

Company Number: 10708559

**THE COMPANIES ACT 2006**  
**PRIVATE COMPANY LIMITED BY SHARES**  
**WRITTEN RECORD OF THE WRITTEN RESOLUTIONS**  
**OF**  
**LYTHAM INTERMEDIATE LIMITED**  
**(the "Company")**

In accordance with the written resolution procedure in chapter 2 of part 13 of the Companies Act 2006, the following resolutions were duly passed on **13 APRIL** 2017 as either an ordinary or special resolution (as indicated).

**SPECIAL RESOLUTION**

**ORDINARY RESOLUTION**

1. THAT the 1 issued Ordinary share of £1 in the capital of the Company be sub-divided into 100,000 Ordinary shares of £0.00001 each.
2. THAT, following the sub-division referred to in Resolution 1 above, the 100,000 Ordinary shares of £0.00001 each in the share capital of the Company (being the entire issued share capital of the Company), be redesignated and reclassified as A shares of £0.00001.

**SPECIAL RESOLUTION**

3. THAT the draft regulations attached to these Resolutions be adopted as the articles of association of the Company in substitution for, and to the exclusion of, the existing articles of association.



.....  
Director



**ARTICLES OF ASSOCIATION  
OF LYTHAM INTERMEDIATE LIMITED**

**Company number 10708559**

**Adopted by special resolution passed on 13 April 2017**

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*Paul Dewart*

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**THE COMPANIES ACT 2006**

**PRIVATE COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION OF LYTHAM INTERMEDIATE LIMITED**

**Adopted by special resolution passed on**

**2017**

**1 Interpretation**

1.1 In these Articles, unless the context requires otherwise, the following expressions shall have the following meanings:

<b>"A Shares"</b>	means the A shares of £0.00001 each in the capital of the Company;
<b>"Act"</b>	means the Companies Act 2006 including a reference to any statutory modification or re-enactment of any provision thereof for the time being in force;
<b>"Affiliate"</b>	of any particular person means any other person directly or indirectly Controlling, Controlled by or under common Control with such particular person;
<b>"AKKR Investor"</b>	means Accel-KKR Capital Partners IV, LP, a Delaware limited partnership (number 5098141), having its principal place of business at 2500 Sand Hill Road, Suite 300, Menlo Park, CA 94025, USA;
<b>"Articles"</b>	means the Articles of Association of the Company for the time being in force;
<b>"Asset Sale"</b>	means a sale by the Parent, the Company or any Group Company of all or a substantial part of its assets (including without limitation shares or interests in any Group Company);
<b>"Bad Leaver"</b>	means (i) the Seller becoming a Leaver in circumstances justifying termination for Cause under grounds (i) or (viii) or as a result of an Event of Default;
<b>"Board"</b>	means the board of directors of the Company;

<b>"B Shares"</b>	means the B1 Shares, B2 Shares, B3 Shares, B4 Shares (for the avoidance of doubt each being a separate class of Share) and in each case any replacement shares or securities or shares or securities derived from the same upon a Share Reorganisation;
<b>"B1 Shares"</b>	means the B1 shares of £0.0002 each in the capital of the Company;
<b>"B2 Shares"</b>	means the B2 shares of £0.0004 each in the capital of the Company;
<b>"B3 Shares"</b>	means the B3 shares of £0.0007 each in the capital of the Company;
<b>"B4 Shares"</b>	means the B4 shares of £0.0050 each in the capital of the Company;
<b>"Cash Equivalent"</b>	shall have the meaning set out in Article 9.1.2.2;
<b>"Cause"</b>	means: (i) commission of a felony or a crime involving moral turpitude or the commission of any other act or omission involving dishonesty, disloyalty or fraud with respect to a Group Company or any of their customers, suppliers, referral sources, governmental authorities, licensors, licensees, employees or other business relation or which has had or the Board reasonably believes would have a material negative effect upon a Group Company, (ii) material and repeated failure to perform his duties of employment, (iii) material and repeated failure to perform his duties as reasonably directed by the Board or his employer, (iv) gross negligence, wilful misconduct or breach of fiduciary duty with respect to a Group Company or any of its customers, suppliers, referral sources, governmental authorities, licensors, licensees, employees or other business relation, (v) reporting to work under the influence of alcohol or illegal drugs, (vi) any conduct causing a Group Company substantial public disgrace or disrepute or substantial economic harm, (vii) any act or omission aiding or abetting a competitor, supplier, customer or referral source of a Group Company to the material disadvantage or detriment of a Group Company, (viii) any material breach by him of the Investment Agreement, and/or (ix) a material failure to observe

	policies or standards regarding employment practices (including, without limitation, non-discrimination and sexual harassment policies) as approved by the Board from time to time;
<b>"the Company"</b>	means this company;
<b>"C Shares"</b>	means the C shares of £0.0001 each in the capital of the Company and in each case any replacement shares or securities or shares or securities derived from the same upon a Share Reorganisation
<b>"Chairman"</b>	means the person designated as chairman in terms of Article 17.4;
<b>"Circulation Date"</b>	shall have the meaning ascribed to it in section 290 of the Act;
<b>"Completion"</b>	means completion of the purchase and sale of Shares in terms of these articles;
<b>"Confidential Information"</b>	means all information (whether oral or recorded in any medium) relating to any Group Company's business, financial or other affairs (including future plans of any Group Company) which is treated by a Group Company as confidential (or is marked or is by its nature confidential);
<b>"Control"</b>	means the beneficial ownership of more than 50% of the issued share capital of a company or equity or units of a company or person or the power to direct or cause the direction of the general management of the company or person whether through the ownership of voting shares or securities, by contract or otherwise; and the expressions <b>Controls, Controlling, Controlled and Change of Control</b> shall be construed accordingly;
<b>"Controlling Interest"</b>	means an interest in any shares in the capital of the Company (within the meaning of sections 820 to 825 inclusive of the Act) conferring in aggregate more than 50 per cent of the total voting rights conferred by all the shares of the capital of the Company from time to time in issue and conferring the right to vote at all general

meetings of the Company;

<b>"Consideration Preferred Units"</b>	shall have the meaning set out in Article 9.1.3.1 (and <b>"Consideration Preferred Unit"</b> means any of them);
<b>"Consideration PIUs"</b>	shall have the meaning set out in Article 9.1.3.2 (and <b>"Consideration PIU"</b> means any of them);
<b>"Defaulting Member"</b>	means the holder of B Shares or C Shares (as the case may be) who has committed an Event of Default;
<b>"Deferred Shares"</b>	means non-voting, non-participating deferred shares of £0.00001 in the capital of the Company;
<b>"Director"</b>	means a director of the Company from time to time;
<b>"Employee"</b>	means any member who is also a director or an employee of, or consultant acting in a personal capacity for, the Company or a Group Company (other than an Investor Director);
<b>"Equity Consideration"</b>	shall have the meaning set out in Article 9.1.2.1;
<b>"Event of Default"</b>	a holder of B Shares and/or C Shares breaching any provisions of any restrictive covenant to which he is a party; or a material breach by such a holder of the Investment Agreement (which such breach, to the extent capable of being cured, is not cured to the satisfaction of an Investor or Investor Director within 30 days after notice thereof to such holder);
<b>"Executive Investment Agreement"</b>	means an Executive Investment Agreement (as defined in the LLC Agreement) in a form required by the Parent on substantially the same terms as those applicable to the Preferred Units (notably the Class A-2 Preferred Units) issued to Executives (as defined in the LLC Agreement) on or around the date of adoption of Articles;

**"Exercise Event"**

means each of the following is an Exercise Event:-

- a) a Liquidity Event;
- b) any of the following occurring in relation to the Parent, the Company or another Group Company: dissolution, administration, winding up or liquidation or other events of insolvency, including any which are analogous to these in the jurisdiction in which it is incorporated or registered, or any resolution passed or being proposed in relation to it with a view to the same;
- c) an Event of Default (in which case the Exercise Event shall only be in respect of the Shares held by the relevant holder who is a Defaulting Member);
- d) a holder of B Shares and/or C Shares becoming a Leaver (in which case the Exercise Event shall only be in respect of the Shares held by the relevant holder);
- e) a Share Reorganisation; or
- f) any other event that an Investor Director or Investor may direct to be an Exercise Event from time to time.

**"Fund"**

means any bank, company, unit trust, investment trust, investment company, limited, general or other partnership, industrial provident or friendly society, any collective investment scheme (as defined by the FSMA), any investment professional (as defined in article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion Order) 2005 (the "FPO")), any certified high net worth individual (as defined in article 48 of the FPO), high net worth company, unincorporated association or partnership (as defined in article 49(2) of the FPO) or any high value trust (as defined in article 49(6) of the FPO), any pension fund or insurance company or any person who is an authorised person under the FSMA or any overseas equivalent;

**"FSMA"**

means the Financial Services and Markets Act 2000;



<b>"Garden Leave"</b>	means any period during which the Company or other Group Company, in respect of an Employee and pursuant to the service contract between the Company or relevant Group Company and that Employee, ceases or has ceased to provide that Employee with work or withdraws or has withdrawn his right of access to any premises of the Company and any other Group Company;
<b>"Good Leaver"</b>	means a Leaver who is not a Bad Leaver;
<b>"Grant Agreement"</b>	means a grant agreement in a form required by the Parent with respect to holders of PIUs on substantially the same terms as the executive investment agreement attached as Schedule 9 to the Investment Agreement, containing (inter alia) the same terms as to vesting of PIUs, save that for the purposes of vesting of PIUs (i) the PIUs shall be deemed to have been acquired on the Issue Date of the corresponding C Shares and (ii) the provisions relating accelerated vesting of unvested PIUs shall instead provide for accelerated vesting of all (and not some only) of the PIUs upon a "Sale of the Company" as defined in the LLC Agreement, provided always that prior to such event the holder was not a Leaver or subject to an outstanding requirement to transfer his PIUs under the repurchase provisions in the LLC Agreement or otherwise;
<b>"Group"</b>	means the Company and Affiliates thereof and references to "Group Company" and "members of the Group" shall be construed accordingly;
<b>"Group Company Interest"</b>	has the meaning ascribed to that expression in Article 20.1.2;
<b>"holder" or "member"</b>	in relation to shares means the member whose name is entered in the Register of Members as the holder of the shares;
<b>"Investment Agreement"</b>	means the investment agreement or shareholders agreement among the Company, the Parent and others dated on or around the date of adoption of these Articles;
<b>"Investor"</b>	means (i) AKKR Investor, (ii) Accel-KKR Capital Partners IV Strategic Fund, LP, a Delaware limited partnership, (iii) Accel-KKR Members Fund, LLC, a Delaware limited

liability company, (iv) any investment fund or Fund managed by or that is an Affiliate of AKKR Fund IV Management Company, LP and any of their respective successors in title or assignees;

