall be zero (0) on the first day of the 37<sup>th</sup> month after the Commencement Date and thereafter;

**"a Member of the same Group"** means as regards any company, a company which is from time to time a Parent Undertaking or a Subsidiary Undertaking of that company or a Subsidiary Undertaking of any such Parent Undertaking;

**"NASDAQ"** means the NASDAQ Stock Market of the NASDAQ OMX Group Inc.,

**"New Securities"** means any shares or other securities convertible into, or carrying the right to subscribe for, those shares issued by the Company after the Date of Adoption (other than shares or securities issued as a result of the events set out in Article 13.11) excluding for the avoidance of doubt any Treasury Shares transferred by the Company after the Date of Adoption;

**"Non-Qualifying Sale"** means any Share Sale or Asset Sale other than a Qualifying Sale;

**"NS Founder Shares"** means 60,000 A Ordinary Shares held by Nigel Swycher;

**"NS Value Shares"** means all Shares held by Nigel Swycher excluding the NS Founder Shares;

**"Offer"** has the meaning set out in Article 20.2,

**"Offer By Way of Rights"** has the meaning set out in Article 9.11;

**"Offer Period"** has the meaning set out in Article 16.7(a);

**"Ordinary Shareholders"** means the holders from time to time of the A Ordinary Shares, the B Ordinary Shares and the C Ordinary Shares (but excludes the Company holding Treasury Shares);

**"Ordinary Shares"** means the A Ordinary Shares, the B Ordinary Shares and the C Ordinary Shares from time to time;

**"Original Shareholder"** has the meaning set out in Article 15.1;

**"Permitted Transfer"** means a transfer of Shares in accordance with Article 15;

**"Permitted Transferee"** means:

- (a) in relation to a Shareholder who is an individual, any of his Privileged Relations, Trustees or Qualifying Companies;
- (b) in relation to a Shareholder which is an undertaking (as defined in section 1161(1) of the Act) means any Member of the same Group;
- (c) in relation to a Shareholder which is an Investment Fund means any Member of the same Fund Group, and
- (d) in relation to an Investor:
  - (i) to any Member of the same Group;
  - (ii) to any Member of the same Fund Group, or
  - (iii) to any nominee of that Investor;

**"Preference Amount"** means a price per share equal to the amount paid up or credited as paid up (including premium) for such share together with a sum equal to any Arrears,

**"Priority Rights"** means the rights of Shareholders to purchase Shares contained in a Transfer Notice in the priority stipulated in Article 16.6;

**"Privileged Relation"** in relation to a Shareholder who is an individual member or deceased or former member means a spouse, Civil Partner, child or grandchild (including step or adopted or illegitimate child and their issue);

**"Proceeds of Sale"** means the consideration payable (including any deferred consideration) whether in cash or otherwise to those Shareholders selling Shares under a Share Sale less any fees, costs and expenses payable in respect of such Share Sale as approved by an Investor Majority;

**"Proposed Exit"** has the meaning given in Article 6.3;

**"Proposed Purchaser"** means a bona fide third party proposed purchaser who at the relevant time has made an offer on arm's length terms;

**"Proposed Sale Date"** has the meaning given in Article 20.3;

**"Proposed Sale Notice"** has the meaning given in Article 20.3;

**"Proposed Sale Shares"** has the meaning given in Article 20.3;

**"Proposed Seller"** means any person proposing to transfer any shares in the capital of the Company;

**"Proposed Transfer"** has the meaning given in Article 20 1;

**"Qualifying Company"** means a company in which a Shareholder or Trustee(s) holds the entire issued share capital and over which that Shareholder or Trustee(s) exercises control (within the meaning of section 1124 of the CTA 2010);

**"Qualifying IPO"** means an IPO at an issue price per Ordinary Share of at least three times the Starting Price (subject to appropriate adjustment following any Bonus Issue or Reorganisation);

**"Qualifying Person"** has the meaning given in section 318(3) of the Act;

**"Qualifying Sale"** means a Share Sale or an Asset Sale returning aggregate proceeds in cash or VCT Shares (as defined in the Subscription Agreement) in respect of the Series D Shares of an amount equal to at least the Qualifying Sale Multiple times the Series D Preference Amount (subject to appropriate adjustment following any Bonus Issue or Reorganisation);

**"Qualifying Sale Multiple"** means 3 times;

**"Relevant Interest"** has the meaning set out in Article 30.5;

**"Relevant Period"** means three (3) years from the Commencement Date;

**"Restricted Shares"** has the meaning set out in Article 19.4;

**"Restrictive Covenants"** means the restrictive covenants set out in clause 10.1 of the Shareholders' Agreement;

**"SH Founder Shares"** means 10,661 C Ordinary Shares held by Steve Harris;

**"SH Value Shares"** means all Shares and Shares subject to share options held by Steve Harris excluding the SH Founder Shares;

**"Sale Shares"** has the meaning set out in Article 16.2(a);

**"Seller"** has the meaning set out in Article 16.2;

**"Series D Preference Amount"** means the WA Issue Price of the Total Series D Shares;

**"Series D Shareholders"** means the holders of the Series D Shares (but excludes the Company holding Treasury Shares);

**"Series D Shares"** means the series D preferred shares of £0.01 each in the capital of the Company from time to time;

**"Shareholder"** means any holder of any Shares (but excludes the Company holding Treasury Shares);

**"Shareholders' Agreement"** means the shareholders' agreement between all the Shareholders of the Company entered into on 21 June 2018 and as varied from time to time;

**"Share Option Plan"** means the share option plan of the Company, the terms of which have been approved by an Investor Majority;

**"Shares"** means the A Ordinary Shares, the B Ordinary Shares, the C Ordinary Shares, the Deferred Shares and the Series D Shares from time to time;

**"Share Sale"** means the sale of (or the grant of a right to acquire or to dispose of) any of the shares in the capital of the Company (in one transaction or as a series of transactions) which will result in the purchaser of those shares (or grantee of that right) and persons Acting in Concert with him together acquiring a Controlling Interest in the Company, except where following completion of the sale the shareholders and the proportion of shares held by each of them are the same as the shareholders and their shareholdings in the Company immediately prior to the sale,

**"Starting Price"** means the WA Issue Price of the Total Series D Shares (if applicable, adjusted as referred to in Article 10.3);

**"Subscription Agreement"** means the subscription agreement dated 2 May 2018 between, amongst others, the Company and the Beringea Funds;

**"Subsidiary", "Subsidiary Undertaking" and "Parent Undertaking"** have the respective meanings set out in sections 1159 and 1162 of the Act;

**"Total Series D Shares"** means all Series D Shares in issue at the relevant time;

**"Transfer Notice"** shall have the meaning given in Article 16.2;

**"Transfer Price"** shall have the meaning given in Article 16.2;

**"Treasury Shares"** means shares in the capital of the Company held by the Company as treasury shares from time to time within the meaning set out in section 724(5) of the Act,

**"Trustees"** in relation to a Shareholder means the trustee or the trustees of a Family Trust;

**"Value Shares"** means:

(i) in relation to Steve Harris, the SH Value Shares; and

(ii) in relation to Nigel Swycher, the NS Value Shares,

in each case held by:

- (a) the Founder in question; and
- (b) any Permitted Transferee of that Founder other than those Shares held by those persons that an Investor Majority declares itself satisfied were not acquired directly or indirectly from the Founder or by reason of that person's relationship with the Founder; and

**"WA Issue Price"** means the weighted average Issue Price of the Total Series D Shares from time to time, to be calculated taking account of the number and Issue Price of all issues of Series D Shares as follows:

$$(N1 \times IP1) + (N2 \times IP2) + (N3 \times IP3) + \dots \text{etc}$$

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**Total Series D Shares**

Where:

N1 = number of Series D Shares issued pursuant to the first issue of Series D Shares

N2 = number of Series D Shares issued pursuant to the second issue of Series D Shares

N3 = number of Series D Shares issued pursuant to the third issue of Series D Shares (if any)

IP1 = Issue Price of the first issue of Series D Shares

IP2 = Issue Price of the second issue of Series D Shares

IP3 = Issue Price of the third issue of Series D Shares (if any)

### **3. Share capital**

- 3.1 In these Articles, unless the context requires otherwise, references to shares of a particular class shall include shares allotted and/or issued after the Date of Adoption 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.
- 3.2 Except as otherwise provided in these Articles, the Series D Shares, the A Ordinary Shares, the B Ordinary Shares and the C Ordinary Shares shall rank pari passu in all respects but shall constitute separate classes of shares
- 3.3 No share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the company in consideration for its issue.
- 3.4 The words "and the directors may determine the terms, conditions and manner of redemption of any such shares" shall be deleted from article 22(2) of the Model Articles.
- 3.5 Subject to Investor Majority Consent and the Act, the Company may purchase its own Shares to the extent permitted by section 692(1ZA) of the Act.

- 3.6 Paragraph (c) of article 24(2) of the Model Articles shall be amended by the replacement of the words "that the shares are fully paid; and" with the words "the amount paid up on them; and".
- 3.7 In article 25(2) of the Model Articles, the words "payment of a reasonable fee as the directors decide" in paragraph (c) shall be deleted and replaced by the words "payment of the expenses reasonably incurred by the Company in investigating evidence as the directors may determine".
- 3.8 For the avoidance of doubt, the Company shall not exercise any right in respect of any Treasury Shares, including without limitation any right to.
- (a) receive notice of or to attend or vote at any general meeting of the Company,
  - (b) receive or vote on any proposed written resolution; and
  - (c) receive a dividend or other distribution
- save as otherwise permitted by section 726(4) of the Act.

#### **4. Dividends**

- 4.1 In respect of any Financial Year, the Company's Available Profits will be applied as set out in this Article 4.
- 4.2 Any Available Profits which the Company may determine, with Investor Majority Consent, to distribute in respect of any Financial Year will be distributed among the holders of the Shares (pari passu as if the Shares constituted one class of share) pro rata to their respective holdings of Shares.
- 4.3 Subject to the Act and these Articles, the Board may, provided Investor Majority Consent is given, pay interim dividends if justified by the Available Profits in respect of the relevant period.
- 4.4 Every dividend shall accrue on a daily basis assuming a 365 day year. All dividends are expressed net and shall be paid in cash.
- 4.5 Article 31(1) of the Model Articles shall be amended by.
- (a) the replacement of the words "either in writing or as the directors may otherwise decide" at the end of paragraphs (a), (b) and (c) of that article 31(1) with the words "in writing"; and
  - (b) the replacement of the words "either in writing or by such other means as the directors decide" from the end of paragraph (d) of that article 31(1) with the words "in writing".

#### **5. Capital Distribution**

- 5.1 Subject to Article 5.3, on a distribution of assets on a liquidation or a return of capital (other than a conversion, redemption or purchase of Shares) the surplus assets of the Company remaining after payment of its liabilities (the "**Total Surplus Assets**") shall be applied (to the extent that the Company is lawfully permitted to do so) as follows:
- (a) first in paying to the holders of the Deferred Shares, if any, a total of £1 00 for the entire class of Deferred Shares (which payment shall be deemed satisfied by payment to any one holder of Deferred Shares),

- (b) second in paying X (where 'X' is a GBP amount equal to the aggregate Preference Amount of all of the Series D Shares in issue at the relevant time plus £100) to the Series D Shareholders and the Ordinary Shareholders at the same time and in the following ratio:

- (A) 99.9% of X to each of the Series D Shareholders pro rata to the number of Series D Shares held; and
- (B) 0.1% of X to each of the holders of Ordinary Shares pro rata according to the number of Ordinary Shares held,

until such time as the Series D Shareholders have received the full Series D Preference Amount in respect of each Series D Share; and

- (c) the balance of the surplus assets (if any) shall be distributed among the Shareholders at the same time and in the following ratio:

- (A) 99.9% of the balance of the surplus assets to the Shareholders other than the Series D Shareholders (as if the Shares other than the Series D Shares constituted one and the same class) pro rata to the number of Shares other than Series D Shares held thereby, and
- (B) 0.1% of the balance of the surplus assets to the each of the Series D Shareholders pro rata to the number of Series D Shares held.