<b>"Investor Affiliate"</b>	means an Investor and/or any of their Affiliates;
<b>"Investor Consent" or "Investor Instruction"</b>	means the giving of a written consent or direction by the Parent with the consent of an Investor, provided that for so long as there is an Investor Director, any such consent or direction required or permitted to be given under these Articles may alternatively be validly given if given by an Investor Director;
<b>"Investor Director"</b>	means any director appointed to the Board by the Parent and who is specifically designated as such by the Parent (with the prior written consent of an Investor) or by an Investor Instruction pursuant to Article 29.1.2;
<b>"Investor Director Interest"</b>	has the meaning ascribed to that expression in Article 21.1;
<b>"Investor Group"</b>	means, in relation to an Investor, that Investor, its Investor Affiliates and their respective subsidiary undertakings or, as the case may be, their respective parent undertakings, whether direct or indirect, and any other subsidiary undertaking of any such parent undertaking from time to time and any person designated by the Investor as a co-investor and references to "member" or "members" of the or an "Investor Group" shall be construed accordingly;
<b>"Issue Date"</b>	has the meaning ascribed to it in Article 9.1.3.2;
<b>"ITEPA"</b>	means the Income Tax (Earnings and Pensions) Act 2003;
<b>"Joinder Agreement"</b>	means the joinder agreement to the LLC Agreement in the form attached to the Investment Agreement or such other form as may from time to time be required by the board of the Parent;
<b>"Leaver"</b>	means a person who is a holder of B Shares and/or C Shares who ceases to be an Employee of a Group Company (where such person does not remain as an Employee of another Group Company), provided that, for

these purposes, a person shall be deemed to cease, or have ceased, to be an Employee upon the commencement of any period during which the relevant individual is placed on Garden Leave pursuant to his service contract with the Company or other Group Company, notwithstanding that the relevant individual remains an Employee of the Company or any other Group Company;

**"Lien Enforcement Notice"**

means an enforcement notice given in respect of a Company's Lien;

**"Liquidity Event"**

means a Sale or an Asset Sale or a proposal for a Listing or Change of Control or a return of capital on liquidation or otherwise in relation to the Company, the Parent or any other Group Company;

**"Listing"**

means in relation to any of the issued share capital of any member of the Group:

- (a) an announcement has been made in accordance with the "Listing Rules" (as referred to below) regarding the decision of the UKLA to admit the same to the official list of the UKLA; or
- (b) the grant of permission (and announcement thereof) by the London Stock Exchange for the same to be dealt in on the Alternative Investment Market of the London Stock Exchange; or
- (c) the admission of or the grant of permission (and announcement thereof if applicable) for the same to be dealt in on some other market similar or equivalent to those aforesaid whether in the UK or elsewhere; or
- (d) a reverse takeover (within the meaning contained in (and in accordance with) the UKLA publication entitled the "Listing Rules" current at the date of this Agreement) by a member of another group of companies any of whose shares are already the subject of a Listing (including for the avoidance of doubt on the Alternative Investment Market of the

London Stock Exchange);

- (e) the equivalent to any of above in respect of any jurisdiction other than in the United Kingdom; and

**Listed** shall be interpreted accordingly;

**"LLC Agreement"**

means the limited liability company agreement relating to the Parent dated on or around the date hereof as may be amended and/or restated from time to time;

**"Model Articles"**

means the model articles for private companies limited by shares contained in Schedule 1 of the Companies (Model Articles) Regulations 2008 (SI 2008/3229) (as amended on or prior to the date of adoption of these Articles);

**"officer"**

means an officer of the Company and includes a Director or the Secretary;

**"Purchase Value"**

means the value to be paid in Equity Consideration or the Cash Equivalent as determined in accordance with Article 9.1;

**"Parent"**

means ESG-Utiligroup Holdings, LLC or any successor entity from time to time (whether as a result of a merger or Share Reorganisation or otherwise);

**"PIU"**

means a Profit Interest Unit (as designated as such in the LLC Agreement), representing a fractional part of the interest of a unitholder interest in profits, losses and distributions of the Parent and having the rights and obligations with respect to such Profit Interest Units in the LLC Agreement, and having the PIU Participation Threshold and **"PIUs"** shall be interpreted accordingly;

**"PIU Participation Threshold"**

means a Participation Threshold (as defined in the LLC Agreement) of USD\$1.63 (one dollar sixty-three cents) per PIU, as such threshold may be adjusted in accordance with the terms of the LLC as if the corresponding PIU had been issued at the date of issue of the corresponding C Share;

**"Preferred Unit"**

means a Class A-2 Preferred Unit (as designated as such in the LLC Agreement), representing a fractional part of the interest of a unitholder interest in profits, losses and

	distributions of the Parent and having the rights and obligations with respect to such Preferred Units in the LLC Agreement, and <b>"Preferred Units"</b> shall be interpreted accordingly;
<b>"Relevant Investor"</b>	has the meaning ascribed to that expression in Article 21.1.1;
<b>"Sale"</b>	means the sale or other disposal (whether by one transaction or a series of related transactions) of a Controlling interest in the Company;
<b>"Seller"</b>	means the holder of any B Shares and/or any C Shares who is required to transfer any of those shares pursuant to Article 7 or who gives a Transfer Notice in terms of Article 8
<b>"Share"</b>	means any share in the capital of the Company from time to time (inclusive of the A Shares, B Shares and C Shares);
<b>"Share Reorganisation"</b>	in relation to any company, any sub-division or consolidation or combination or redesignation or reorganisation of its own shares or securities or units or interests (as the case may be);
<b>"Situational Conflict"</b>	shall mean a direct or indirect interest of a Director which conflicts or may potentially conflict with the interests of the Company (other than a Transactional Conflict or in circumstances which cannot reasonably be regarded as likely to give rise to a conflict of interest). For these purposes a conflict of interest shall include a conflict of interest and duty and a conflict of duties;
<b>"subsidiary"</b>	has the meaning attributed to it in Section 1159 and Schedule 6 of the Act;
<b>"Tax Election"</b>	means an election pursuant to Section 431(1), ITEPA, in the form prescribed by HM Customs & Excise, to elect that the market value of the shares or securities covered by the election is to be calculated as if the shares or securities were not restricted and that Sections 425 to 430, ITEPA do not apply to such shares or securities (in the case of the UK) or any overseas equivalent or other election

aimed at reducing the amount of payroll taxes or similar (including without limitation an election with the US Internal Revenue Service under Section 83(b) of the US Internal Revenue Code and the regulations promulgated thereunder, as amended);

**"Transactional Conflict"** shall mean a direct or indirect conflict of interest of a Director which arises in relation to an existing or proposed transaction or arrangement with the Company;

**"Transfer Notice"** shall have the meaning ascribed to it in Article 8.1;

**"UKLA"** means the UK Listing Authority or its successor or replacement body or authority from time to time;

**"Units"** means a unit, representing a fractional part of the interest of a unitholder interest in profits, losses and distributions of the Parent and having the rights and obligations with respect to such units in the LLC Agreement, including without limitation the Preferred Units and the PIUs.

1.2 Unless the context requires otherwise the words or expressions contained in these Articles bear the same meaning as in the Act, but excluding any statutory provision or modification thereof not in force on the date of adoption of these Articles.

1.3 In the Articles:

- 1.3.1 Article headings are included for convenience only and shall not affect the construction of these Articles;
- 1.3.2 words denoting the singular shall include the plural and vice versa;
- 1.3.3 words denoting one gender include each gender and all genders;
- 1.3.4 references to persons are deemed to include references to natural persons, to firms, to partnerships, to companies, to corporations, to associations, to organisations and to trusts (in each case whether or not having separate legal personality);
- 1.3.5 unless an Investor Instruction or the context requires otherwise a shareholder or member of the Company shall exclude the Company holding its own shares in treasury;
- 1.3.6 a reference to a **"company"** shall include any company, limited liability partnership, corporation or other body corporate or partnership (including without limitation any US limited liability company or corporation), wherever and however incorporated or established;

1.3.7 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms. Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.

1.3.8 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

## **2 Model Articles**

2.1 The Model Articles shall apply to the Company except insofar as they are modified by, excluded by, or inconsistent with the Articles.

## **3 Share capital**

The rights attaching to the respective classes of shares shall be as follows:

### **3.1 As regards liability**

The liability of the members is limited to the amount, if any, unpaid on the shares held by them.

### **3.2 As regards income:**

The Company may not distribute any profits in respect of any financial year unless and until an Investor Director or the Parent has made a request to the Board for a dividend to be paid and Investor Consent or the consent of the Parent to such distribution shall have been obtained. Subject thereto, the profits of the Company available for distribution shall be distributed amongst the holders of such class or classes of Shares as the Company may by ordinary resolution determine, PROVIDED ALWAYS that:

3.2.1 the dividends payable to any particular class of Shares shall not exceed the amount recommended by the Directors in respect of such class;

3.2.2 the aggregate dividends payable to all the classes of shares shall not exceed the aggregate amount recommended by the Directors; and

3.2.3 the dividends to be paid to a particular class of Shares shall be distributed among the holders of such class of Shares pro rata to the amount paid up or credited as paid up on the Shares of such class held by them respectively.

For the avoidance of doubt, the foregoing provisions relating to income mean that different dividends may be distributed on different classes of shares and one or more class of share may

receive dividends when other classes do not. Such a course of conduct (even if it continues over an extended period of time) is not unfairly prejudicial to the interests of any of the members.

3.3 As regards capital:

3.3.1 On a return of capital on liquidation or otherwise (except on a redemption or purchase by the Company of any Shares), the surplus assets of the Company remaining after the payment of its liabilities shall be applied amongst the holders of the A Shares (pari passu among them as a class).

3.3.2 On a return of capital on liquidation or otherwise, the holders of the B Shares, the C Shares and Deferred Shares will have no entitlement to any proceeds.