5.2 If there are insufficient assets to make any payment in full as defined in Articles 5.1(a) or 5.1(b), the surplus assets shall be distributed pro rata to the amounts which the Shareholders would otherwise have been entitled under Articles 5.1(a) or 5.1(b).

5.3 The Series D Shares will automatically convert into B Ordinary Shares in accordance with the provisions of these Articles immediately prior to a distribution of assets on a return of capital, where the holders of such converted Series D Shares would, in receiving their pro rata share of any assets distributed following such conversion, receive a higher amount for such converted Series D Shares than they would for the Series D Shares under Article 5.1, in which case for the avoidance of doubt Article 5.1(b) shall not apply.

## **6. Exit provisions**

6.1 On a Share Sale the Proceeds of Sale shall be distributed in the order of priority set out in Article 5 and the Directors shall not register any transfer of Shares if the Proceeds of Sale are not so distributed save in respect of any Shares not sold in connection with that Share Sale provided that if the Proceeds of Sale are not settled in their entirety upon completion of the Share Sale:

- (a) the Directors shall not be prohibited from registering the transfer of the relevant Shares so long as the Proceeds of Sale that are settled have been distributed in the order of priority set out in Article 5; and
- (b) the Shareholders shall take any action reasonably required by an Investor Majority to ensure that the Proceeds of Sale in their entirety are distributed in the order of priority set out in Article 5.

In the event that the Proceeds of Sale are distributed on more than one occasion (for any deferred or contingent consideration or otherwise), the consideration so distributed

on any further occasion shall be paid by continuing the distribution from the previous distribution of consideration in the order of priority set out in Article 5.

- 6.2 On an Asset Sale the surplus assets of the Company remaining after payment of its liabilities shall be distributed (to the extent that the Company is lawfully permitted to do so) in the order of priority set out in Article 5 provided always that if it is not lawful for the Company to distribute its surplus assets in accordance with the provisions of these Articles, the Shareholders shall take any action reasonably required by an Investor Majority (including, but without prejudice to the generality of this Article 6.2, actions that may be necessary to put the Company into voluntary liquidation) so that Article 5 applies.
- 6.3 In the event of an Exit approved by the majority of the Board and the holders of 75 per cent of the Shares (including an Investor Majority, in the case of an Exit which is not a Qualifying IPO or a Qualifying Sale) in accordance with the terms of these Articles (the "**Proposed Exit**"), all Shareholders shall consent to, vote for, raise no objections to and waive any applicable pre-emption or consent in connection with the Proposed Exit ("**Actions**"). The Shareholders shall be required to take all Actions with respect to the Proposed Exit as are required by the Board to facilitate the Proposed Exit. If any Shareholder fails to comply with the provisions of this Article, the Company shall be constituted the agent of each defaulting Shareholder for taking the Actions as are necessary to effect the Proposed Exit and the Directors may authorise an officer or member to execute and deliver on behalf of such defaulting Shareholder the necessary documents and the Company may receive any purchase money due to the defaulting Shareholder in trust for each of the defaulting Shareholders.

## **7. Votes in general meeting and written resolutions**

- 7.1 The Series D Shares shall confer on each holder of Series D Shares the right to receive notice of and to attend, speak and vote at all general meetings of the Company and to receive and vote on proposed written resolutions of the Company.
- 7.2 The A Ordinary Shares shall confer on each holder of A Ordinary Shares the right to receive notice of and to attend, speak and vote at all general meetings of the Company and to receive and vote on proposed written resolutions of the Company.
- 7.3 The B Ordinary Shares shall confer on each holder of B Ordinary Shares the right to receive notice of and to attend, speak and vote at all general meetings of the Company and to receive and vote on proposed written resolutions of the Company.
- 7.4 The C Ordinary Shares shall confer on each holder of C Ordinary Shares the right to receive notice of and to attend, speak and vote at all general meetings of the Company and to receive and vote on proposed written resolutions of the Company.
- 7.5 The Deferred Shares (if any) shall not entitle the holders of them to receive notice of, to attend, to speak or to vote at any general meeting of the Company nor to receive or vote on, or otherwise constitute an eligible member for the purposes of, proposed written resolutions of the Company.
- 7.6 Where Shares confer a right to vote, on a show of hands each holder of such shares 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 each such holder so present shall have one vote for each Share held by him.

## **8. Consolidation of Shares**

- 8.1 Whenever as a result of a consolidation of Shares any Shareholders would become entitled to fractions of a Share, the Directors may, on behalf of those Shareholders, sell



the Shares representing the fractions for the best price reasonably obtainable to any person (including, subject to the provisions of the Act, the Company) and distribute the net proceeds of sale in due proportion among those Shareholders, and the Directors may authorise any person to execute an instrument of transfer of the Shares to, or in accordance with the directions of, the purchaser. The transferee shall not be bound to see to the application of the purchase money nor shall his title to the Shares be affected by any irregularity in or invalidity of the proceedings in reference to the sale.

## **9. Conversion of Series D Shares**

- 9.1 Any holder of Series D Shares shall be entitled, by notice in writing to the Company, to require conversion into B Ordinary Shares of all of the fully paid Series D Shares held by them at any time prior to a distribution of Total Surplus Assets in accordance with Article 5.1(b) and those Series D Shares shall convert automatically on the date of such notice (the "**Conversion Date**"), provided that the holder may in such notice, state that conversion of its Series D Shares into B Ordinary Shares is conditional upon the occurrence of one or more events (the "**Conditions**").
- 9.2 All of the fully paid Series D Shares shall automatically convert into B Ordinary Shares:
- (a) on the date of a notice given by the Investor Majority (which date shall be treated as the Conversion Date); and
  - (b) immediately upon the occurrence of a Qualifying IPO
- 9.3 In the case of (i) Articles 9.1 and 9.2(a), not more than five Business Days after the Conversion Date or (ii) in the case of Article 9.2(b), at least five Business Days prior to the occurrence of the Qualifying IPO, each holder of the relevant Series D Shares shall deliver the certificate (or an indemnity for lost certificate in a form acceptable to the Board) in respect of the Series D Shares being converted to the Company at its registered office for the time being.
- 9.4 Where conversion is mandatory on the occurrence of a Qualifying IPO, that conversion will be effective only immediately prior to and conditional upon such Qualifying IPO (the "**Conversion Date**" shall be construed accordingly) and, if such Qualifying IPO does not become effective or does not take place, such conversion shall be deemed not to have occurred. In the event of a conversion under Article 9.1, if the Conditions have not been satisfied or waived by the relevant holder by the Conversion Date such conversion shall be deemed not to have occurred.
- 9.5 On the Conversion Date, the relevant Series D Shares shall without further authority than is contained in these Articles stand converted into B Ordinary Shares on the basis of one B Ordinary Share for each Series D Share held (the "**Conversion Ratio**"), and the B Ordinary Shares resulting from that conversion shall in all other respects rank pari passu with the existing issued B Ordinary Shares.
- 9.6 The Company shall on the Conversion Date enter the holder of the converted Series D Shares on the register of members of the Company as the holder of the appropriate number of B Ordinary Shares and, subject to the relevant holder delivering its certificate(s) (or an indemnity for lost certificate in a form acceptable to the Board) in respect of the Series D Shares in accordance with this Article, the Company shall within ten (10) Business Days of the Conversion Date forward to such holder of Series D Shares by post to his address shown in the register of members, free of charge, a definitive certificate for the appropriate number of fully paid B Ordinary Shares.
- 9.7 On the Conversion Date (or as soon afterwards as it is possible to calculate the amount payable), the Company will, if it has sufficient Available Profits, pay to holders of the Series D Shares falling to be converted a dividend equal to all Arrears and

accruals of dividends in relation to those Series D Shares to be calculated on a daily basis down to and including the day immediately preceding the Conversion Date. If the Company has insufficient Available Profits to pay all such Arrears and accruals of dividends in full then it will pay the same to the extent that it is lawfully able to do so and any Arrears and accruals of dividends that remain outstanding shall continue to be at debt due from and immediately payable by the Company.

9.8 The Conversion Ratio shall from time to time be adjusted in accordance with the provisions of this Article:

- (a) if Series D Shares remain capable of being converted into new B Ordinary Shares and there is a consolidation and/or sub-division of B Ordinary Shares, the Conversion Ratio shall be adjusted by an amount, which in the opinion of the Board (with Investor Director Consent) is fair and reasonable, to maintain the right to convert so as to ensure that each Series D Shareholder is in no better or worse position as a result of such consolidation or sub-division, such adjustment to become effective immediately after such consolidation or sub-division;
- (b) if Series D Shares remain capable of being converted into B Ordinary Shares, on an allotment of fully-paid B Ordinary Shares pursuant to a capitalisation of profits or reserves to holders of B Ordinary Shares the Conversion Ratio shall be adjusted by an amount, which in the opinion of the Board (with Investor Director Consent) is fair and reasonable, to maintain the right to convert so as to ensure that each Series D Shareholder is in no better or worse position as a result of such capitalisation of profits or reserves, such adjustment to become effective as at the record date for such issue.

9.9 If any Series D Shareholder becomes entitled to fractions of an B Ordinary Share as a result of conversion ("**Fractional Holders**"), the Directors may (in their absolute discretion) deal with these fractions as they think fit on behalf of the Fractional Holders. In particular, the Directors may aggregate and sell the fractions to a person for the best price reasonably obtainable and distribute the net proceeds of sale in due proportions among the Fractional Holders or may ignore fractions or accrue the benefit of such fractions to the Company rather than the Fractional Holder. For the purposes of completing any such sale of fractions, the chairman of the Company or, failing him, the secretary will be deemed to have been appointed the Fractional Holder's agent for the purpose of the sale.

9.10 If a doubt or dispute arises concerning an adjustment of the Conversion Ratio in accordance with Article 9.8, or if so requested by an Investor Majority, the Board shall refer the matter to the Auditors for determination who shall make available to all Shareholders their report and whose certificate as to the amount of the adjustment is, in the absence of manifest error, conclusive and binding on all concerned and their costs shall be met by the Company.

9.11 If Series D Shares remain capable of being converted into new B Ordinary Shares and B Ordinary Shares are offered by the Company by way of rights to holders of B Ordinary Shares (an "**Offer By Way of Rights**"), the Company shall on the making of each such offer, make a like offer to each Series D Shareholder as if immediately before the record date for the Offer By Way Of Rights, his Series D Shares had been converted into fully-paid B Ordinary Shares at the then applicable Conversion Ratio.

## 10. **Anti-Dilution protection**

10.1 If New Securities are issued by the Company at a price per New Security which equates to less than the Starting Price (a "**Qualifying Issue**") (which in the event that the New Security is not issued for cash shall be a price certified by the Auditors acting

as experts and not as arbitrators as being in their opinion the current cash value of the new consideration for the allotment of the New Securities) then the Company shall, unless the Investor Majority shall have specifically waived the rights of all of the holders of Series D Shares, issue to each holder of Series D Shares (the "**Exercising Investor**") a number of new Series D Shares determined by applying the following formula (and rounding the product, N, down to the nearest whole share), subject to adjustment as certified in accordance with Article 10.3 (the "**Anti-Dilution Shares**"):

$$N = \left( \left( \frac{SIP}{WA} \right) \times Z \right) - Z$$

Where:

N= Number of Anti-Dilution Shares to be issued to the Exercising Investor

$$WA = \frac{(SIP \times ESC) + (QISP \times NS)}{(ESC + NS)}$$

SIP = Starting Price

ESC = the number of Shares in issue plus the aggregate number of Shares in respect of which options to subscribe have been granted, or which are subject to convertible securities (including but not limited to warrants) in each case immediately prior to the Qualifying Issue

QISP = the lowest per share price of the New Securities issued pursuant to the Qualifying Issue (which in the event that that New Security is not issued for cash shall be the sum certified by the Auditors acting as experts and not arbitrators as being in their opinion the current cash value of the non cash consideration for the allotment of the New Security)

NS = the number of New Securities issued pursuant to the Qualifying Issue

Z = the number of Series D Shares held by the Exercising Investor prior to the Qualifying Issue.

## 10.2 The Anti-Dilution Shares shall:

- (a) be paid up by the automatic capitalisation of available reserves of the Company, unless and to the extent that the same shall be impossible or unlawful or a majority of the Exercising Investors shall agree otherwise, in which event the Exercising Investors shall be entitled to subscribe for the Anti-Dilution Shares in cash at par (being the par value approved in advance by Investor Director Consent) and the entitlement of such Exercising Investors to Anti-Dilution Shares shall be increased by adjustment to the formula set out in Article 10.1 so that the Exercising Investors shall be in no worse position than if they had not so subscribed at par. In the event of any dispute between the Company and any Exercising Investor as to the effect of Article 10.1 or this Article 10.2, the matter shall be referred (at the cost of the Company) to the Auditors for certification of the number of Anti-Dilution Shares to be issued. The Auditor's certification of the matter shall in the absence of manifest error be final and binding on the Company and the Exercising Investor; and
- (b) subject to the payment of any cash payable pursuant to Article 10.2(a) (if applicable), be issued, credited fully paid up in cash and shall rank pari passu in all respects with the existing Series D Shares, within five (5) Business Days

of the expiry of the offer being made by the Company to the Exercising Investor and pursuant to Article 10.2(a).

- 10.3 In the event of any Bonus Issue or Reorganisation, the Starting Price shall also be subject to adjustment on such basis as may be agreed by the Company with the Investor Majority within ten (10) Business Days after any Bonus Issue or Reorganisation. If the Company and the Investor Majority cannot agree such adjustment it shall be referred to the Auditors whose determination shall, in the absence of manifest error, be final and binding on the Company and each of the Shareholders. The costs of the Auditors shall be borne by the Company.
- 10.4 For the purposes of this Article 10 any Shares held as Treasury Shares by the Company shall be disregarded when calculating the number of Anti-Dilution Shares to be issued

## **11. Deferred Shares**

- 11.1 Subject to the Act, any Deferred Shares may be purchased by the Company at any time at its option for the aggregate sum of one penny for all the Deferred Shares registered in the name of any holder(s) without obtaining the sanction of the holder(s)
- 11.2 The allotment or issue of Deferred Shares or the conversion or re-designation of shares into Deferred Shares shall be deemed to confer irrevocable authority on the Company at any time after their allotment, issue, conversion or re-designation, without obtaining the sanction of such holder(s), to:
- (a) appoint any person to execute any transfer (or any agreement to transfer) of such Deferred Shares to such person(s) as the Company may determine (as nominee or custodian thereof or otherwise), including (subject to the Act) to the Company itself, in any such case for a price being not more than an aggregate sum of one penny for all the Deferred Shares registered in the name of such holder(s); and/or
  - (b) receive the consideration for such a transfer or purchase (and give a good discharge for it) and hold the same on trust for the transferor(s); and/or
  - (c) give, on behalf of such holder(s), consent to the cancellation of such Deferred Shares, and/or
  - (d) retain the certificate(s) (if any) in respect of such Deferred Shares pending the transfer, cancellation and/or purchase thereof.
- 11.3 No Deferred Share may be transferred without the prior consent of the Board.

## **12. Variation of rights**

- 12.1 Whenever the share capital of the Company is divided into different classes of shares, the special rights attached to any such 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 more than 75 per cent. in nominal value of the issued shares of that class save that the special rights attaching to the Series D Shares may only be varied or abrogated with Investor Majority Consent
- 12.2 The creation of a new class of shares which has preferential rights to one or more existing classes of shares shall not constitute a variation of the rights of those existing classes of shares.

**13. Allotment of new shares or other securities: pre-emption**

- 13.1 Sections 561(1) and 562(1) to (5) (inclusive) of the Act do not apply to an allotment of Equity Securities made by the Company.
- 13.2 If the Company proposes to allot any New Securities prior to the date of a Qualifying IPO, those New Securities shall not be allotted to any person (a "**Third Party Subscriber**") unless the Company has complied with the provisions of Articles 13.3 to 13.9
- 13.3 In the first instance the Company must offer the Lead Investor such number of New Securities which would result in the Lead Investor holding in aggregate twenty-five per cent. (25%) of the Shares in issue on a fully diluted, as converted basis following the issue of the New Securities (as nearly as may be without involving fractions). The New Securities shall be offered to the Lead Investor on the same terms and at the same price as those New Securities are being offered to the Third Party Subscribers. The offer shall be in writing, be open for acceptance from the date of the offer to the date ten (10) Business Days after the date of the offer (inclusive) (the "**First Subscription Period**") and give details of the number and subscription price of the New Securities. At the end of the First Subscription Period, such number of New Securities shall be allotted to the Lead Investor as have been properly applied for by them pursuant to an offer by the Company in accordance with the terms of this Article 13.3 (the "**First Allotment**"). For the avoidance of doubt, nothing in this Article 13.3 shall prevent New Securities from being allotted by the Company which would (together with the Lead Investor's existing holding) result in the Lead Investor holding in aggregate less than twenty-five per cent. (25%) of the Shares in issue on a fully diluted, as converted basis following the issue of the New Securities PROVIDED THAT all such New Securities are offered to the Lead Investor in accordance with the terms of this Article 13.3.
- 13.4 Following the First Allotment (if any) and unless otherwise agreed by special resolution, the Company must offer the remaining New Securities to the Shareholders (excluding the Lead Investor) (the "**Subscribers**") on the same terms and at the same price as those New Securities are being offered to the Third Party Subscribers on a pari passu and pro rata basis to the number of Shares held by those holders (as nearly as may be without involving fractions). The offer shall be in writing, be open for acceptance from the date of the offer to the date ten (10) Business Days after the date of the offer (inclusive) (the "**Second Subscription Period**") and give details of the number and subscription price of the New Securities.
- 13.5 If, at the end of the Second Subscription Period, the number of New Securities applied for is equal to the number of New Securities, the New Securities shall be allotted to the Subscribers who have applied for New Securities on a pro rata basis to the number of Shares held by such Subscribers.
- 13.6 If, at the end of the Second Subscription Period, the number of New Securities applied for is less than the number of New Securities, the New Securities shall be allotted to the Subscribers in accordance with their applications (the "**Second Allotment**") and any remaining New Securities shall be offered, subject to Article 13.11, to all the Shareholders in accordance with Article 13.7.
- 13.7 Following the Second Allotment and unless otherwise agreed by special resolution, the Company must offer the remaining New Securities to the Shareholders (the "**Secondary Subscribers**") on the same terms and at the same price as those New Securities are being offered to the Third Party Subscribers persons on a pari passu and pro rata basis to the number of Shares held by those holders, as nearly as may be without involving fractions. For the avoidance of doubt, the Lead Investor's pro rata proportion shall be deemed to be twenty-five per cent. (25%) of the Shares in issue on a fully diluted, as converted basis following the issue of the New Securities (as nearly

as may be without involving fractions) in accordance with the provisions set out in Article 13.3. The offer:

- (a) shall be in writing, be open for acceptance from the date of the offer to the date ten (10) Business Days after the date of the offer (inclusive) (the "**Third Subscription Period**") and give details of the number and subscription price of the New Securities; and
  - (b) may stipulate that any Secondary Subscriber who wishes to subscribe for a number of New Securities in excess of the proportion to which each is entitled shall in their acceptance state the number of excess New Securities for which they wish to subscribe.
- 13.8 If, at the end of the Third Subscription Period, the number of New Securities applied for is equal to or exceeds the number of New Securities, the New Securities shall be allotted to the Secondary Subscribers who have applied for New Securities on a pro rata basis to the number of Shares held by such Secondary Subscribers which procedure shall be repeated until all New Securities have been allotted (as nearly as may be without involving fractions or increasing the number allotted to any Secondary Subscriber beyond that applied for by him).
- 13.9 If, at the end of the Third Subscription Period, the number of New Securities applied for is less than the number of New Securities, the New Securities shall be allotted to the Secondary Subscribers in accordance with their applications and any remaining New Securities shall be offered, subject to Article 13.11, to any other person as the Directors may determine at the same price and on the same terms as the offer to the Secondary Subscribers.
- 13.10 Subject to the requirements of Articles 13.2 to 13.9 (inclusive) and to the provisions of section 551 of the Act, any New Securities shall be at the disposal of the Board who may allot, grant options over or otherwise dispose of them to any persons at those times and generally on the terms and conditions they think proper, provided that the allotment or grant to that person must be approved in writing by an Investor Majority.
- 13.11 The provisions of Articles 13.2 to 13.9 (inclusive) shall not apply to:
- (a) options to subscribe for C Ordinary Shares under the Share Option Plan;
  - (b) New Securities issued or granted in order for the Company to comply with its obligations under these Articles including, but not limited to the Anti-Dilution Shares;
  - (c) New Securities issued in consideration of the acquisition by the Company of any company or business which has been approved in writing by an Investor Majority;
  - (d) New Securities which the Investor Majority have agreed in writing should be issued without complying with the procedure set out in this Article 13;
  - (e) New Securities issued as a result of a Bonus Issue or Reorganisation which has been approved in writing by an Investor Majority, and
  - (f) Shares or options for Shares issued or granted to the Investors in accordance with the terms of the Subscription Agreement.
- 13.12 Any New Securities offered under this Article 13 to an Investor may be accepted in full or part by a Member of the same Fund Group as that Investor or a Member of the same Group as that Investor in accordance with the terms of this Article 13.

- 13.13 No Shares shall be allotted (nor any Treasury Shares be transferred) to any Employee, Director, prospective Employee or prospective director of the Company, who in the opinion of the Board is subject to taxation in the United Kingdom, unless such person has entered into a joint section 431 ITEPA election with the Company if so required by the Company.

#### **14. Transfers of Shares – general**

- 14.1 In Articles 14 to 20 (inclusive) reference to the transfer of a Share includes the transfer or assignment of a beneficial or other interest in that Share or the creation of a trust or Encumbrance over that Share and reference to a Share includes a beneficial or other interest in a Share.
- 14.2 No Share may be transferred unless the transfer is made in accordance with these Articles.
- 14.3 If a Shareholder transfers or purports to transfer a Share otherwise than in accordance with these Articles he will be deemed immediately to have served a Transfer Notice in respect of all Shares held by him.
- 14.4 Any transfer of a Share by way of sale which is required to be made under Articles 16 to 21 (inclusive) will be deemed to include a warranty that the transferor sells with full title guarantee.
- 14.5 Unless express provision is made in these Articles to the contrary (including for the avoidance of doubt the provisions of Articles 14, 15, 18, 19 and 20), no Ordinary Shares held by any Founder shall be transferred without Investor Majority Consent.
- 14.6 The Directors may refuse to register a transfer if:
- (a) it is a transfer of a Share to a bankrupt, a minor or a person of unsound mind;
  - (b) the transfer is to an Employee, Director or prospective Employee or prospective director of the Company, who in the opinion of the Board is subject to taxation in the United Kingdom, and such person has not entered into a joint section 431 ITEPA election with the Company;
  - (c) the transfer is not lodged at the registered office or at such other place as the Directors may appoint;
  - (d) the transfer is not accompanied by the certificate for the Shares to which it relates (or an indemnity for lost certificate in a form acceptable to the Board) and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer;
  - (e) the transfer is in respect of more than one class of Shares;
  - (f) the transfer is in favour of more than four transferees; or
  - (g) these Articles otherwise provide that such transfer shall not be registered.