3.4 As regards voting:

3.4.1 Subject to Article 3.4.2, the A Shares and the B Shares shall have the right to receive notice of and attend and vote and speak at any general meeting of the Company and shall be entitled to vote on any written resolution of the Company.

3.4.2 Notwithstanding the foregoing provisions, as between each class of Share:

3.4.2.1 the voting rights conferred on the holders of the B1 Shares shall (for as long as in issue) collectively represent 5% of the voting rights attached to all shares in issue;

3.4.2.2 the voting rights conferred on the holders of the B2 Shares shall (for as long as in issue) collectively represent 5% of the voting rights attached to all shares in issue;

3.4.2.3 the voting rights conferred on the holders of the B3 Shares shall (for as long as in issue) collectively represent 5% of the voting rights attached to all shares in issue;

3.4.2.4 the voting rights conferred on the holders of the B4 Shares shall (for as long as in issue) collectively represent 5% of the voting rights attached to all shares in issue;

3.4.2.5 the voting rights conferred on the holders of the A Shares pursuant to Article 3.4.1 shall collectively represent 80% of the voting rights attaching to all shares in issue but that 80% shall automatically increase by the percentage of voting rights attached to any B Shares that convert in terms of Article 3.5.1.

and within each class of Share, save, in each case, as provided otherwise in the Act, each such holder present in person or by proxy or by representative shall be entitled



on a show of hands to one vote and on a poll or written resolution to one vote for each Share held by him.

- 3.4.3 C Shares and Deferred Shares shall confer no rights on any holder thereof to receive notice of, attend, speak or vote at any general meeting of the Company or to vote on written resolutions.

**3.5 Re-designation:**

- 3.5.1 Any B Shares or C Shares transferred to a holder of A Shares shall on an Investor Instruction (without further authority than is contained in this Article) forthwith on their transfer be deemed to have been re-designated as A Shares (on the basis of one A Share for every one B Share or C Share) having all the rights, privileges and restrictions attaching to the A Shares. In the event of the nominal values being different, the balance shall be made up of Deferred Shares.

**3.6 Variation of class rights**

- 3.6.1 Whenever the share capital of the Company is divided into different classes of shares, the rights attached to any class may, whether or not the Company is being wound up, be varied, modified, abrogated or cancelled only with the consent in writing of the holders of 75% of the issued shares of that class (subject always to the restrictions on voting contained in Article 3.4.2); provided that the rights attached to the Deferred Shares may be varied, modified, abrogated or cancelled by the holders of 75% of the issued Shares in the Company voting as one class (subject always to the restrictions on voting contained in Article 3.4.2).
- 3.6.2 Except as otherwise provided in Article 3.6, the rights attached to any class of share shall not be deemed varied by the creation or issue of further shares ranking in some or all respects *pari passu* with or in priority to those shares or by the purchase or redemption by the Company of its own shares.

**4 Further issue of shares**

**4.1 Except as may be resolved by ordinary resolution:**

- 4.1.1 no shares may be allotted or issued to any person;
- 4.1.2 the Company shall not exercise any of the powers referred to in article 22(2) of the Model Articles (issue of redeemable shares); and
- 4.1.3 the Company shall not reduce, consolidate, sub-divide, convert or otherwise make any alteration to its share capital.

- 4.2 Pursuant to the Act, all statutory rights of pre-emption shall be excluded from applying to the Company. In accordance with section 567(1) of the Act, sections 561 and 562 of the Act shall not

apply to an allotment of equity securities (as defined in section 560(1) of the Act) made by the Company.

- 4.3 Unless the Board otherwise provides (having obtained Investor Consent), any new shares issued to holders of A Shares will be A Shares, and any new shares issued to any other person, including a holder of B Shares or C Shares, will be B Shares or C Shares (as the case may be).

## **5 Transfer of Shares – General Principles**

- 5.1 No member shall dispose of any share except:

- 5.1.1 as permitted by Article 6 (Permitted Transfers);
- 5.1.2 as required by Article 7 (Compulsory Transfers) or under any other obligation under the Articles;
- 5.1.3 as permitted by and in accordance with Article 8 (*Purchase Rights*) and Article 9 (*Purchase Value and Completion*)

(but subject always to the restrictions contained in Articles 5.3 and 5.5) and the Directors shall decline to register any transfer that is either not made in accordance with the provisions of these Articles or is of shares on which the Company has a lien.

- 5.2 Reference in Article 5.1 or Article 5.5 to disposing of shares shall include disposing of any interest in or right attaching to any shares or renouncing or assigning any right to receive or subscribe for any shares or creating or permitting to exist any legal or equitable mortgage or charge, lien, encumbrance or trust over any share or agreeing to do any such thing.
- 5.3 Notwithstanding any other provision of these Articles, no share shall in any circumstances be issued or transferred to any minor, bankrupt or person of unsound mind.
- 5.4 Any reference in these Articles to the transfer of a share shall include the transfer or purported transfer of the beneficial ownership of such share.
- 5.5 Without prejudice to the foregoing, the holder(s) of B Shares and the holder(s) of C Shares shall not be entitled to dispose of any shares without Investor Consent.
- 5.6 Deferred Shares may be purchased by the Parent or (at its request) by the Company (subject to compliance with the Act) at any time on demand for an aggregate amount of £1. Subject to the foregoing, none of the holder(s) of Deferred Shares shall be entitled to dispose of any Deferred Shares without Investor Consent

## **6 Permitted transfers**

Notwithstanding any other provision of these Articles:

- 6.1 any A Shares may be disposed of by the holders thereof without restriction; and
- 6.2 any holder of Shares may transfer at any time without restriction as to price or otherwise all or any of its shares in the Company to:
  - 6.2.1 a holder of A Shares, or
  - 6.2.2 any other person (including the Company) with Investor Consent.

## **7 Compulsory transfers**

- 7.1 These compulsory transfer provisions only apply to B Shares and C Shares. In the event of an Exercise Event, any holder of B Shares and/or C Shares will, if required to do so by written notice from the Parent or an Investor, transfer the shares specified in that notice to the Parent in accordance with these Articles or to any person nominated by the Parent provided that such person has accepted such nomination. Such written notice shall include:
  - 7.1.1 the date on which the notice is given;
  - 7.1.2 a statement to the effect that the Parent is exercising its rights under this Article in respect of the Shares specified in the notice;
  - 7.1.3 a statement by the Parent that it will be satisfying the Purchase Value either in cash or by the allotment of Units;
  - 7.1.4 a statement by the Parent
    - 7.1.4.1 (if being satisfied in cash) of the cash value of the Purchase Value; or
    - 7.1.4.2 (otherwise) the number and type of Units comprising the Purchase Value (having regard to the application of Article 9.1.5);
  - 7.1.5 (subject to Article 7.1.6) a date, which is no more than 45 Business Days after the date of the notice, on which Completion is to take place;
  - 7.1.6 if it is the case, that the notice is conditional on the occurrence of an anticipated Exercise Event and (if it is also the case) that Completion will only occur at the same moment as or immediately prior to the Exercise Event; and
  - 7.1.7 a signature by or on behalf of the Parent.

Where a notice has been given in terms of this Article 7 (and is not withdrawn and is, if applicable, no longer subject to a condition) the Seller is required to sell and the Parent (or its nominated person) is required to buy the relevant shares in accordance with the terms of these Articles at the Purchase Value at Completion all as provided for in Article 9 and subject always to the Seller complying with all its completion obligations in Article 9.

- 7.2 In the event of negotiations being conducted for a Liquidity Event, the Parent shall be entitled to execute and deliver a conditional notice (as provided for in Article 7.1) in the form of a conditional notice to acquire the relevant Shares at, or immediately prior to, the Liquidity Event. Any conditional notice shall lapse in the event that the Liquidity Event has not taken place within 60 days the notice being given; provided that nothing shall prevent the Parent or an Investor from issuing further notice(s) (conditional or otherwise) before or after the previous one has lapsed.
- 7.3 The Parent may withdraw a notice given in terms of either Article 7.1 or Article 7.2 and such withdrawal shall not prevent further notices being given in the future.
- 7.4 An obligation to transfer a share under the provisions of this Article 7 shall be deemed to be an obligation to transfer the entire legal and beneficial interest in such share free from any lien, charge or other encumbrance.
- 7.5 The Board (with Investor Consent) or an Investor Instruction shall be entitled to decide that a member, who is affected by an Exercise Event qualifying that member as a Bad Leaver, should instead be treated as a Good Leaver for the purposes of the transfer provisions, including the Purchase Value.
- 7.6 Where it transpires that a person should have been treated as a Bad Leaver, rather than a Good Leaver, the Purchase Value shall (unless waived by Investor Consent) be deemed adjusted accordingly; and if the transfer has already taken place, any difference between the Purchase Value received by the Leaver and the Purchase Value that should have been made over shall be a debt owed by the Leaver to the relevant transferee(s) of such shares or to the Company, as an Investor Instruction may direct.
- 7.7 The compulsory transfer provisions may only be exercised by the Parent or the Investor in relation to a Leaver within 6 months of the later of (i) the date of cessation as an Employee of a Group Company (where such person does not remain as an Employee of another Group Company) and (ii) the board of the Parent (as a whole) and the Investor becoming aware of circumstances making a person a Bad Leaver, rather than a Good Leaver.
- 7.8 If any B Shares or any C Shares are required to be, and are not so, transferred in accordance with the provisions of this Article 7 within 10 Business Days of the date set for Completion by the Parent (and such failure to complete is not attributable to a default by the Company, the Parent or the Investor at the date set for Completion) then the Parent may by notice to the holder of the relevant Shares:-
- 7.8.1 authorise and instruct any person as it thinks fit (including any Director) to execute the necessary transfer(s) on behalf of the relevant person or persons; or
- 7.8.2 confirm in writing to the Company that the relevant Shares shall automatically be converted, upon receipt of such notice, such number of Deferred Shares with an equivalent par value to those being converted.