If the Directors refuse to register a transfer, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent

- 14.7 The Directors may, as a condition to the registration of any transfer of shares in the Company (whether pursuant to a Permitted Transfer or otherwise), require the transferee to execute and deliver to the Company a deed agreeing to be bound by the

terms of any shareholders' agreement or similar document in force between some or all of the Shareholders and the Company in any form as the Directors may reasonably require (but not so as to oblige the transferee to have any obligations or liabilities greater than those of the proposed transferor under any such agreement or other document) and if any condition is imposed in accordance with this Article 14.7 the transfer may not be registered unless that deed has been executed and delivered to the Company's registered office by the transferee.

- 14.8 To enable the Directors to determine whether or not there has been any disposal of shares in the capital of the Company (or any interest in shares in the capital of the Company) in breach of these Articles the Directors may require any holder or the legal personal representatives of any deceased holder or any person named as transferee in any transfer lodged for registration or any other person who the Directors or the Lead Investor Director may reasonably believe to have information relevant to that purpose, to furnish to the Company that information and evidence the Directors may request regarding any matter which they deem relevant to that purpose, including (but not limited to) the names, addresses and interests of all persons respectively having interests in the shares in the capital of the Company from time to time registered in the holder's name. If the information or evidence is not provided to enable the Directors to determine to their reasonable satisfaction that no breach has occurred, or where as a result of the information and evidence the Directors are reasonably satisfied that a breach has occurred, the Directors shall immediately notify the holder of such shares in the capital of the Company in writing of that fact and the following shall occur:

- (a) the relevant shares shall cease to confer upon the holder of them (including any proxy appointed by the holder) any rights to vote (whether on a show of hands or on a poll and whether exercisable at a general meeting or on a written resolution of the Company or at any separate meeting or written resolution of the class in question) provided that, at the election of the relevant Investor, such rights shall not cease if as a result of such cessation the Company shall become a Subsidiary of an Investor; or
- (b) the withholding of payment of all dividends or other distributions otherwise attaching to the relevant shares or to any further shares issued in respect of those shares; and
- (c) the holder may be required at any time following receipt of the notice to transfer some or all of its Shares to any person(s) at the price that the Directors may require by notice in writing to that holder.

The rights referred to in (a) and (b) above may be reinstated by the Board subject to Investor Director Consent and shall in any event be reinstated upon the completion of any transfer referred to in (c) above

- 14.9 In any case where the Board requires a Transfer Notice to be given in respect of any Shares, if a Transfer Notice is not duly given within a period of 10 Business Days of demand being made, a Transfer Notice shall be deemed to have been given at the expiration of that period.

- 14.10 If a Transfer Notice is required to be given by the Board or is deemed to have been given under these Articles, the Transfer Notice, unless otherwise specified in the Articles, will be treated as having specified that:

- (a) the Transfer Price for the Sale Shares will be as agreed between the Board (including Investor Director Consent) (any director who is a Seller or with whom the Seller is connected (within the meaning of section 252 of the Act) not voting) and the Seller, or, failing agreement within five Business Days after the



date on which the Board becomes aware that a Transfer Notice has been deemed to have been given, will be the Fair Value of the Sale Shares;

- (b) it does not include a Minimum Transfer Condition (as defined in Article 16.2(d)); and
- (c) the Seller wishes to transfer all of the Shares held by it.

14.11 Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor.

## **15. Permitted Transfers**

15.1 Subject to Article 15.2, a Shareholder (who is not a Permitted Transferee) (the "**Original Shareholder**") may transfer all or any of his or its Shares to a Permitted Transferee without restriction as to price or otherwise save that no Restricted Shares shall be transferred to a Permitted Transferee without Investor Majority Consent.

15.2 In the event that Nigel Swycher assigns, sells or transfers any A Ordinary Share to another person (including, but not limited to, a Permitted Transferee), those A Ordinary Shares shall automatically be converted into B Ordinary Shares.

15.3 Shares previously transferred as permitted by Article 15.1 may be transferred by the transferee to any other Permitted Transferee of the Original Shareholder without restriction as to price or otherwise.

15.4 Where under the provision of a deceased Shareholder's will or laws as to intestacy, the persons legally or beneficially entitled to any Shares, whether immediately or contingently, are Permitted Transferees of the deceased Shareholder, the legal representative of the deceased Shareholder may transfer any Share to those Permitted Transferees, in each case without restriction as to price or otherwise.

15.5 If a Permitted Transferee who was a Member of the same Group as the Original Shareholder ceases to be a Member of the same Group as the Original Shareholder, the Permitted Transferee must not later than five Business Days after the date on which the Permitted Transferee so ceases, transfer the Shares held by it to the Original Shareholder or a Member of the same Group as the Original Shareholder (which in either case is not in liquidation) without restriction as to price or otherwise failing which it will be deemed to have given a Transfer Notice in respect of those Shares.

15.6 Other than in connection with the bona fide dissolution of an Investment Fund in accordance with its constitutional documents, if a Permitted Transferee who was a Member of the same Fund Group as the Original Shareholder ceases to be a Member of the same Fund Group, the Permitted Transferee must not later than five Business Days after the date on which the Permitted Transferee so ceases, transfer the Shares held by it to the Original Shareholder or a Member of the same Fund Group as the Original Shareholder (which in either case is not in liquidation) without restriction as to price or otherwise failing which it will be deemed to give a Transfer Notice in respect of such Shares.

15.7 Trustees may transfer Shares to (i) a Qualifying Company or (ii) the Original Shareholder or another Permitted Transferee of the Original Shareholder or (iii) the new or remaining trustees upon a change of Trustees, without restrictions as to price or otherwise

15.8 No transfer of Shares may be made to Trustees unless the Board is satisfied:

- (a) with the terms of the trust instrument and in particular with the powers of the trustees;
  - (b) with the identity of the proposed trustees;
  - (c) the proposed transfer will not result in 50 per cent or more of the aggregate of the Company's equity share capital being held by trustees of that and any other trusts; and
  - (d) that no costs incurred in connection with the setting up or administration of the Family Trust in question are to be paid by the Company.
- 15.9 If a Permitted Transferee who is a Qualifying Company of the Original Shareholder ceases to be a Qualifying Company of the Original Shareholder, it must within five Business Days of so ceasing, transfer the Shares held by it to the Original Shareholder (or, to any Permitted Transferee of the Original Shareholder) (any may do so without restriction as to price or otherwise) failing which it will be deemed (unless it obtains the approval of the Board (to include Investor Director Consent) to have given a Transfer Notice in respect of such Shares.
- 15.10 If a Permitted Transferee who is a spouse or Civil Partner of the Original Shareholder ceases to be a spouse or Civil Partner of the Original Shareholder whether by reason of divorce or otherwise he must, within 15 Business Days of so ceasing either:
- (a) execute and deliver to the Company a transfer of the Shares held by him to the Original Shareholder (or, to any Permitted Transferee of the Original Shareholder) for such consideration as may be agreed between them; or
  - (b) give a Transfer Notice to the Company in accordance with Article 16.2,
- failing which he shall be deemed to have given a Transfer Notice.
- 15.11 On the death (subject to Article 15.4), bankruptcy, liquidation, administration or administrative receivership of a Permitted Transferee (other than a joint holder) his personal representatives or trustee in bankruptcy, or its liquidator, administrator or administrative receiver must within five Business Days after the date of the grant of probate, the making of the bankruptcy order or the appointment of the liquidator, administrator or the administrative receiver execute and deliver to the Company a transfer of the Shares held by the Permitted Transferee without restriction as to price or otherwise. The transfer shall be to the Original Shareholder if still living (and not bankrupt or in liquidation) or, if so directed by the Original Shareholder, to any Permitted Transferee of the Original Shareholder. If the transfer is not executed and delivered within five Business Days of such period or if the Original Shareholder has died or is bankrupt or is in liquidation, administration or administrative receivership, the personal representative or trustee in bankruptcy or liquidator, administrator or administrative receiver will be deemed to have given a Transfer Notice
- 15.12 A transfer of any Shares approved by the Board and the Investor Majority may be made without restriction as to price or otherwise and with any such conditions as may be imposed and each such transfer shall be registered by the Directors.
- 15.13 Any Shares may at any time be transferred where there is a sale of the entire issued share capital of the Company to a Holding Company, which has been approved by a majority of the Board, including Investor Director Consent
- 15.14 The Company shall only be permitted to sell or transfer any Shares held as Treasury Shares to any person with Investor Majority Consent.

**16. Transfers of Shares subject to pre-emption rights**

16.1 Save where the provisions of Articles 15, 20 or 21 apply, any transfer of Shares by a Shareholder shall be subject to the pre-emption rights contained in this Article 16.

16.2 A Shareholder who wishes to transfer Shares (a "**Seller**") shall, except as otherwise provided in these Articles, and subject to Article 14.5, before transferring or agreeing to transfer any Shares give notice in writing (a "**Transfer Notice**") to the Company specifying:

- (a) the number of Shares which he wishes to transfer (the "**Sale Shares**");
- (b) if he wishes to sell the Sale Shares to a third party, the name of the proposed transferee;
- (c) the price at which he wishes to transfer the Sale Shares; and
- (d) whether the Transfer Notice is conditional on all or a specific number of the Sale Shares being sold to Shareholders (a "**Minimum Transfer Condition**").

If no cash price is specified by the Seller, the price at which the Sale Shares are to be transferred (the "**Transfer Price**") must be agreed by the Board (including Investor Director Consent). In addition, if the price is not specified in cash, an equivalent cash value price must be agreed between the Seller and the Board (including Investor Director Consent). In both cases, the price will be deemed to be the Fair Value of the Sale Shares if no price is agreed within five (5) Business Days of the Company receiving the Transfer Notice.

16.3 Except with Investor Director Consent, no Transfer Notice once given or deemed to have been given under these Articles may be withdrawn.

16.4 A Transfer Notice constitutes the Company the agent of the Seller for the sale of the Sale Shares at the Transfer Price.

16.5 As soon as practicable following the later of:

- (a) receipt of a Transfer Notice, and
- (b) in the case where the Transfer Price has not been agreed, the determination of the Transfer Price under Article 17,

the Board shall offer the Sale Shares for sale to the Shareholders in the manner set out in Articles 16.6 and 16.7. Each offer must be in writing and give details of the number and Transfer Price of the Sale Shares offered.

16.6 *Priority for offer of Sale Shares*

- (a) If the Sale Shares are Series D Shares, the Company shall offer them in the following priority.
  - (i) first, to the Company;
  - (ii) second to the Series D Shareholders; and
  - (iii) third, to all the holders of Ordinary Shares (as if the Ordinary Shares constituted one and the same class),

on the basis set out in Article 16.7

- (b) If the Sale Shares are Ordinary Shares, the Sale Shares shall be offered to all Shareholders on the basis set out in Article 16.7.

16.7 *Transfers: Offer*

- (a) The Board shall offer the Sale Shares pursuant to the Priority Rights to the Company in accordance with the provisions of the Act.
- (b) Subject to paragraph 16.7(a) above, the Board shall offer the Sale Shares pursuant to the Priority Rights to all persons specified in the offer other than the Seller (the "**Continuing Shareholders**") inviting them to apply in writing within the period from the date of the offer to the date fifteen (15) Business Days after the offer (inclusive) (the "**Offer Period**") for the maximum number of Sale Shares they wish to buy.
- (c) If the Sale Shares are subject to a Minimum Transfer Condition then any allocation made under this Article 16.7 will be conditional on the fulfilment of the Minimum Transfer Condition.
- (d) If, at the end of the Offer Period, the number of Sale Shares applied for is equal to or exceeds the number of Sale Shares, the Board shall allocate the Sale Shares to each Continuing Shareholder who have applied for Sale Shares in the proportion (fractional entitlements being rounded to the nearest whole number) which his existing holding of the relevant class(es) of Shares bears to the total number of the relevant class(es) of Shares held by those Continuing Shareholders who have applied for Sale Shares which procedure shall be repeated until all Sale Shares have been allocated but no allocation shall be made to a Shareholder of more than the maximum number of Sale Shares which he has stated he is willing to buy.
- (e) If, at the end of the Offer Period, the number of Sale Shares applied for is less than the number of Sale Shares, the Board shall allocate the Sale Shares to the Continuing Shareholders in accordance with their applications and the balance will be dealt with in accordance with Article 16.8(e).

16.8 *Completion of transfer of Sale Shares*

- (a) If the Transfer Notice includes a Minimum Transfer Condition and the total number of Shares applied for does not meet the Minimum Transfer Condition the Board shall notify the Seller and all those to whom Sale Shares have been conditionally allocated under Article 16.7 stating the condition has not been met and that the relevant Transfer Notice has lapsed with immediate effect.
- (b) If:
  - (i) the Transfer Notice does not include a Minimum Transfer Condition, or
  - (ii) the Transfer Notice does include a Minimum Transfer Condition and allocations have been made in respect of all or the minimum required number of the Sale Shares,

the Board shall, when no further offers are required to be made under Article 16.7 and once the requirements of Article 20 have been fulfilled to the extent required, give written notice of allocation (an "**Allocation Notice**") to the Seller and each Shareholder to whom Sale Shares have been allocated (an "**Applicant**") specifying the number of Sale Shares allocated to each Applicant and the place and time (being not less than 5 Business Days nor more than

15 Business Days after the date of the Allocation Notice) for completion of the transfer of the Sale Shares.

- (c) Upon service of an Allocation Notice, the Seller must, against payment of the Transfer Price, transfer the Sale Shares in accordance with the requirements specified in it.
- (d) If the Seller fails to comply with the provisions of Article 16.8(c):
  - (i) the chairman of the Company or, failing him, one of the directors, or some other person nominated by a resolution of the Board, may on behalf of the Seller:
    - (A) complete, execute and deliver in his name all documents necessary to give effect to the transfer of the relevant Sale Shares to the Applicants;
    - (B) receive the Transfer Price and give a good discharge for it; and
    - (C) (subject to the transfer being duly stamped) enter the Applicants in the register of Shareholders as the holders of the Shares purchased by them; and
  - (ii) the Company shall pay the Transfer Price into a separate bank account in the Company's name on trust (but without interest) or otherwise hold the Transfer Price on trust for the Seller until he has delivered to the Company his certificate or certificates for the relevant Shares (or an indemnity for lost certificate in a form acceptable to the Board).
- (e) If an Allocation Notice does not relate to all the Sale Shares then, subject to Article 16.8(f), the Seller may, within eight weeks after service of the Allocation Notice, transfer the unallocated Sale Shares to any person at a price at least equal to the Transfer Price.
- (f) The right of the Seller to transfer Shares under Article 16.8(e) does not apply if the Board is of the opinion on reasonable grounds that:
  - (i) the transferee is a person (or a nominee for a person) who the Board (with Investor Director Consent) determine in their absolute discretion is a competitor with (or an Associate of a competitor with) the business of the Company or with a Subsidiary Undertaking of the Company;
  - (ii) the sale of the Sale Shares is not bona fide or the price is subject to a deduction, rebate or allowance to the transferee; or
  - (iii) the Seller has failed or refused to provide promptly information available to it or him and reasonably requested by the Board for the purpose of enabling it to form the opinion mentioned above.

16.9 Any Sale Shares offered under this Article 16 to an Investor may be accepted in full or part only by a Member of the same Fund Group as that Investor or a Member of the same Group as that Investor in accordance with the terms of this Article 16.

## **17. Valuation of Shares**

17.1 If no Transfer Price can be agreed between the Seller and the Board in accordance with provisions of Articles 14.10 or 16.2 or otherwise then, on the date of failing agreement, the Board shall either:

- (a) appoint an expert valuer in accordance with Article 17.2 (the "**Expert Valuer**") to certify the Fair Value of the Sale Shares; or
  - (b) (if the Fair Value has been certified by an Expert Valuer within the preceding 12 weeks) specify that the Fair Value of the Sale Shares will be calculated by dividing any Fair Value so certified by the number of Sale Shares to which it related and multiplying such Fair Value by the number of Sale Shares the subject of the Transfer Notice.
- 17.2 The Expert Valuer will be either.
- (a) the Auditors; or
  - (b) (if the Auditors decline to act, or the Board and the Seller so agree) an independent firm of chartered accountants to be agreed between the Board and the Seller or failing agreement not later than the date 10 Business Days after the date of service of the Transfer Notice to be nominated by the then President of the Institute of Chartered Accountants in England and Wales on the application of either party and approved by the Company.
- 17.3 The "**Fair Value**" of the Sale Shares shall be determined by the Expert Valuer on the following assumptions and bases
- (a) valuing the Sale Shares as on an arm's-length sale between a willing seller and a willing buyer;
  - (b) if the Company is then carrying on business as a going concern, on the assumption that it will continue to do so,
  - (c) that the Sale Shares are capable of being transferred without restriction;
  - (d) valuing the Sale Shares as a rateable proportion of the total value of all the issued Shares (excluding any Shares held as Treasury Shares) without any premium or discount being attributable to the percentage of the issued share capital of the Company which they represent but taking account of the rights attaching to the Sale Shares; and
  - (e) reflect any other factors which the Expert Valuer reasonably believes should be taken into account.
- 17.4 If any difficulty arises in applying any of these assumptions or bases then the Expert Valuer shall resolve that difficulty in whatever manner they shall in their absolute discretion think fit
- 17.5 The Expert Valuer shall be requested to determine the Fair Value within 20 Business Days of their appointment and to notify the Board of their determination
- 17.6 The Expert Valuer shall act as experts and not as arbitrators and their determination shall be final and binding on the parties (in the absence of fraud or manifest error).
- 17.7 The Board will give the Expert Valuer access to all accounting records or other relevant documents of the Company subject to them agreeing to such confidentiality provisions as the Board may reasonably impose.
- 17.8 The Expert Valuer shall deliver their certificate to the Company. As soon as the Company receives the certificate it shall deliver a copy of it to the Seller. Unless the Sale Shares are to be sold under a Transfer Notice, which is deemed to have been served, the Seller may by notice in writing to the Company within five Business Days of

the service on him of the copy certificate, cancel the Company's authority to sell the Sale Shares.

17.9 The cost of obtaining the certificate shall be paid by the Company unless:

- (a) the Seller cancels the Company's authority to sell; or
- (b) the Sale Price certified by the Expert Valuer is less than the price (if any) offered by the directors to the Seller for the Sale Share before Expert Valuer was instructed,

in which case the Seller shall bear the cost

## **18. Compulsory transfers – general**

18.1 A person entitled to a Share in consequence of the bankruptcy of a Shareholder shall be deemed to have given a Transfer Notice in respect of that Share at a time determined by the Directors.

18.2 If a Share remains registered in the name of a deceased Shareholder for longer than one year after the date of his death the Directors may require the legal personal representatives of that deceased Shareholder either:

- (a) to effect a Permitted Transfer of such Shares (including for this purpose an election to be registered in respect of the Permitted Transfer); or
- (b) to show to the satisfaction of the Directors that a Permitted Transfer will be effected before or promptly upon the completion of the administration of the estate of the deceased Shareholder.

If either requirement in this Article 18.2 shall not be fulfilled to the satisfaction of the Directors a Transfer Notice shall be deemed to have been given in respect of each such Share save to the extent that the Directors may otherwise determine.

18.3 If a Shareholder which is a company, either suffers or resolves for the appointment of a liquidator, administrator or administrative receiver over it or any material part of its assets (other than as part of a bona fide restructuring or reorganisation), the relevant Shareholder (and all its Permitted Transferees) shall be deemed to have given a Transfer Notice in respect of all the shares held by the relevant Shareholder and its Permitted Transferees save to the extent that, and at a time, the Directors may determine.

18.4 If there is a change in control (as control is defined in section 1124 of the CTA 2010) of any Shareholder which is a company, it shall be bound at any time, if and when required in writing by the Directors to do so, to give (or procure the giving in the case of a nominee) a Transfer Notice in respect of all the Shares registered in its and their names and their respective nominees' names save that, in the case of the Permitted Transferee, it shall first be permitted to transfer those Shares back to the Original Shareholder from whom it received its Shares or to any other Permitted Transferee before being required to serve a Transfer Notice. This Article 18.4 shall not apply to a member that is an Investor.

## **19. Departing Founders**

### *Bad Leaver*

19.1 Unless the Board and the Investor Majority determine that this Article 19.1 shall not apply:

- (a) if at any time a Founder ceases to be an Employee by reason of being a Bad Leaver:
  - (i) the Founder Shares relating to such Founder shall automatically convert into Deferred Shares (on the basis of one Deferred Share for each Founder Share held) on the Effective Termination Date, and
  - (ii) the relevant Founder shall be deemed to have given a Transfer Notice in respect of all the Value Shares relating to such Founder on the Effective Termination Date, with the Transfer Price for such Shares being the original subscription price (including any premium paid on such Shares) of such Value Shares; and
- (b) if at any time between the Effective Termination Date and the first anniversary of the Effective Termination Date a Founder breaches any of the Restrictive Covenants (the "**Restrictive Covenants Breach Date**") and therefore becomes a Bad Leaver (having not been a Bad Leaver at the Effective Termination Date):
  - (i) the Founder Shares relating to such Founder shall automatically convert into Deferred Shares (on the basis of one Deferred Share for each Founder Share held) on the Restrictive Covenants Breach Date; and
  - (ii) the relevant Founder shall be deemed to have given a Transfer Notice in respect of all the Value Shares relating to such Founder on the Restrictive Covenants Breach Date, with the Transfer Price for such Shares being the original subscription price (including any premium paid on such Shares) of such Value Shares

*Deferred Shares: Intermediate Leaver*

- 19.2 Unless the Board and the Investor Majority determine that this Article 19.2 shall not apply, if at any time during the Relevant Period a Founder ceases to be an Employee by reason of being an Intermediate Leaver, then the Leaver's Percentage of the Founder Shares relating to such Founder shall automatically convert into Deferred Shares (on the basis of one Deferred Share for each Founder Share held) on the Effective Termination Date.

*Suspension of voting rights*

- 19.3 Unless the Board and the Investor Majority determine that this Article 19.3 shall not apply, if at any time an Employee ceases to be an Employee for any reason, all voting rights attached to Founder Shares held by such Employee (including, for the avoidance of doubt, any Founder) or by any Permitted Transferee of that Employee (the "**Restricted Member**"), if any, shall at the time he ceases to be an Employee be suspended.
- 19.4 Any Founder Shares whose voting rights are suspended pursuant to Article 19.3 ("**Restricted Shares**") shall confer on the holders of Restricted Shares the right to receive a notice of and attend all general meetings of the Company but shall have no right to vote either in person or by proxy or to vote on any proposed written resolution. Voting rights suspended pursuant to Article 19.3 shall be automatically restored immediately prior to an IPO. If a Restricted Member transfers any Restricted Shares in accordance with these Articles all voting rights attached to the Restricted Shares so transferred shall upon completion of the transfer (as evidenced by the transferee's name being entered in the Company's register of members) automatically be restored.