- 7.9 The Deferred Shares shall not confer on the holder any entitlement to dividends.
- 7.10 On a return of capital or Sale, the entire entitlement in respect of all of the Deferred Shares shall be satisfied in full by the payment of £1 in aggregate to the holders of Deferred Shares. The Deferred Shares shall confer no rights on any holder thereof to receive notice of, attend, speak or vote at any general meeting of the Company or to vote on written resolutions
- 7.11 The Deferred Shares may be redeemed by the Company at any time and at its option for £0.01 for all of the issued Deferred Shares (or such of them as the Company wish to redeem) without obtaining the sanction of the Holder(s) of the relevant Deferred Shares (or anyone entitled to be the Holder of such Deferred Shares) and, pending the transfer and/or purchase, retain the certificates (if any) in respect of them.

## **8 Purchase Rights**

### **8.1 Transfer Notice**

8.1.1 An A Share may be transferred without restriction and the provisions of this Article 8.1 relating to the giving of a Transfer Notice only applies to the B Shares and C Shares. Subject always to Article 5.5, except where a transfer is permitted pursuant to Article 6 (Permitted Transfers), a member wishing to transfer his B Shares or C Shares or any of them ("Transferor") shall give notice in writing (a "Transfer Notice") to the Company and the Parent. A Transfer Notice must always be in respect of all of the Shares of the relevant member of whatever class. Where a Transfer Notice has been given, the buyer of the relevant Shares shall be the Parent (or, where permitted in these Articles) its nominee and the relevant Shares may not be disposed of to any other person (unless with Investor Consent). A Transfer Notice once given may not be withdrawn. Where a Transfer Notice has been validly given in terms of this Article 8.1, the Parent is required to purchase (or, where permitted, procure the purchase by its nominee of) the relevant shares in accordance with the terms of these Articles at the Purchase Value at Completion all as provided for in Article 9, and subject always to the Seller complying with its obligations in this Article 8 and Article 9.

8.1.2 A Transfer Notice must:

- 8.1.2.1 state the date on which the Transfer Notice is given;
- 8.1.2.2 contain a statement to the effect that the notice is a Transfer Notice;
- 8.1.2.3 provide a date, which is not less than 5 nor more than 20 Business Days after the date of the Transfer Notice, on which Completion is to take place (or such shorter period as may be agreed with the Parent);
- 8.1.2.4 include a signature by the person giving the notice;

- 8.1.2.5 be accompanied by a Joinder Agreement duly executed by the Seller;  
and
- 8.1.2.6 be accompanied by any Tax Election required to be delivered by the Seller in terms of the Investment Agreement or otherwise, duly executed;  
and
- 8.1.2.7 be accompanied a security transfer power with respect to the Equity Consideration, endorsed in blank;

all without prejudice to the other documentation required to be delivered at Completion in terms of Article 9.2.2.

## 9 Purchase Value and Completion

### 9.1 Purchase Value

- 9.1.1 The Purchase Value whether on a compulsory transfer under Article 7 or a Transfer Notice under Article 8 shall be determined in accordance with this Article 9.1.
- 9.1.2 The Parent shall have the right to elect (at the Parent's sole discretion) to satisfy the Purchase Value by means of:
  - 9.1.2.1 the allotment and issue of Consideration Preferred Units and/or Consideration PIUs (as such number of Units are calculated in accordance with Article 9.1.3)("Equity Consideration"); or
  - 9.1.2.2 a payment in cash for an amount equivalent to the value of the relevant Units (if any) which the Seller would have been entitled to receive in accordance with Article 9.1.3 and determined in accordance with Article 9.1.4 ("Cash Equivalent").
- 9.1.3 Where the Parent elects to pay the Purchase Value for the relevant Shares in Equity Consideration, the Purchase Value shall be satisfied as follows:
  - 9.1.3.1 In the case of B Shares: the allotment and issue by the Parent to the Seller of one Preferred Unit for every one B Option Share to be transferred by the Seller (or in such other proportions or as otherwise amended pursuant to Article 9.1.5) (the "Consideration Preferred Units"), PROVIDED THAT:
    - 9.1.3.1.1 (where the Seller is not also a Bad Leaver or a Defaulting Member prior to Completion) such Consideration Preferred Units shall have entitlements to such Preferred Yield as if the Consideration Preferred

Units had been held from the date on which the Shares being bought and sold were first issued to the Seller; or

9.1.3.1.2 (in the case of the seller being a Bad Leaver or Defaulting Member prior to Completion), then such Consideration Preferred Units shall have no such Preferred Yield entitlement;

9.1.3.2 In the case of C Shares (other than held by a Bad Leaver or a Defaulting Member): the allotment and issue by the Parent to the Seller of the number of PIUs (the "**Consideration PIUs**") calculated as follows:

9.1.3.2.1 in the case of (i) a Transfer Notice given under Article 8.1 (which has not been superseded by a notice given under Article 7) or (ii) a notice given under Article 7 for an Exercise Event listed in paragraph a), e) or f) of the definition of "Exercise Event":- one PIU for every one C Share to be transferred by the Seller (or in such other proportions or as otherwise amended pursuant to Article 9.1.5); or

9.1.3.2.2 otherwise:- the number of Consideration PIUs resulting from the following formula:

$$\text{Number of PIUs} = CP \times \text{Vested Proportion}$$

Where:

- a) "CP" represents one PIU for every one C Share to be transferred by the Seller (or in such other proportions or as otherwise amended pursuant to Article 9.1.5); and
- b) "Vested Proportion" means the following proportion by reference to the time elapsed since the date of first issue of the relevant C Shares which are being transferred by the Seller ("Issue Date") (i) until the date of, in the case of a Transfer Notice given under Article 7 in respect of paragraph (1) of the definition of "Exercise Event", the date of the Liquidity Event; and (ii) in the case of a notice given under Article 7 for an Exercise Event listed in paragraph (c) or (d) of the definition of "Exercise Event", the date of the Exercise Event itself :

- i. Nil prior the first anniversary of the Issue Date;

- ii. 20% on the first anniversary of the Issue Date; and

- iii. thereafter in equal amounts (i.e., 20% per year) over the following four (4) year period thereafter (i.e., each anniversary of the Issue Date

(each such anniversary date being a "**Vesting Date**"), in each case so long as the Seller is and has remained continuously employed by a Group Company from the date of issue of the C Shares through and including such Vesting Date; and there shall be no proportional or partial vesting in the periods prior to each Vesting Date and all vesting should only occur on the applicable Vesting Date PROVIDED THAT, the Board may, in its sole discretion, provide for accelerated vesting at any time. Notwithstanding the foregoing, the vesting of the relevant C Shares shall automatically accelerate upon a "Sale of the Company" (as such term is defined in the LLC Agreement);

- 9.1.3.3 in the case of C Shares held by a Seller who is a Bad Leaver or a Defaulting Member: an aggregate sum of £1 for all his C Shares (and for the avoidance of doubt, no Units shall be allotted or issued in relation thereto).
- 9.1.4 Subject always to any lesser value to be attributed as a consequence of the Seller being a Bad Leaver or a Defaulting Member, the Cash Equivalent of Equity Consideration shall be determined by a decision of the board of the Parent (with Investor Consent) on a basis consistent with the valuation of the corresponding Units forming part of the Equity Consideration under the LLC Agreement (including without limitation as to the provisions regarding distribution of proceeds among the Units, commonly known as waterfall provisions), PROVIDED THAT, where in terms of the LLC Agreement the Board would have discretion, it shall apply the last available valuation of the Parent under any independent valuation (in the form of a US 409A valuation or equivalent) in valuing the Units of the Parent as a whole. .
- 9.1.5 If, following the date of issue of B Shares and/or C Shares, the Company or the Parent shall effect any sub-division or consolidation or redesignation or reorganisation in relation to its shares capital or its Units (as the case may be) ("**a Share Reorganisation**"), then the Purchase Value and/or number of Units shall be adjusted in such manner as the board of the Parent (with the consent of the Investor) in its sole discretion deems fit.
- 9.1.6 In the case of an entitlement to a fraction of a Unit, it shall be rounded up or down at the discretion of the board of the Parent.



- 9.1.7 Where a Seller or a connected person of his is also a board member of the Parent, such Seller and/or his connected person shall not be entitled to vote.

## 9.2 Completion of the transfers

- 9.2.1 Completion shall take place at such location as directed by the Parent and on the date specified in the Transfer Notice or notice given in terms of Article 7 or (where conditional upon a Liquidity Event) on or, immediately prior to, such Liquidity Event or such other date as the parties may agree.

- 9.2.2 At Completion, the Seller shall deliver to the Parent each of the documents or items set out or referred to in this Article:

- 9.2.2.1 a duly executed stock transfer form in favour of the Parent or such person as it may nominate and supporting share certificate or an appropriate indemnity for the Shares being transferred;
- 9.2.2.2 a duly executed Joinder Agreement(s) designating the Seller as an "Executive Member" and/or "Rollover Member" and/or as otherwise designated at the request of the Investor;
- 9.2.2.3 a duly executed Tax Election (where the Seller is receiving Equity Consideration);
- 9.2.2.4 a security transfer power with respect to the Equity Consideration, endorsed in blank;
- 9.2.2.5 a duly executed Executive Investment Agreement;
- 9.2.2.6 a duly executed Grant Agreement; and
- 9.2.2.7 such other documentation and instruments in form and substance reasonably deemed by the Parent to be required for the issuance of the Equity Consideration.

- 9.2.3 Subject to the Seller complying with the terms of Article 9.2.2, the Parent shall immediately either (at its sole option):

- 9.2.3.1 pay (or procure the payment of) the Purchase Value in cash to the Seller; or
- 9.2.3.2 allot and issue to the Seller the relevant Equity Consideration, treated as fully paid up, in the Seller's name; or

9.2.3.3 in the case of the payment for the C Shares where the Seller is a Bad Leaver or Defaulting Member, pay the aggregate sum of £1 in cash to the Seller or to the Company for the Seller's account

and such payment or allotment and issue of relevant Equity Consideration (as the case may be) shall constitute an absolute discharge to the Parent of its obligations to satisfy the Purchase Value.

9.2.4 Where the Parent has elected to satisfy the Purchase Value in Cash Equivalent, the Parent may substitute any other person for itself to acquire the relevant Shares from a Seller (including, subject to compliance with the Act, the Company itself or any other Group Company) by notifying the Seller to that effect and giving the proposed date for completion of the sale of the relevant Shares; and on such completion date the Seller shall deliver the proposed transferee the documents referred to in Article 9.2.2.1 and the Parent shall procure payment by such person of the relevant Cash Equivalent.