## **20. Mandatory Offer on a Change of Control**

- 20.1 Except in the case of Permitted Transfers and transfers pursuant to Article 18, after going through the pre-emption procedure in Article 16, the provisions of Article 20.2 will apply if one or more Proposed Sellers propose to transfer in one or a series of related transactions any Shares (the "**Proposed Transfer**") which would, if put into effect, result in any Proposed Purchaser (and Associates of his or persons Acting in Concert with him) acquiring a Controlling Interest in the Company.
- 20.2 A Proposed Seller must, before making a Proposed Transfer procure the making by the Proposed Purchaser of an offer (the "**Offer**") to the other Shareholders to acquire all of the Shares for a consideration per share the value of which is at least equal to the Specified Price (as defined in Article 20.7)
- 20.3 The Offer must be given by written notice (a "**Proposed Sale Notice**") at least ten (10) Business Days (the "**Offer Period**") prior to the proposed sale date ("**Proposed Sale Date**"). The Proposed Sale Notice must set out, to the extent not described in any accompanying documents, the identity of the Proposed Purchaser, the purchase price and other terms and conditions of payment, the Proposed Sale Date and the number of Shares proposed to be purchased by the Proposed Purchaser (the "**Proposed Sale Shares**").
- 20.4 If any other holder of Shares is not given the rights accorded him by this Article, the Proposed Sellers will not be entitled to complete their sale and the Company will not register any transfer intended to carry that sale into effect.
- 20.5 If the Offer is accepted by any Shareholder (an "**Accepting Shareholder**") within the Offer Period, the completion of the Proposed Transfer will be conditional upon the completion of the purchase of all the Shares held by Accepting Shareholders.
- 20.6 The Proposed Transfer is subject to the pre-emption provisions of Article 16 but the purchase of the Accepting Shareholders' shares shall not be subject to Article 16.
- 20.7 For the purpose of this Article:
- (a) the expression "**Specified Price**" shall mean in respect of each Share a sum in cash equal to the highest price per Share offered or paid by the Proposed Purchaser:
    - (i) in the Proposed Transfer; or
    - (ii) in any related or previous transaction by the Proposed Purchaser or any person Acting in Concert with the Proposed Purchaser in the 12 months preceding the date of the Proposed Transfer,plus an amount equal to the Relevant Sum, as defined in Article 20.7(b), of any other consideration (in cash or otherwise) paid or payable by the Proposed Purchaser or any other person Acting in Concert with the Proposed Purchaser, which having regard to the substance of the transaction as a whole, can reasonably be regarded as an addition to the price paid or payable for the Shares (the "**Supplemental Consideration**") provided that the total consideration paid by the Proposed Purchaser in respect of the Proposed Transfer is distributed to the Proposed Seller and the Accepting Shareholders in accordance with the provisions of Articles 5 and 6,
  - (b) **Relevant Sum** =  $C + A$

where: A = number of Shares being sold in connection with the relevant Proposed Transfer;

C = the Supplemental Consideration.

## 21. Drag-along

21.1 If the holders of seventy five per cent (75%) of the Shares (excluding any Treasury Shares) (the "**Selling Shareholders**") wish to transfer all their interest in Shares (the "**Sellers' Shares**") to a Proposed Purchaser, then subject to:

- (a) in the case of a Non-Qualifying Sale only, Investor Majority Consent; and
- (b) for so long as he holds in excess of ten per cent. (10%) of the Shares in issue, the prior written consent of Nigel Swycher,

the Selling Shareholders shall have the option (the "**Drag Along Option**") to compel each other holder of Shares (each a "**Called Shareholder**" and together the "**Called Shareholders**") to sell and transfer all their Shares to the Proposed Purchaser or as the Proposed Purchaser shall direct (the "**Drag Purchaser**") in accordance with the provisions of this Article.

21.2 The Selling Shareholders may exercise the Drag Along Option by giving a written notice to that effect (a "**Drag Along Notice**") to the Company which the Company shall forthwith copy to the Called Shareholders at any time before the transfer of the Sellers' Shares to the Drag Purchaser. A Drag Along Notice shall specify that:

- (a) the Called Shareholders are required to transfer all their Shares (the "**Called Shares**") under this Article;
- (b) the person to whom they are to be transferred,
- (c) the consideration for which the Called Shares are to be transferred (calculated in accordance with this Article);
- (d) the proposed date of transfer, and
- (e) the form of any sale agreement or form of acceptance or any other document of similar effect that the Called Shareholders are required to sign in connection with such sale (the "**Sale Agreement**"),

(and, in the case of paragraphs (b) to (d) above, whether actually specified or to be determined in accordance with a mechanism described in the Drag Along Notice) No Drag Along Notice or Sale Agreement may require a Called Shareholder to agree to any terms except those specifically provided for in this Article.

21.3 Drag Along Notices shall be irrevocable but will lapse if for any reason there is not a sale of the Sellers' Shares by the Selling Shareholders to the Drag Purchaser within 60 Business Days after the date of service of the Drag Along Notice. The Selling Shareholders shall be entitled to serve further Drag Along Notices following the lapse of any particular Drag Along Notice.

21.4 The total consideration proposed to be paid by the Drag Purchaser (in cash or otherwise) shall be distributed to the holders of the Called Shares and the Sellers' Shares in accordance with the provisions of Articles 5 and 6 (the "**Drag Consideration**").

- 21.5 Each party acknowledges and agrees that in respect of a transaction that is the subject of a Drag-Along Notice and with respect to any Drag Document, the Lead Investor shall only be obliged to give a warranty as to capacity to enter into a Drag Document and undertake to transfer his Shares with full title guarantee (and provide an indemnity for lost certificate in a form acceptable to the Company if so necessary).
- 21.6 Within three Business Days of the Company copying the Drag Along Notice to the Called Shareholders (or such later date as may be specified in the Drag Along Notice) (the "**Drag Completion Date**"), each Called Shareholder shall deliver:
- (a) duly executed stock transfer form(s) for its Shares in favour of the Drag Purchaser; and
  - (b) the relevant share certificate(s) (or a duly executed indemnity for lost certificate in a form acceptable to the Board) to the Company,
- (together the "**Drag Documents**").
- 21.7 On the Drag Completion Date, the Company shall pay each Called Shareholder, on behalf of the Drag Purchaser, the Drag Consideration that is due to the extent the Drag Purchaser has paid such consideration to the Company. The Company's receipt of the Drag Consideration shall be a good discharge to the Drag Purchaser. The Company shall hold the Drag Consideration in trust for each of the Called Shareholders without any obligation to pay interest.
- 21.8 To the extent that the Drag Purchaser has not, on the Drag Completion Date, paid the Drag Consideration that is due to the Company, the Called Shareholders shall be entitled to the immediate return of the Drag Documents for the relevant Shares and the Called Shareholders shall have no further rights or obligations under this Article 21 in respect of their Shares
- 21.9 If a Called Shareholder fails to deliver the Drag Documents for its Shares to the Company by the Drag Completion Date, the Company and each Director shall be constituted the agent of such defaulting Called Shareholder to take such actions and enter into any Drag Document or such other agreements or documents as are necessary to effect the transfer of the Called Shareholder's Shares pursuant to this Article 21 and the Directors shall, if requested by the Drag Purchaser, authorise any Director to transfer the Called Shareholder's Shares on the Called Shareholder's behalf to the Drag Purchaser to the extent the Drag Purchaser has, by the Drag Completion Date, paid the Drag Consideration to the Company for the Called Shareholder's Shares offered to him. The Board shall then authorise registration of the transfer once appropriate stamp duty has been paid. The defaulting Called Shareholder shall surrender his share certificate for his Shares (or suitable executed indemnity) to the Company. On surrender, he shall be entitled to the Drag Consideration due to him.
- 21.10 Any transfer of Shares to a Drag Purchaser pursuant to a sale in respect of which a Drag Along Notice has been duly served shall not be subject to the provisions of Article 16.
- 21.11 On any person, following the issue of a Drag Along Notice, becoming a Shareholder pursuant to the exercise of a pre-existing option or warrant to acquire shares in the Company or pursuant to the conversion of any convertible security of the Company (a "**New Shareholder**"), a Drag Along Notice shall be deemed to have been served on the New Shareholder on the same terms as the previous Drag Along Notice who shall then be bound to sell and transfer all Shares so acquired to the Drag Purchaser and the provisions of this Article shall apply with the necessary changes to the New Shareholder except that completion of the sale of the Shares shall take place immediately on the Drag Along Notice being deemed served on the New Shareholder.

### *Asset Sale*

- 21.12 In the event that an Asset Sale is approved by the Board and the holders of 75 per cent of the Shares (excluding any Treasury Shares), then subject to:

- (a) in the case of a Non-Qualifying Sale only, Investor Majority Consent; and
- (b) for so long as he holds in excess of ten per cent. (10%) of the Shares in issue, the prior written consent of Nigel Swycher,

such consenting Shareholders shall have the right, by notice in writing to all other Shareholders, to require such Shareholders to take any and all such actions as it may be necessary for Shareholders to take in order to give effect to or otherwise implement such Asset Sale, subject always to the proceeds from such Asset Sale being distributed to Shareholders in accordance with the provisions of Articles 5 and 6.

## **22. General meetings**

- 22.1 If the Directors are required by the Shareholders under section 303 of the Act to call a general meeting, the Directors shall convene the meeting for a date not later than 28 days after the date on which the Directors became subject to the requirement under section 303 of the Act.
- 22.2 The provisions of section 318 of the Act shall apply to the Company, save that if a quorum is not present at any meeting adjourned for the reason referred to in article 41 of the Model Articles, then, provided that the Qualifying Persons present together hold or represent the holder(s) of at least 10 per cent in nominal value of the Series D Shares (including the Lead Investor) and 10% in nominal value of the Ordinary Shares, any resolution agreed to by such Qualifying Persons shall be as valid and effectual as if it had been passed unanimously at a general meeting of the Company duly convened and held.
- 22.3 If any two or more Shareholders (or Qualifying Persons representing two or more Shareholders) attend the meeting in different locations, the meeting shall be treated as being held at the location specified in the notice of the meeting, save that if no one is present at that location so specified, the meeting shall be deemed to take place where the largest number of Qualifying Persons is assembled or, if no such group can be identified, at the location of the chairman
- 22.4 If a demand for a poll is withdrawn under article 44(3) of the Model Articles, the demand shall not be taken to have invalidated the result of a show of hands declared before the demand was made and the meeting shall continue as if the demand had not been made.
- 22.5 Polls must be taken in such manner as the chairman directs. A poll demanded on the election of a chairman or on a question of adjournment must be held immediately. A poll demanded on any other question must be held either immediately or at such time and place as the chairman directs not being more than 14 days after the poll is demanded. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded.
- 22.6 No notice need be given of a poll not held 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 clear days' notice shall be given specifying the time and place at which the poll is to be taken.

- 22.7 If the poll is to be held more than 48 hours after it was demanded the Shareholders shall be entitled to deliver Proxy Notices in respect of the poll at any time up to 24 hours before the time appointed for taking that poll. In calculating that period, no account shall be taken of any part of a day that is not a working day.