9.2.5 Where the Seller is a Leaver or Defaulting Member and the Purchase Value has been satisfied in Equity Consideration, the resulting Equity Consideration shall (unless the Parent with Investor Consent expressly waives such requirement in writing) be subject to any compulsory transfers or sale obligations as may have affected the Equity Consideration had the Seller held the Equity Consideration immediately before becoming a Leaver or Defaulting Member; and the Seller shall comply with the terms of the LLC Agreement as if this had been the case and, in security of compliance with such undertakings, hereby appoints as his attorney any person designated by the Parent to execute such transfers or documentation required to give effect to this should the Seller fail to do so upon request by the Parent.

### 9.3 Default by the Seller

If the Seller defaults in transferring Shares or in otherwise executing any document required in terms of these Articles:

9.3.1 the Chairman for the time being of the Company or failing him one of the Directors or some other person duly nominated by the Board for that purpose, shall be deemed to be the duly appointed attorney of the Seller with full power to execute, complete and deliver in the name and on behalf of the Seller a transfer of the relevant Shares to the Parent or nominated person, any Joinder Agreement and/or any other documentation require under these Articles;

9.3.2 the Company may receive and give good discharge for the Purchase Value on behalf of the Seller and (subject to the transfer being duly stamped) the Directors may enter the name of the Parent or nominated person in the Register of Members as the holder by transfer of the relevant Shares;

- 9.3.3 the Company shall forthwith pay the Purchase Value (or such part of it as is cash) into a separate bank account in the Company's name and shall hold the same on trust for the Seller and if and when the Seller shall deliver up his certificate(s) for the relevant Shares to the Company (or an appropriate indemnity in respect of lost certificates) then he shall be paid the Purchase Value without interest and less any sums owed to the Company by the Seller pursuant to these Articles or otherwise.

#### 9.4 Waiver

The provisions of Article 8 and/or this Article 9 may be waived on a case-by-case basis by the written consent of the holders of at least 50% in nominal value of the A Shares with Investor Consent.

#### 9.5 Conflicts

Where both a transfer notice under Article 7 and a Transfer Notice under Article 8 have been served in respect of the same Shares, unless there is an Investor Instruction otherwise, the former shall prevail.

### 10 Lien

- 10.1 The Company has a lien ("**Company's Lien**") over every share which is registered in the name of any person indebted or under any liability to the company, whether he is the sole registered holder of the share or one of several joint holders, for all monies payable by him (either alone or jointly with any other person) to the Company, whether payable immediately or at some time in the future.

- 10.2 The Company's Lien over a share:-

10.2.1 takes priority over any third party's interest in that share; and

10.2.2 extends to any dividend or other money payable by the Company in respect of that share and (if the lien is enforced and the share is sold by the Company) the proceeds of sale of that share.

- 10.3 The Directors may at any time decide that a share which is or would otherwise be subject to the Company's Lien shall not be subject to it, either wholly or in part.

### 11 Enforcement of the Company's Lien

- 11.1 Subject to the provisions of this Article, if:-

11.1.1 a Lien Enforcement Notice has been given in respect of a share; and

11.1.2 the person to whom the notice was given has failed to comply with it

the Company may sell that share in such manner as the Directors decide.

**11.2 A Lien Enforcement Notice:-**

- 11.2.1 may only be given in respect of a share which is subject to the Company's Lien if a sum in respect of which the lien exists is payable and the due date for payment of that sum has passed;
- 11.2.2 must specify the share concerned;
- 11.2.3 must require payment of the sum payable within 14 days of the notice;
- 11.2.4 must be addressed either to the holder of the share or to a person entitled to it by reason of the holder's death, bankruptcy or otherwise; and
- 11.2.5 must state the Company's intention to sell the share if the notice is not complied with.

**11.3 Where shares are sold under this Article:-**

- 11.3.1 the Directors may authorise any person to execute an instrument of transfer of the shares to the purchaser or a person nominated by the purchaser; and
- 11.3.2 the transferee is not bound to see to the application of the consideration, and the transferee's title is not affected by any irregularity in or invalidity of the process leading to the sale.

**11.4 The net proceeds of any such sale (after payment of the costs of sale and any other costs of enforcing the lien) must be applied:-**

- 11.4.1 first, in payment of so much of the sum for which the lien exists as was payable at the date of the Lien Enforcement Notice;
- 11.4.2 second, to the person entitled to the shares at the date of the sale, but only after the certificate for the shares sold has been surrendered to the company for cancellation or a suitable indemnity has been given for any lost certificates, and subject to a lien equivalent to the Company's Lien for any money payable (whether immediately or at some time in the future) as existed upon the shares before the sale in respect of all the shares registered in the name of such person after the date of the Lien Enforcement Notice.

**11.5 A statutory declaration by a Director or the company secretary (if any) that the declarant is a Director or the company secretary and that a share has been sold to satisfy the Company's Lien on a specified date:-**

- 11.5.1 is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share; and

- 11.5.2 subject to compliance with any other formalities of transfer required by the Articles or by law, constitutes a good title to the share.

## **12 Proceedings at General Meetings**

- 12.1 No business shall be transacted at any meeting of the members of the Company unless a quorum is present at the time when the meeting proceeds to business.
- 12.2 Two persons entitled to vote upon the business to be transacted, each being a member or a proxy for a member or a duly authorised representative of a corporation or partnership (at least one of whom must be a holder of A Shares, or a proxy or duly authorised representative of such holder) shall be a quorum.
- 12.3 If a quorum is not present within half an hour of the time appointed for a General Meeting, the meeting, if convened on the requisition of members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the next week, at the same time and place (or to such other date and at such other time and place as all the members may agree in writing). Article 41 of the Model Articles shall not apply.
- 12.4 A poll may be demanded at any General Meeting by any member present in person or by proxy and entitled to vote. Article 44(2) of the Model Articles shall be modified accordingly.
- 12.5 An instrument appointing a proxy may, in the case of a corporation, be signed on its behalf by a director or the secretary thereof or by its duly appointed attorney or duly authorised representative.
- 12.6 On a show of hands or on a poll, votes may be given either personally or by proxy.
- 12.7 Without limiting article 37 of the Model Articles, a member may participate in a meeting of the Company by means of conference telephone or similar communications equipment whereby all the members participating in the meeting can hear each other and the members participating in a meeting in this manner shall be deemed to be present in person at such a meeting.
- 12.8 A proposed written resolution circulated to the members shall lapse if it is not passed by the requisite majority in accordance with the Act before the expiration of 60 days (or such other shorter period as is stated on the proposed written resolution) from the Circulation Date stated on the proposed written resolution.

## **13 Number of Directors**

- 13.1 Save with Investor Consent, the number of Directors (other than alternate directors) shall not be more than seven excluding any Investor Directors.

## **14 Alternate directors**

- 14.1 Subject to Article 14.2, any Director may appoint as an alternate any other Director, or any other person approved by resolution of the Directors, to:-

14.1.1 exercise that Director's powers; and

14.1.2 carry out that Director's responsibilities

in relation to the taking of decisions by the Directors in the absence of the alternate's appointor.

14.2 An Investor Director may appoint any person to be alternate director and may remove from office an alternate director appointed by him.

14.3 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.

14.4 The notice must:-

14.4.1 identify the proposed alternate; and

14.4.2 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.

## **15 Rights and responsibilities of alternate Directors**

15.1 An alternate Director may act as alternate to more than one Director and has the same rights in relation to any decision of the Directors as the alternate's appointor.

15.2 Except as the Articles specify otherwise, alternate Directors:-

15.2.1 are deemed for all purposes to be Directors;

15.2.2 are liable for their own acts and omissions;

15.2.3 are subject to the same restrictions as their appointors; and

15.2.4 are not deemed to be agents of or for their appointors

15.2.5 and in particular 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.

15.3 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.

15.4 In determining the minimum and (if any) the maximum number of Directors, no account shall be taken of any alternate Directors appointed from time to time.

- 15.5 When an alternate Director is also a Director or acts as an alternate for more than one Director, he shall have one vote for every Director represented by him (in addition to his own vote if he is himself a Director) but he shall count only as one for the purpose of determining whether a quorum is present.

## **16 Termination of alternate Directorship**

- 16.1 An alternate Director's appointment as an alternate terminates:-

- 16.1.1 when the alternate's appointor revokes the appointment by notice to the Company in writing specifying when it is to terminate;
- 16.1.2 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;
- 16.1.3 on the death of the alternate's appointor; or
- 16.1.4 when the alternate's appointor's appointment as a Director terminates, except that an alternate's appointment as an alternate does not terminate when the appointor vacates his office at a general meeting and is then re-appointed as a Director at the same general meeting.

## **17 Appointment and Termination of Directors**

- 17.1 Subject to Article 13, the Board shall be appointed as follows:

- 17.1.1 the Parent may appoint one or more persons willing to act as Director(s) and to remove any such Director(s), all in accordance with Article 29.1.1;
- 17.1.2 the Company may (with Investor Consent) by ordinary resolution appoint one or more persons willing to act as additional Directors and each such additional Director may be removed by a general meeting or by notice in writing to that effect being given by the holder or holders of a majority of the votes calculated in accordance with article 3.4;
- 17.1.3 the Directors may (with Investor Consent) appoint a person who is willing to act to be a director, either to fill a vacancy or as an additional Director (but not to fill the vacancy of Investor Director).

- 17.2 No Director shall be appointed otherwise than as provided in these Articles. Article 17(1) of the Model Articles is excluded.

- 17.3 The office of a Director shall also be vacated if he shall be removed from office as provided in these Articles.

- 17.4 The Investor Director(s) shall have the right to appoint the Chairman of the Board or any meeting of Directors or committee thereof, and the right to appoint shall carry the corresponding right to remove such person as Chairman and appoint another person in his place.