## **23. Proxies**

- 23.1 Paragraph (c) of article 45(1) of the Model Articles shall be deleted and replaced by the words: "is signed by or on behalf of the shareholder appointing the proxy and accompanied by any the authority under which it is signed (or a certified copy of such authority or a copy of such authority in some other way approved by the directors)".
- 23.2 The instrument appointing a proxy and any authority under which it is signed or a certified copy of such authority or a copy in some other way approved by the Directors may:
- (a) be sent or supplied in hard copy form, or (subject to any conditions and limitations which the Board may specify) in electronic form, to the registered office of the Company or to such other address (including electronic address) as may be specified for this purpose in the notice convening the meeting or in any instrument of proxy or any invitation to appoint a proxy sent or supplied by the Company in relation to the meeting at any time before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote;
  - (b) be delivered at the meeting or adjourned meeting at which the person named in the instrument proposes to vote to the chairman or to the company secretary or to any Director; or
  - (c) in the case of a poll, be delivered at the meeting at which the poll was demanded to the chairman or to the company secretary or to any Director, or at the time and place at which the poll is held to the Chairman or to the company secretary or to any Director or scrutineer,

and an instrument of proxy which is not deposited or delivered in a manner so permitted shall be invalid.

## **24. Directors' borrowing powers**

The Directors may, with Investor Director Consent or Investor Majority Consent where required, exercise all the powers of the Company to borrow or raise money and to mortgage or charge its undertaking, property and uncalled capital and to issue debentures, debenture stock and other securities as security for any debt, liability of obligation of the Company or of any third party.

## **25. Alternate Directors**

- 25.1 Notwithstanding any provision of these Articles to the contrary, any person appointed as a Director (the "**Appointer**") may appoint any director or any other person as he thinks fit to be his alternate Director to:
- (a) exercise that Director's powers; and
  - (b) carry out that Director's responsibilities in relation to the taking of decisions by the Directors in the absence of the alternate's Appointor.

The appointment of an alternate Director shall not require approval by a resolution of the Directors.

25.2 Any appointment or removal of an alternate must be effected by notice in writing to the Company signed by the Appointor, or in any other manner approved by the Directors.

25.3 The notice must.

- (a) identify the proposed alternate; and
- (b) in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the Director giving the notice

25.4 An alternate Director may act as an alternate to more than one Director and has the same rights, in relation to any Directors' meeting (including as to notice) or Directors' written resolution, as the alternate's Appointor.

25.5 Except as these Articles specify otherwise, alternate directors:

- (a) are deemed for all purposes to be Directors;
- (b) are liable for their own acts and omissions;
- (c) are subject to the same restrictions as their Appointors; and
- (d) are not deemed to be agents of or for their Appointors,

and, in particular (without limitation), each alternate director shall be entitled to receive notice of all meetings of Directors and of all meetings of committees of Directors of which his Appointor is a member.

25.6 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 sign a Directors' written resolution (but only if his Appointor is an Eligible Director in relation to that decision, but does not participate).

No alternate may be counted as more than one Director for such purposes.

25.7 A Director who is also an alternate Director is entitled, in the absence of his Appointor, to a separate vote on behalf of each Appointor, in addition to his own vote on any decision of the Directors (provided that his Appointor is an Eligible Director in relation to that decision).

25.8 An alternate Director is not entitled to receive any remuneration from the company for serving as an alternate Director, except such part of the alternate's Appointor's remuneration as the Appointor may direct by notice in writing made to the Company.

25.9 An alternate Director's appointment as an alternate shall terminate:

- (a) when the alternate's Appointor revokes the appointment by notice to the Company in writing specifying when it is to terminate;
- (b) on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's Appointor, would result in the termination of the Appointor's appointment as a Director;

- (c) on the death of the alternate's Appointor; or
- (d) when the alternate's Appointor's appointment as a Director terminates.

## **26. Number of Directors**

Unless and until the Company shall otherwise determine by ordinary resolution, the number of Directors shall be not less than two.

## **27. Appointment of Directors and Board Observers**

- 27.1 For so long as the Lead Investor or its Permitted Transferees hold in excess of five per cent. (5%) of the Shares in issue, the Lead Investor and its Permitted Transferees shall have the right to appoint and maintain such natural person as the Lead Investor shall from time to time nominate as a director of the Company (and as a member of each and any committee of the Board) and to remove any director so appointed and, upon his removal whether by the Lead Investor or otherwise, to appoint another director in his place (the "**Lead Investor Director**"); or
- 27.2 If the Lead Investor Director has not been appointed in accordance with Article 27.1, and for so long as the Lead Investor or its Permitted Transferees hold in excess of two and a half per cent. (2.5%) of the Shares in issue, the Lead Investor or its Permitted Transferees shall have the right to appoint (and remove from appointment and, upon removal to appoint a replacement) a representative to attend as an observer at each and any meeting of the Board and of each and any committee of the Board who will be entitled to speak at any such meetings and receive copies of all board papers as if he were a director but will not be entitled to vote on any resolutions proposed at a board meeting (the "**Observer**").
- 27.3 For so long as Nigel Swycher holds in excess of ten per cent. (10%) of the Shares in issue and provided that all of the A Ordinary Shares in issue from time to time are held by Nigel Swycher, he shall have the right to appoint and maintain in office two natural persons as directors of the Company (and as members of each and any committee of the Board) and to remove the directors so appointed and, upon their removal whether or not by Nigel Swycher, to appoint another director in their place (the "**Founder Directors**").
- 27.4 The B Ordinary Majority shall have the right to appoint and maintain in office one natural person as a director of the Company (and as a member of each and any committee of the Board) and to remove the director so appointed and, upon his removal whether by the B Ordinary Majority, to appoint another director in his place (the "**B Ordinary Director**").
- 27.5 An appointment or removal of a Director or the Observer under Articles 27.1 to 27.4 will take effect at and from the time when the notice is received at the registered office of the Company or produced to a meeting of the directors of the Company.
- 27.6 In respect of the appointment of a Director or Observer under Articles 27.1 to 27.4, the Shareholders (other than the relevant appointors) shall not vote their Shares so as to remove that Director from office.
- 27.7 The Director appointment rights in Articles 27.1 to 27.4 shall be in addition to the powers of appointment under article 17(1) of the Model Articles

## **28. Disqualification of Directors**

In addition to that provided in article 18 of the Model Articles, the office of a Director shall also be vacated if

- (a) he is convicted of a criminal offence (other than a minor motoring offence) and the Directors resolve that his office be vacated; or
- (b) in the case of Directors other than the Lead Investor Director, the Founder Directors and the B Ordinary Director, if a majority of his co-Directors (acting with Investor Director Consent) serve notice on him in writing, removing him from office.

## **29. Proceedings of Directors**

- 29.1 The quorum for Directors' meetings shall be two Directors who must include the Lead Investor Director (unless he agreed otherwise) and a Founder Director (save that where a Relevant Interest of the Lead Investor Director is being authorised by other Directors in accordance with section 175(5)(a) of the Act, such Lead Investor Director and any other interested Director shall not be included in the quorum required for the purpose of such authorisation but shall otherwise be included for the purpose of forming the quorum at the meeting). If such a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting such quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at, so far as is reasonably practicable, the same time and place. If a quorum is not present at any such adjourned meeting within half an hour from the time appointed, then the meeting shall proceed.
- 29.2 In the event that a meeting of the Directors is attended by a Director who is acting as alternate for one or more other Directors, the Director or Directors for whom he is the alternate shall be counted in the quorum despite their absence, and if on that basis there is a quorum the meeting may be held despite the fact (if it is the case) that only one Director is physically present.
- 29.3 If all the Directors participating in a meeting of the Directors are not physically in the same place, the meeting shall be deemed to take place where the largest group of participators in number is assembled. In the absence of a majority the location of the chairman shall be deemed to be the place of the meeting.
- 29.4 Notice of a Directors' meeting need not be given to Directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the Company at any time before or after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.
- 29.5 Provided (if these Articles so require) that he has declared to the Directors, in accordance with the provisions of these Articles, the nature and extent of his interest (and subject to any restrictions on voting or counting in a quorum imposed by the Directors in authorising a Relevant Interest), a Director may vote at a meeting of the Directors or of a committee of the Directors on any resolution concerning a matter in which he has an interest, whether a direct or an indirect interest, or in relation to which he has a duty and shall also be counted in reckoning whether a quorum is present at such a meeting.
- 29.6 Questions arising at any meeting of the Directors shall be decided by a majority of votes. In the case of any equality of votes, the chairman shall have a second or casting vote.
- 29.7 In the event of completion of a Down Round by the Company, the Lead Investor shall be entitled to appoint a chairman, whether from the existing members of the Board or by the appointment of a new Director, by notice in writing addressed to the Company. Article 12 of the Model Articles shall be modified accordingly.



- 29.8 A decision of the Directors 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 (including confirmation given by electronic means). Reference in article 7(1) of the Model Articles to article 8 of the Model Articles shall be deemed to include a reference to this article also.

### **30. Directors' interests**

#### *Specific interests of a Director*

- 30.1 Subject to the provisions of the Act and provided (if these Articles so require) that he has declared to the Directors in accordance with the provisions of these Articles, the nature and extent of his interest, a Director may (save as to the extent not permitted by law from time to time), notwithstanding his office, have an interest of the following kind:
- (a) where a Director (or a person connected with him) is party to or in any way directly or indirectly interested in, or has any duty in respect of, any existing or proposed contract, arrangement or transaction with the Company or any other undertaking in which the Company is in any way interested;
  - (b) where a Director (or a person connected with him) is a director, employee or other officer of, or a party to any contract, arrangement or transaction with, or in any way interested in, any body corporate promoted by the Company or in which the Company is in any way interested;
  - (c) where a Director (or a person connected with him) is a shareholder in the Company or a shareholder in, employee, director, member or other officer of, or consultant to, a Parent Undertaking of, or a Subsidiary Undertaking of a Parent Undertaking of, the Company;
  - (d) where a Director (or a person connected with him) holds and is remunerated in respect of any office or place of profit (other than the office of auditor) in respect of the Company or body corporate in which the Company is in any way interested;
  - (e) where a Director is given a guarantee, or is to be given a guarantee, in respect of an obligation incurred by or on behalf of the Company or any body corporate in which the Company is in any way interested;
  - (f) where a Director (or a person connected with him or of which he is a member or employee) acts (or any body corporate promoted by the Company or in which the Company is in any way interested of which he is a director, employee or other officer may act) in a professional capacity for the Company or any body corporate promoted by the Company or in which the Company is in any way interested (other than as auditor) whether or not he or it is remunerated for this;
  - (g) an interest which cannot reasonably be regarded as likely to give rise to a conflict of interest; or
  - (h) any other interest authorised by ordinary resolution.

#### *Interests of the Lead Investor Director or the B Ordinary Director*

- 30.2 In addition to the provisions of Article 30.1, subject to the provisions of the Act and provided (if these Articles so require) that he has declared to the Directors in accordance with the provisions of these Articles, the nature and extent of his interest, where a Director is either the Lead Investor Director or the B Ordinary Director he may

(save as to the extent not permitted by law from time to time), notwithstanding his office, have an interest arising from any duty he may owe to, or interest he may have as an employee, director, trustee, member, partner, officer or representative of, or a consultant to, or direct or indirect investor (including without limitation by virtue of a carried interest, remuneration or incentive arrangements or the holding of securities) in.

- (a) an Investor;
- (b) a Fund Manager which advises or manages an Investor;
- (c) any of the funds advised or managed by a Fund Manager who advises or manages an Investor from time to time; or
- (d) another body corporate or firm in which a Fund Manager who advises or manages an Investor or any fund advised or managed by such Fund Manager has directly or indirectly invested, including without limitation any portfolio companies.

*Interests of which a Director is not aware*

- 30.3 For the purposes of this Article 30, an interest of which a Director is not aware and of which it is unreasonable to expect him to be aware shall not be treated as an interest of his.

*Accountability of any benefit and validity of a contract*

- 30.4 In any situation permitted by this Article 30 (save as otherwise agreed by him) a Director shall not by reason of his office be accountable to the Company for any benefit which he derives from that situation and no such contract, arrangement or transaction shall be avoided on the grounds of any such interest or benefit.

*Terms and conditions of Board authorisation*

- 30.5 Subject to Article 30.6, any authority given in accordance with section 175(5)(a) of the Act in respect of a Director ("**Interested Director**") who has proposed that the Directors authorise his interest ("**Relevant Interest**") pursuant to that section may, for the avoidance of doubt:

- (a) be given on such terms and subject to such conditions or limitations as may be imposed by the authorising Directors as they see fit from time to time, including, without limitation:
  - (i) restricting the Interested Director from voting on any resolution put to a meeting of the Directors or of a committee of the Directors in relation to the Relevant Interest;
  - (ii) restricting the Interested Director from being counted in the quorum at a meeting of the Directors or of a committee of the Directors where such Relevant Interest is to be discussed, or
  - (iii) restricting the application of the provisions in Articles 29.7 and 29.8, so far as is permitted by law, in respect of such Interested Director;
- (b) be withdrawn, or varied at any time by the Directors entitled to authorise the Relevant Interest as they see fit from time to time, and

subject to Article 30.6, an Interested Director must act in accordance with any such terms, conditions or limitations imposed by the authorising Directors pursuant to section 175(5)(a) of the Act and this Article 30.

*Terms and conditions of Board authorisation for the Lead Investor Director or the B Ordinary Director*

- 30.6 Notwithstanding the other provisions of this Article 30, it shall not (save with the consent in writing of the Lead Investor Director or the B Ordinary Director (as applicable)) be made a condition of any authorisation of a matter in relation to that Director in accordance with section 175(5)(a) of the Act, that he shall be restricted from voting or counting in the quorum at any meeting of, or of any committee of the Directors or that he shall be required to disclose, use or apply confidential information as contemplated in Article 30.8.

*Director's duty of confidentiality to a person other than the Company*

- 30.7 Subject to Article 30.8 (and without prejudice to any equitable principle or rule of law which may excuse or release the Director from disclosing information, in circumstances where disclosure may otherwise be required under this Article 30), if a Director, otherwise than by virtue of his position as director, receives information in respect of which he owes a duty of confidentiality to a person other than the Company, he shall not be required:
- (a) to disclose such information to the Company or to any Director, or to any officer or employee of the Company; or
  - (b) otherwise to use or apply such confidential information for the purpose of or in connection with the performance of his duties as a Director.
- 30.8 Where such duty of confidentiality arises out of a situation in which a Director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company, Article 30.7 shall apply only if the conflict arises out of a matter which falls within Article 30.1 or Article 30.2 or has been authorised under section 175(5)(a) of the Act.

*Additional steps to be taken by a Director to manage a conflict of interest*

- 30.9 Where a Director has an interest which can reasonably be regarded as likely to give rise to a conflict of interest, the Director shall take such additional steps as may be necessary or desirable for the purpose of managing such conflict of interest, including compliance with any procedures laid down from time to time by the Directors for the purpose of managing conflicts of interest generally and/or any specific procedures approved by the Directors for the purpose of or in connection with the situation or matter in question, including without limitation:
- (a) absenting himself from any discussions, whether in meetings of the Directors or otherwise, at which the relevant situation or matter falls to be considered; and
  - (b) excluding himself from documents or information made available to the Directors generally in relation to such situation or matter and/or arranging for such documents or information to be reviewed by a professional adviser to ascertain the extent to which it might be appropriate for him to have access to such documents or information.

*Requirement of a Director is to declare an interest*

- 30.10 Subject to section 182 of the Act, a Director shall declare the nature and extent of any interest permitted by Article 30.1 or Article 30.2 at a meeting of the Directors, or by general notice in accordance with section 184 (notice in writing) or section 185 (general notice) of the Act or in such other manner as the Directors may determine, except that no declaration of interest shall be required by a Director in relation to an interest:
- (a) falling under Article 30 130.1(g),
  - (b) if, or to the extent that, the other Directors are already aware of such interest (and for this purpose the other Directors are treated as aware of anything of which they ought reasonably to be aware); or
  - (c) if, or to the extent that, it concerns the terms of his service contract (as defined by section 227 of the Act) that have been or are to be considered by a meeting of the Directors, or by a committee of Directors appointed for the purpose under these Articles.

*Shareholder approval*

- 30.11 Subject to section 239 of the Act, the Company may by ordinary resolution ratify any contract, transaction or arrangement, or other proposal, not properly authorised by reason of a contravention of any provisions of this Article 30.
- 30.12 For the purposes of this Article 30:
- (a) a conflict of interest includes a conflict of interest and duty and a conflict of duties;
  - (b) the provisions of section 252 of the Act shall determine whether a person is connected with a Director;
  - (c) a general notice to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such transaction of the nature and extent so specified.

**31. Notices**

- 31.1 Subject to the requirements set out in the Act, any notice given or document sent or supplied to or by any person under these Articles, or otherwise sent by the Company under the Act, may be given, sent or supplied:
- (a) in hard copy form;
  - (b) in electronic form; or
  - (c) (by the Company) by means of a website (other than notices calling a meeting of Directors),

or partly by one of these means and partly by another of these means.

Notices shall be given and documents supplied in accordance with the procedures set out in the Act, except to the extent that a contrary provision is set out in this Article 31.

*Notices in hard copy form*

- 31.2 Any notice or other document in hard copy form given or supplied under these Articles may be delivered or sent by first class post (airmail if overseas).
- (a) to the Company or any other company at its registered office; or
  - (b) to the address notified to or by the Company for that purpose; or
  - (c) in the case of an intended recipient who is a member or his legal personal representative or trustee in bankruptcy, to such member's address as shown in the Company's register of members; or
  - (d) in the case of an intended recipient who is a Director or alternate, to his address as shown in the register of Directors, or
  - (e) to any other address to which any provision of the Companies Acts (as defined in the Act) authorises the document or information to be sent or supplied; or
  - (f) where the Company is the sender, if the Company is unable to obtain an address falling within one of the addresses referred to in (a) to (e) above, to the intended recipient's last address known to the Company.
- 31.3 Any notice or other document in hard copy form given or supplied under these Articles shall be deemed to have been served and be effective:
- (a) if delivered, at the time of delivery;
  - (b) if posted, on receipt or 48 hours after the time it was posted, whichever occurs first

*Notices in electronic form*

- 31.4 Subject to the provisions of the Act, any notice or other document in electronic form given or supplied under these Articles may:
- (a) if sent by fax or email (provided that a fax number or an address for email has been notified to or by the Company for that purpose), be sent by the relevant form of communication to that address;
  - (b) if delivered or sent by first class post (airmail if overseas) in an electronic form (such as sending a disk by post), be so delivered or sent as if in hard copy form under Article 31.2, or
  - (c) be sent by such other electronic means (as defined in section 1168 of the Act) and to such address(es) as the Company may specify:
    - (i) on its website from time to time, or
    - (ii) by notice (in hard copy or electronic form) to all members of the Company from time to time.
- 31.5 Any notice or other document in electronic form given or supplied under these Articles shall be deemed to have been served and be effective.
- (a) if sent by facsimile or email (where a fax number or an address for email has been notified to or by the Company for that purpose), on receipt or 48 hours after the time it was sent, whichever occurs first;

- (b) if posted in an electronic form, on receipt or 48 hours after the time it was posted, whichever occurs first;
- (c) if delivered in an electronic form, at the time of delivery, and
- (d) if sent by any other electronic means as referred to in Article 31.4(c), at the time such delivery is deemed to occur under the Act.

31.6 Where the Company is able to show that any notice or other document given or sent under these Articles by electronic means was properly addressed with the electronic address supplied by the intended recipient, the giving or sending of that notice or other document shall be effective notwithstanding any receipt by the Company at any time of notice either that such method of communication has failed or of the intended recipient's non-receipt.

*Notice by means of a website*

31.7 Subject to the provisions of the Act, any notice or other document or information to be given, sent or supplied by the Company to Shareholders under these Articles may be given, sent or supplied by the Company by making it available on the Company's website.

*General*

31.8 In the case of joint holders of a share all notices shall be given to the joint holder whose name stands first in the register of members of the Company in respect of the joint holding (the "**Primary Holder**"). Notice so given shall constitute notice to all the joint holders.

31.9 Anything agreed or specified by the Primary Holder in relation to the service, sending or supply of notices, documents or other information shall be treated as the agreement or specification of all the joint holders in their capacity as such (whether for the purposes of the Act or otherwise).

## **32. Indemnities and insurance**

32.1 Subject to the provisions of and so far as may be permitted by, the Act:

(a) every Director or other officer of the Company (excluding the Company's auditors) shall be entitled to be indemnified by the Company (and the Company shall also be able to indemnify directors of any associated company (as defined in section 256 of the Act)) out of the Company's assets against all liabilities incurred by him in the actual or purported execution or discharge of his duties or the exercise or purported exercise of his powers or otherwise in relation to or in connection with his duties, powers or office, provided that no Director or any associated company is indemnified by the Company against:

- (i) any liability incurred by the director to the Company or any associated company, or
- (ii) any liability incurred by the director to pay a fine imposed in criminal proceedings or a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirements of a regulatory nature; or
- (iii) any liability incurred by the director.

(A) in defending any criminal proceedings in which he is convicted;

- (B) in defending civil proceedings brought by the Company or any associated company in which final judgment (within the meaning set out in section 234 of the Act) is given against him; or
  - (C) in connection with any application under sections 661(3) or 661(4) or 1157 of the Act (as the case may be) for which the court refuses to grant him relief.
- (b) the Directors may exercise all the powers of the Company to purchase and maintain insurance for any such Director or other officer against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the Company, or any associated company including (if he is a director of a company which is a trustee of an occupational pension scheme) in connection with that company's activities as trustee of an occupational pension scheme.

32.2 The Company shall (at the cost of the Company) effect and maintain for each Director policies of insurance insuring each Director against risks in relation to his office as each director may reasonably specify including without limitation, any liability which by virtue of any rule of law may attach to him in respect of any negligence, default of duty or breach of trust of which he may be guilty in relation to the Company.

### **33. Data Protection**

33.1 Each of the Shareholders and Directors consent to the processing of their personal data by the Company, the Shareholders 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. 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 ("**Recipient Group Companies**") and to employees, directors and professional advisers of that Recipient or the Recipient Group Companies and funds managed by any of the Recipient Group Companies. Each of the Shareholders and Directors 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

### **34. Secretary**

Subject to the provisions of the Act, the Directors may appoint a secretary for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

### **35. Authority to capitalise and appropriation of capitalised sums**

35.1 The Board may, if authorised to do so by an ordinary resolution (with Investor Majority Consent):

- (a) decide to capitalise any profits of the Company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the Company's share premium account or capital redemption reserve; and

- (b) appropriate any sum which they so decide to capitalise (a "**Capitalised Sum**") to such Shareholders and in such proportions as the Board may in their absolute discretion deem appropriate (the "**Shareholders Entitled**").

Article 36 of the Model Articles shall not apply to the Company.

- 35.2 Capitalised Sums may be applied on behalf of such Shareholders and in such proportions as the Board may (in its absolute discretion) deem appropriate.
- 35.3 Any Capitalised Sum may be applied in paying up new Shares up to the nominal amount (or such amount as is unpaid) equal to the Capitalised Sum, which are then allotted credited as fully paid to the Shareholders Entitled or as they may direct
- 35.4 A Capitalised Sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the Company which are allotted credited as fully paid to the Shareholders Entitled or as they may direct
- 35.5 Subject to the Articles the Board may:
  - (a) apply Capitalised Sums in accordance with Articles 35.3 and 35 4 partly in one way and partly another;
  - (b) make such arrangements as they think fit to deal with Shares or debentures becoming distributable in fractions under this Article 35; and
  - (c) authorise any person to enter into an agreement with the Company on behalf of all of the Shareholders Entitled which is binding on them in respect of the allotment of Shares or debentures under this Article 35.