## **18 Proceedings of Directors**

- 18.1 The Chairman of any meeting of the Directors or any committee of the Directors shall be entitled to a casting vote.
- 18.2 The quorum for the transaction of business of the Directors may be fixed by the Directors and unless so fixed at any other number shall be 2 Directors PROVIDED THAT, while an Investor Director is in office, no quorum shall be present unless the Investor Director or his alternate is participating, except where such Investor Director, in respect of his attendance or that of his alternate, has waived such requirement.
- 18.3 An Investor Director shall not be taken to be in breach of his duty to promote the success of the Company or his duty to exercise independent judgement as set out in sections 172 and 173 of the Act respectively by reason only that in the performance of his duties and the exercise of his powers, he has regard to the interests and acts upon the wishes of any Investor unless no honest and reasonable director could have formed the view that, in doing so, the director was promoting the success of the Company as a whole.
- 18.4 Without limiting article 10 of the Model Articles, a Director (or where appropriate his alternate) may participate in a meeting of the Board of Directors or of a committee of the Board by means of conference telephone or similar communications equipment whereby all the Directors participating in the meeting can hear each other, and the Directors participating in a meeting in this manner shall be deemed to be present in person at such meeting.
- 18.5 For the purposes of article 8 of the Model Articles, a resolution signed by an alternate Director need not also be signed by his appointor, and if it is signed by a Director who has appointed an alternate Director, it need not be signed by the alternate Director in that capacity.

## **19 Directors' conflicts of interest – Board approval for Situational Conflicts**

- 19.1 If a situation arises or exists in which a Director has or could have a Situational Conflict, without prejudice to the provisions of Articles 20 to 23 (inclusive), the Director concerned, or any other Director, may propose to the Board that such Situational Conflict be authorised, such proposal to be made in writing and delivered to the other Directors or made orally at a meeting of the Board, in each case setting out particulars of the Situational Conflict in question. Subject to the Act, the Directors may authorise such Situational Conflict and the continuing performance by the relevant Director of his duties as a Director of the Company on such terms as they may think fit.
- 19.2 The relevant Director shall not be counted in the quorum at the relevant meeting of the Directors to authorise such Situational Conflict nor be entitled to vote on the resolution authorising it. If the relevant Director is the sole Investor Director, for the purposes of any part of the meeting of the



Directors at which a resolution authorising the relevant Situational Conflict pursuant to section 175(4)(b) of the Act is to be considered, the quorum requirement for such part of the meeting shall be any two Directors, neither of whom have any interest in the matter and notwithstanding the provisions of Article 18.2 it shall not be necessary for such Investor Director or his alternate to be present during such part of the meeting for the quorum requirement to be met.

## **20 Directors' Situational Conflicts – pre-approval for all Directors**

20.1 Subject to compliance by him with his duties as a Director under Part 10 of the Act (other than the duty in section 175(1) of the Act which is the subject of this Article 20.1), a Director may:

20.1.1 be an officer of, employed by, or hold shares or other securities (whether directly or indirectly) in the Company; or

20.1.2 be a director or other officer of, employed by or hold shares or other securities (whether directly or indirectly) in, or otherwise be interested, whether directly or indirectly, in any other Group Company,

(in either case a **Group Company Interest**) and notwithstanding his office or the existence of an actual or potential conflict between any Group Company Interest and the interests of the Company, which would fall within the ambit of that section 175(1), the relevant Director:

20.1.2.1 shall be entitled to attend any meeting or part of a meeting of the Directors or a committee of the Directors at which any matter which may be relevant to the Group Company Interest may be discussed, and to vote on any resolution of the Directors or a committee thereof relating to such matter, and any board papers relating to such matter shall be provided to the relevant Director at the same time as the other Directors (save that a Director may not vote on any resolution in respect of matters relating to his employment with the Company or other Group Company);

20.1.2.2 shall not be obliged to account to the Company for any remuneration or other benefits received by him in consequence of any Group Company Interest;

20.1.2.3 shall be entitled to consult freely about the Group and its affairs with, and to disclose Confidential Information to the Group's auditors, lenders and proposed lenders (or with and to any of its or their professional advisers);

20.1.2.4 for the purposes of facilitating a sale of shares in the Company or Listing, shall be entitled to disclose any Confidential Information to any proposed purchaser, underwriter, sponsor or broker, subject to the relevant Director using his reasonable endeavours to procure that any such

recipient is made aware that it is Confidential Information and agrees to treat it accordingly; and

- 20.1.2.5 will not be obliged to disclose to the Company or use for the benefit of the Company any confidential information received by him by virtue of his Group Company Interest and otherwise than by virtue of his position as a Director, if to do so would breach any duty of confidentiality to any other Group Company or third party.

## 21 Directors' Situational Conflicts – pre-approval for Investor Directors

- 21.1 Subject to compliance by him with his duties as a Director under Part 10 of the Act (other than the duty in section 175(1) of the Act to the extent that it is the subject of this Article 21.1), an Investor Director may be a director or other officer of, employed by, hold shares or other securities in, or otherwise be interested, whether directly or indirectly, in:

- 21.1.1 any Investor, Investor Affiliate, or other entity which, directly or indirectly, holds Shares in the Company (a "**Relevant Investor**") and as such the Investor Director may, on behalf of the Investor or Parent who appointed him, give or withhold any consent or give any direction required of any Investor or Parent pursuant to the terms of any subscription, investment or shareholders' agreement relating to the Company, or of any similar agreement or document ancillary to such an agreement; or

- 21.1.2 any other company in which a Relevant Investor also holds shares or other securities or is otherwise interested, whether directly or indirectly,

(in either case an "**Investor Director Interest**"), and notwithstanding his office or the existence of an actual or potential conflict between any Investor Director Interest and the interests of the Company which would fall within the ambit of section 175(1) of the Act the relevant Investor Director:

- 21.1.2.1 shall be entitled to attend any meeting or part of a meeting of the Directors or a committee of the Directors at which any matter which may be relevant to the Investor Director Interest may be discussed, and to vote on a resolution of the Directors or a committee thereof relating to such matter, and any board papers relating to such matter shall be provided to the relevant Investor Director at the same time as other Directors;

- 21.1.2.2 shall not be obliged to account to the Company for any remuneration or other benefits received by him in consequence of any Investor Director Interest;

- 21.1.2.3 shall be entitled to consult freely about the Group and its affairs with, and to disclose, for investment appraisal purposes, Confidential Information

to, any Investor, Investor Affiliate, or proposed investor in the Group or any other person on whose behalf it is investing in the Group, and to the Group's auditors, lenders and proposed lenders (or with and to any of its or their professional advisers); and

21.1.2.4 for the purposes of facilitating a sale of shares in the Company or Listing, shall be entitled to disclose any Confidential Information to any proposed purchaser, underwriter, sponsor or broker, subject to the relevant Investor Director using his reasonable endeavours to procure that any such recipient is made aware that it is Confidential Information and agrees to treat it accordingly; and

21.1.2.5 will not be obliged to disclose to the Company or use for the benefit of the Company any other confidential information received by him by virtue of his Investor Director Interest and otherwise than by virtue of his position as a Director.

## **22 Directors' Situational Conflicts – disclosure of interests**

Any Director who has a Group Company Interest and any Investor Director who has an Investor Director Interest shall, as soon as reasonably practicable following the relevant interest arising, disclose to the Board the existence of such interest and the nature and extent of such interest so far as the relevant Investor Director or other Director is able at the time the disclosure is made PROVIDED that no such disclosure is required to be made of any matter in respect of which the relevant Investor Director or other Director owes any duty of confidentiality to any third party. A disclosure made to the Board under this Article 22 may be made either at a meeting of the Board or by notice in writing to the Company marked for the attention of the Directors.

## **23 Directors' Situational Conflicts – shareholder approval**

23.1 Notwithstanding the provisions of Articles 19.1, 20.1 and 21.1, the holders of 50% of the issued shares which are held by shareholders who are not the same person as or connected persons in relation to the relevant Director from time to time may, at any time, by notice in writing to the Company, authorise, on such terms as they shall think fit and shall specify in the notice:

23.1.1 any Situational Conflict which has been notified to the Board by any Director under Article 19.1; or

23.1.2 any Group Company Interest or Investor Director Interest which has been disclosed to the Board under Article 22

(whether or not the matter has already been considered under, or deemed to fall within, Article 19.1, 20.1 or 21.1, as the case may be).

23.2 No contract entered into shall be liable to be avoided by virtue of:

- 23.2.1 any Director having an interest of the type referred to in Article 19.1 where the relevant Situational Conflict has been approved as provided by that Article or which is authorised pursuant to Article 23.1;
  - 23.2.2 any Director having a Group Company Interest which falls within Article 21.1 or which is authorised pursuant to Article 23.1; or
  - 23.2.3 any Investor Director having an Investor Director Interest which falls within Article 21.1 or which is authorised pursuant to Article 23.1.
- 23.3 For the purposes of this Article, **connected persons** shall have the meaning as set out in section 252 of the Act.

## **24 Directors' conflicts of interest – Transactional Conflicts**

- 24.1 The provisions of Articles 19 to 23 (inclusive) shall not apply to Transactional Conflicts but the following provisions of this Article 24.1 and Article 24.2 shall so apply. Any Director may be interested in an existing or proposed transaction or arrangement with the Company provided that he complies with the section 177 or 182 (as applicable) of the Act. Article 14 of the Model Articles is excluded.
- 24.2 Without prejudice to the obligation of each Director to declare the nature and extent of his interest in accordance with the Act, a Director may vote at a meeting of the Board or of a committee of the Board on any resolution concerning a matter in which he has an interest, whether direct or indirect, which relates to a transaction or arrangement with the Company, or in relation to which he has a duty. Having so declared any such interest or duty he may have, the Director shall be counted in the quorum present when any such resolution is under consideration and if he votes on such resolution his vote shall be counted.

## **25 Notices and Company Communications**

- 25.1 Any notice, document or other information shall be deemed served on, or delivered to, the intended recipient:
- 25.1.1 if delivered by hand, on signature of a delivery receipt or at the time the notice, document or other information is left at the address; or
  - 25.1.2 if sent by fax, at the time of transmission; or
  - 25.1.3 if sent by pre-paid first class post, recorded delivery or special delivery to an address in the United Kingdom, at 9.00 am on the second Business Day after posting; or
  - 25.1.4 if sent by pre-paid airmail to an address outside the country from which it is sent, at 9.00 am on the fifth Business Day after posting; or

- 25.1.5 if sent by reputable international overnight courier to an address outside the country from which it is sent, on signature of a delivery receipt or at the time the notice, document or other information is left at the address; or
  - 25.1.6 if sent or supplied by email, one hour after the notice, document or information was sent or supplied; or
  - 25.1.7 if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website (provided always that no Transfer Notice or deemed Transfer Notice, or (without Investor Consent) no notice for an Investor, may be served in this manner); and
  - 25.1.8 if deemed receipt under the previous paragraphs of this Article 26.1 would occur outside business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of deemed receipt), at 9.00 on the day when business next starts in the place of deemed receipt. For the purposes of this Article, all references to time are to local time in the place of deemed receipt.
- 25.2 To prove service, it is sufficient to prove that:
- 25.2.1 if delivered by hand or by reputable international overnight courier, the notice was delivered to the correct address; or
  - 25.2.2 if sent by fax, a transmission report was received confirming that the notice was successfully transmitted to the correct fax number; or
  - 25.2.3 if sent by post or by airmail, the envelope containing the notice was properly addressed, paid for and posted; or
  - 25.2.4 if sent by email, the notice was properly addressed and sent to the email address of the recipient.
- 25.3 In proving that any notice, document or information was properly addressed, it will suffice to show that the notice, document or information was addressed to an address permitted for the purpose by the Act.
- 26 Indemnity**
- 26.1 Subject to Article 26.2, a relevant director of the Company or an associated company may be indemnified out of the Company's assets against—
- 26.1.1 any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the Company or an associated company;

- 26.1.2 any liability incurred by that director in connection with the activities of the Company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Act); and
- 26.1.3 any other liability incurred by that director as an officer of the Company or an associated company.
- 26.2 This Article 26 does not authorise any indemnity which would be prohibited or rendered void by any provision of the Act or by any other provision of law.
- 26.3 In this Article 26 —
  - 26.3.1 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and
  - 26.3.2 a "relevant director" means any director or former director of the Company or an associated company.

## **27 Insurance**

- 27.1 Subject to the Companies Acts, the directors shall purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant director in respect of any relevant loss, all on terms and with such insurer(s) as required or approved by an Investor Instruction.
- 27.2 In this Article:
  - 27.2.1 a "relevant officer" means any director or former director of the Company or an associated company, any other officer or employee or former officer or employee of the Company or an associated company (but not its auditors), or any trustee of a pension fund or employee benefits trust of the Company or an associated company; and
  - 27.2.2 a "relevant loss" means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer's duties or powers or responsibilities in relation to the Company or an associated company or any pension fund or employees' share scheme of the Company or associated company; and
  - 27.2.3 "associated company" shall have the meaning ascribed to it in Article 26.3.1.

## **28 Approvals**

Where the approval, agreement or consent of any member or Director is required under any provision of these Articles to any particular matter, such approval, agreement or consent may be given subject to such terms and conditions as that member or Director may require and any breach of such terms and conditions shall ipso facto be deemed to be a breach of these Articles.

## 29 Parent Company

- 29.1 In the event that the Parent shall be the holder of shares that carry more than 50 per cent of the total voting rights of the members of the Company, the following provisions shall apply notwithstanding anything in these Articles which may be inconsistent therewith:
- 29.1.1 the Parent may at any time and from time to time appoint any person to be a Director or remove from office any Director howsoever appointed;
  - 29.1.2 any Director appointed in accordance with Article 29.1.1 may also be designated as “Investor Director” by the Parent (with Investor Consent) or shall also be designated as such by an Investor Instruction; and such designation may likewise be removed by the Parent (with Investor Consent) or by an Investor Instruction to that effect;
  - 29.1.3 no unissued shares of the Company shall be issued or agreed to be issued or put under option without the prior written consent of the Parent;
  - 29.1.4 any or all powers of the Directors shall be restricted in such respects and to such extent as the Parent may by notice to the Company from time to time prescribe.
- 29.2 Any such appointment, removal, consent or notice shall be in writing served on the Company and signed by the Parent or, if the Parent is a company, on its behalf by any person duly authorised for the purpose. No person dealing with the Company shall be concerned to see or enquire whether the powers of the Directors have been in any way restricted hereunder or whether any requisite consent of the Parent has been obtained and no obligation incurred or security given or transaction effected by the Company to or with any third party shall be invalid or ineffectual unless the third party had at the time express notice that the incurring of such obligation or the giving of such security or the effecting of such transaction was in excess of the powers of the Directors.

## 30 U.S. TAX MATTERS

This Article 30, inter alia, sets forth principles under which items of income, gain, loss, deduction and credit of the Company shall be allocated among the Shareholders solely for U.S. federal, state and local income tax purposes. This Article 30 also provides for (i) the determination and maintenance of capital accounts, generally in accordance with Regulations promulgated under Code Section 704(b) and shall be read and interpreted consistent with such purpose and (ii) certain other elections and covenants of the Shareholders that related to and impact U.S. tax matters. Capitalized terms not otherwise defined in this Article 30 shall have the meanings given in Article 30.1 below.

### 30.1 DEFINITIONS

“**Book Value**” means, with respect to any asset, the asset’s adjusted basis for U.S. federal income tax purposes, except as follows:

- (a) the Book Value of any asset contributed by a Shareholder to the Company shall be the gross fair market value of such asset at the time of contribution;
- (b) the Book Value of any asset distributed by the Company to any Shareholder shall be adjusted immediately prior to such distribution to equal its gross fair market value at such time;
- (c) the Book Values of all of the Company's assets shall be adjusted in the discretion of the Board to equal their respective gross fair market values as of the date of the acquisition of additional Shares by any new or existing Shareholder in exchange for a capital contribution, upon the liquidation of the Company, or upon the distribution by the Company to a retiring or continuing Shareholder of money or other assets of the Company in redemption of some or all of such Shareholder's interests; and
- (d) any adjustments to the adjusted basis of any asset of the Company pursuant to Code Sections 732(d), 734(b) or 743(b) shall be taken into account in determining such asset's Book Value in a manner consistent with Regulation Section 1.704-1(b)(2)(iv).

If the Book Value of an asset has been determined pursuant to paragraphs (a), (b) or (d) above, such Book Value shall thereafter be adjusted in the same manner as would the asset's adjusted tax basis for federal income tax purposes, except that depreciation and amortization deductions shall be computed based on the asset's Book Value as so determined, and not on the asset's adjusted tax basis in a manner consistent with Regulations Section 1.704-1(b)(2)(iv)(g)(3) or 1.704-3(d)(2), as applicable.

**"CFC"** means a "controlled foreign corporation" as defined in Code Section 957(a).

**"Code"** means the United States Internal Revenue Code of 1986, as amended from time to time.

**"FATCA"** means (i) Code §§1471-1474, any successor legislation, any U.S. Department of Treasury Regulations, forms, instructions or other guidance issued pursuant thereto, (ii) any intergovernmental agreement entered into pursuant to such authorities, and (iii) any current or future legislation, regulations or guidance promulgated by any jurisdiction giving effect to any item described in clause (i) or (ii) above.

**"Global Account Reporting Requirements"** means FATCA and any similar law, intergovernmental agreement or other legal or administrative requirement promulgated or agreed to by any jurisdiction, including the Standard for Automatic Exchange of Financial Account Information (Common Reporting Standard) of the Organisation for Economic Co-operation and Development.

**"PFIC"** means a passive foreign investment company as defined in Code Section 1297.



**"Profits and Losses"** means, for any tax year of the Company (or portion thereof), the taxable income or loss of the Company, or particular items thereof, determined in accordance with the accrual method of accounting and with the following adjustments and any other adjustments determined by the Investors in their reasonable discretion to be reasonably appropriate and/or necessary for maintaining Capital Accounts in accordance with Code Section 704(b): (a) any income of the Company that is exempt from United States federal income taxation and not otherwise taken into account in computing Profits and Losses shall be added to such taxable income or loss; (b) if the Book Value of any asset differs from its adjusted tax basis for United States federal income tax purposes, any gain or loss resulting from a disposition of such asset shall be calculated with reference to such Book Value; (c) upon an adjustment to the Book Value (other than an adjustment in respect of depreciation, amortization or cost recovery deductions) of any asset, pursuant to the definition of Book Value, the amount of the adjustment shall be included as gain or loss in computing such taxable income or loss; (d) if the Book Value of any asset differs from its adjusted tax basis for United States federal income tax purposes, the amount of depreciation, amortization or other cost recovery deductions with respect to such asset for purposes of determining Profits and Losses, if any, shall be an amount which bears the same ratio to such Book Value as the United States federal income tax depreciation, amortization or other cost recovery deductions bears to such adjusted tax basis; and (e) any expenditures of the Company not deductible in computing taxable income or loss, not properly capitalizable and not otherwise taken into account in computing Profits and Losses pursuant to this definition shall be treated as deductible items.

**"Regulations"** means the regulations promulgated by the United States Department of the Treasury pursuant to, and in respect of, provisions of the Code.

**"Shareholder"** means a member of or holder of shares in the capital of the Company from time to time.

## **CAPITAL ACCOUNT**

- 30.2 A separate capital account (a **"Capital Account"**) shall be maintained for each Shareholder in accordance with Code Section 704(b) and Regulation Sections 1.704-1(b) and 1.704-2. The Capital Account of each Shareholder shall be credited with (i) such Shareholder's capital contributions and all items of income and gain allocated to such Shareholder, and (ii) shall be debited with all items of loss and deduction allocated to such Shareholder and all cash and the Book Value of any property (net of liabilities assumed by such Shareholder and the liabilities to which such property is subject) distributed by the Company to such Shareholder. Any transferee of a share in the Company shall succeed to the Capital Account relating to the share so transferred.
- 30.3 Whenever it is necessary to determine the Capital Account of any Shareholder, the Capital Account of such Shareholder shall be determined after giving effect to all allocations and all contributions and distributions made prior to the time as of which such determination is to be made.

- 30.4 Except as expressly required herein, no Shareholder shall be required to restore any negative balance in its Capital Account.
- 30.5 **Articles 30.2 to 30.8** (inclusive) are intended to comply with Regulation Sections 1.704-1(b) and 1.704-2 and shall be interpreted and applied in a manner consistent with such Regulations and any amendments or successor provision thereto. If the Board determines in its reasonable discretion that it is appropriate and/or necessary to modify the manner in which the Capital Accounts, or any debits or credits or allocations thereto, are computed in order to comply with such Regulations, the Company shall cause such modifications to be made.

## **ALLOCATIONS**

### **Allocations of Profits and Losses**

- 30.6 Profits and Losses (and to the extent necessary, individual items of income, gain, loss or deduction) for the fiscal year shall be allocated in a manner that, to the extent possible, the Capital Account of each Shareholder at the end of such year equals (a) the amount that would be distributed to such Shareholder if (i) the Company sold its assets for their Book Value, (ii) all Company liabilities were satisfied (limited with respect to each non-recourse liability to the Book Value of the asset securing such liability) and (iii) the net proceeds were distributed in full in accordance with **Article 3** minus (b) such Shareholder's share of "Company minimum gain" and "Shareholder minimum gain" (within the meaning of and in accordance with the Regulations under Code Section 704(b)), computed immediately prior to the hypothetical sale of assets and, for this purpose, treating all Shares as vested. Any Company asset distributed in kind shall be deemed to be sold for its fair market value, and any gain or loss associated with such deemed sale shall be included in determining Profits and Losses for the applicable period. If any interests in the Company are transferred or redeemed other than on the first day of the Company's taxable year, then Profits, Losses, each item thereof and all other items attributable to such interest for such Company taxable year shall be divided and allocated between the transferor Shareholder and the transferee Shareholder using any method permitted under Code Section 706 as determined by the Board. The Investors may modify the provisions of **Articles 30.6 to 30.8** (inclusive) in order to result in allocations for Section 704(b) and U.S. income tax purposes that reflect the Shareholders' interest in the Company.

### **Income Tax Allocations**

- 30.7 For U.S. federal income tax purposes, each item of income, gain, loss and deduction of the Company shall be allocated among the Shareholders in the same manner as the corresponding items of Profits and Losses and specially allocated items are allocated for Capital Account purposes; provided, that in the case of any asset the Book Value of which differs from its adjusted tax basis for United States federal income tax purposes, income, gain, loss and deduction with respect to such asset shall be allocated solely for income tax purposes in accordance with the principles of Code Sections 704(b) and (c) (in any manner determined by the Investors) so as to take account of the difference between Book Value and adjusted basis of such asset. Allocations

pursuant to this **Article 30.7** are solely for purposes of income taxes and shall not affect, or in any way be taken into account in computing any Shareholder's Capital Account.

### **Special Allocations**

30.8 Notwithstanding any other provision of this **Article 30**, the following special allocations shall be made in the following order:

- 30.8.1 "Shareholder nonrecourse deductions" (as defined in Regulation Section 1.704-2(i)), if any, of the Company shall be allocated for each period to the Shareholder that bears the economic risk of loss within the meaning of Regulation Section 1.704-2(i).
- 30.8.2 "Nonrecourse deductions" (as defined in Regulation Section 1.704-2(b)) and "excess nonrecourse liabilities" (as defined in Regulation Section 1.752-3(a)), if any, of the Company shall be allocated to the Shareholders in accordance with their respective percentage interests in the Company.
- 30.8.3 The Articles shall be deemed to include "qualified income offset," "minimum gain chargeback" and "Shareholder nonrecourse debt minimum gain chargeback" provisions within the meaning of the Regulations promulgated under Code Section 704(b). Accordingly, notwithstanding any other provision of this Annex, items of gross income shall be allocated to the Shareholders on a priority basis to the extent and in the manner *required by such provisions*.
- 30.8.4 To the extent that Losses or items of loss or deduction otherwise allocable to a Shareholder hereunder would cause such Shareholder to have a negative Capital Account as of the end of the taxable period to which such Losses, or items of loss or deduction, relate (after taking into account the allocation of all items of income and gain for such taxable period), such Losses, or items of loss or deduction, shall not be allocated to such Shareholder and instead shall be allocated to the other Shareholders in accordance with paragraph 3 hereof as if such Shareholder were not a Shareholder.
- 30.8.5 Any allocations required to be made pursuant to **Articles 30.8.1, 30.8.2, 30.8.3, or 30.8.4** of this **Article 30** (the "**Regulatory Allocations**") (other than allocations, the effect of which are likely to be offset in the future by other special allocations) shall be taken into account, to the extent permitted by the Regulations, in computing subsequent allocations of income, gain, loss or deduction pursuant to **Article 30.6** of these Articles so that the net amount of any items so allocated and all other items allocated to each Shareholder shall, to the extent possible, be equal to the

amount that would have been allocated to each Shareholder pursuant to **Article 30.6** had such Regulatory Allocations under this **Article 30.8** not occurred.

## **COVENANTS**

- 30.9 Unless AKKR consents in writing, the Company and its subsidiaries will be operated, and investments will be made, in a manner that avoids any Shareholder, or any direct or indirect owner of an Shareholder, (i) incurring any income that is effectively connected with the conduct of a U.S. trade or business as defined in Code Section 864(b), (ii) having a permanent establishment in the United States, (iii) realizing any unrelated business taxable income as defined in Code Sections 512 and 514(e), (iv) engaging in any “commercial activity” as defined in Code Section 892(a)(2)(i) or any activity that would create a significant risk of causing the Company, or any flow through entity in which the Shareholders are invested, to be treated as engaged in a “commercial activity” and subject to tax in the United States as a result.
- 30.10 Without the written consent of AKKR, the Company shall not make any investments that would result in any direct or indirect beneficial owner of the Company having to include in taxable income any amounts under subpart F of the Code, other than any investments already made as of the date of adoption of these Articles, or being treated as having made an investment (either directly or indirectly) in a PFIC.
- 30.11 Upon request of a Shareholder, the Company shall provide each Shareholder with such information and records as is reasonable to request, and make such of its officers, directors, employees and agents available as may be reasonably requested by such Shareholder, so that such Shareholder can obtain any information that it needs in order to timely make any determination necessary for the filing of any tax return, the payment of any tax, the provision of any tax information to its direct or indirect owners, or the defense of, or participation in, any tax audit or controversy, including, without limitation, such information as is reasonably necessary to determine whether the Shareholder (directly or indirectly) owns an interest in any PFIC or CFC and to determine whether treaty qualification is available with respect to any distribution.

## **OTHER U.S. TAX MATTERS**

### **Tax Elections**

- 30.12 The Company shall timely file, or cause to be timely filed, an election under Code Section 7701 and the Regulations promulgated thereunder for the Company to be treated as a partnership for U.S. federal income tax purposes. The Company intends to operate so that it is treated as a partnership (and not as a publicly traded partnership taxable as a corporation) for U.S. federal income tax purposes. All other tax elections required or permitted to be made under the Code and any applicable state, local or foreign tax law shall be made in the discretion of the Board, with the consent of AKKR, and any decision with respect to the treatment of Company transactions on the Company's U.S. federal, state, local or foreign tax returns shall be made in such manner as may be approved by the Board and AKKR.

## **Tax Returns**

- 30.13 The Board is hereby authorized and empowered to prepare or have prepared, to execute or have executed and to file, on behalf and in the name of the Company, any returns, applications, agreements, elections and other instruments or documents, under applicable tax law, which it deems desirable or advisable, the cost of which shall be borne by the Company. For the avoidance of doubt, C Shares are intended to be treated as "profits interests" under IRS Revenue Procedure 93-27 and IRS Revenue Procedure 2001-43 and the provisions of these Articles shall be interpreted and applied consistently therewith. The liquidation value of such shares shall be zero upon issue. Each Shareholder authorizes the Company, at the election of the Board, to elect to have the "Safe Harbor" described in the proposed Revenue Procedure (the "Revenue Procedure") set forth in Internal Revenue Service Notice 2005-43 (the "Notice") and Proposed Regulations Section 1.83-3(l) apply to any interest in the Company transferred to a service provider by the Company on or after the effective date of such Revenue Procedure in connection with services provided to the Company.

## **Tax Matters Shareholder**

- 30.14 The Company shall appoint and designate a "tax matters partner" of the Company as such term is defined under the Code for U.S. federal income tax purposes (the "Tax Matters Shareholder") and such person shall serve the related role (including the "Partnership Representative") under any comparable provision of state or local or non-U.S. tax law or successor or subsequent related provision of federal law (including the 2015 Bipartisan Budget Act). The Tax Matters Shareholder shall initially be AKKR Investor, and shall be authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by all federal, state, local and non-U.S. taxing authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and other expenses reasonably incurred in connection therewith, provided that the Tax Matters Shareholder shall not settle any such examination or proceeding in a manner that would materially and disproportionately adversely affect the holders of the B Shares and the C Shares without such holders' written consents as compared to the other Shareholders of the Company. Each Shareholder agrees (i) to cooperate with the Company and the Tax Matters Shareholder and to do or refrain from doing any or all things reasonably requested by the Company or the Tax Matters Shareholder with respect to the conduct of such proceedings and (ii) to provide to the Company or the Tax Matters Shareholder any information that could help mitigate any tax due by the Company or the Shareholders. Promptly following the written request of the Tax Matters Shareholder, the Company shall, to the fullest extent permitted by law, reimburse and indemnify the Tax Matters Shareholder for all reasonable expenses, including reasonable legal and accounting fees, claims, liabilities, losses and damages incurred by the Tax Matters Shareholder in connection with any administrative or judicial proceeding (i) with respect to the tax liability of the Company and/or (ii) with respect to the tax liability of the Shareholders in connection with the operations or activities of the Company.

**Global Account Reporting Requirements**

- 30.15 The Board shall use commercially reasonable efforts to (i) take or cause the Company and each of its subsidiaries to take such actions as may be reasonably required to minimize the imposition of withholding tax under FATCA with respect to any payments thereto, and (ii) cause the Company and each of its subsidiaries to comply with applicable Global Account Reporting Requirements. Each Shareholder shall furnish the Company with any information, representations and forms as shall reasonably be requested by the Company solely in order to comply with its obligations pursuant to any Global Account Reporting Requirements. Notwithstanding anything in these Articles to the contrary, (x) the AKKR Investor shall have no liability with respect to any taxes, penalties or interest resulting from the status of any Shareholder other than the AKKR Investor or the failure of any Shareholder other than the AKKR Investor to timely provide any information or otherwise take action required by FATCA or any Global Account Reporting Requirements, (y) any such Shareholder agrees to promptly reimburse the Company for any such taxes, penalties, and interest payable or otherwise borne directly or indirectly by the Company or any of its subsidiaries and (z) the Board shall use commercially reasonable efforts, to the extent reasonably practicable under applicable law and the governing documents of the applicable entity, to allocate the burden of (or any diminution in distributable proceeds resulting from) any such amounts to those Shareholders to whom such amounts are specifically attributable (whether as a result of their status, actions, inactions or otherwise), as determined by the Board in its sole discretion.