

178641

THE COMPANIES ACTS 1985 AND 1989  
PRIVATE COMPANY LIMITED BY SHARES  
MEMORANDUM OF ASSOCIATION  
of  
DIAGNOSTIC POTENTIALS LIMITED

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1. The Company's name is "DIAGNOSTIC POTENTIALS LIMITED".<sup>1</sup>
2. The Company's registered office is to be situated in Scotland.
3. The Company's objects are:-
  - 3.1 (a) to carry on for profit, directly or indirectly, whether by itself or through subsidiary, associated or allied companies or firms in the United Kingdom or elsewhere in all or any of its branches any business, undertaking, project or enterprise of any description whether of a private or public character and all or any trades, processes and activities connected therewith or ancillary or complementary thereto;
  - (b) to promote the interests of any company which is for the time being a subsidiary, holding company or subsidiary of any holding company of the Company or any undertaking which is for the time being a subsidiary undertaking of the Company or of any holding company of the Company in any manner whatever and, in particular, by paying or discharging the liabilities thereof or giving any undertaking to do so, by giving any indemnity or guarantee in respect of such liabilities and by giving any security or charge for any such indemnity or guarantee or for the payment of money or performance of obligations by any such company or undertaking as aforesaid, either with or without consideration and whether or not any benefit flows to the Company other than the promotion of such interests as aforesaid to the intent that the promotion of the interests of any such company or undertaking as aforesaid shall be an object and not a power of the Company;
- 3.2 to manufacture, develop, process, refine, repair, purchase, sell, export, import, deal in or let on hire all kinds of goods, substances, articles, services and material (tangible or intangible) of any kind;



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<sup>1</sup>By Special Resolution dated 26/2/98 the Company changed its name from Pacific Shelf 764 Limited to Diagnostic Potentials Limited

- 3.3 to purchase, feu, take on lease, hire or otherwise acquire, and to sell, let or otherwise dispose of in whole or in part, any lands, interests in lands, buildings, plant and machinery, stock-in-trade, business concerns and any other heritable or moveable, real or personal property and to construct, alter, demolish, manage and maintain any of the foregoing;
- 3.4 to borrow or raise money or accept money on deposit and to secure the payment of money or the observance of obligations in such manner as the Directors shall think fit and for such purposes as to mortgage or otherwise charge in any manner whatsoever permitted in any jurisdiction in which the Company has assets or carries on business and in particular by way of fixed charge or floating charge over the whole or part of the undertaking and all or any of the property and assets (both present and future), and the uncalled capital of the Company and to create, issue and accept securities;
- 3.5 to draw, make, accept, endorse, discount, execute, issue, negotiate and deal in promissory notes, bills of exchange, shipping documents, documentary credits and other negotiable or transferable instruments and to buy, sell and deal in currencies, commodities, options, traded options (financial or commodity) and other financial instruments;
- 3.6 to lend or advance money or give credit to such persons and companies and on such terms (including as to security) as may be thought fit and to deposit money with any bank, deposit taker or other financial organisation;
- 3.7 to guarantee and/or give security for the payment of money by, or the performance of contracts and obligations by, or the payment or repayment of principal, interest, dividends and premiums on, and any other monies due in respect of, securities or obligations by, the Company or by any other person or company, including any company which shall at the time be the holding company of the Company or another subsidiary of such holding company or a subsidiary of the Company and any undertaking which shall at the time be a subsidiary undertaking of the Company or of any holding company of the Company or of any subsidiary of the Company or any holding company of the Company notwithstanding the fact that the Company may not receive any consideration or benefit from entering into any such guarantee or security;
- 3.8 to invest and deal with the funds of the Company not immediately required in such investments or securities and in such manner as may from time to time be determined by the Directors;

- 3.9 to subscribe for, underwrite, purchase or otherwise acquire securities of any company, fund or trust and to deal with and dispose of the same;
- 3.10 to acquire and hold all or any part of the undertaking, property, business or assets of any person or company, to undertake, whether as part of the consideration for such acquisition or otherwise, all or any of the liabilities of such person or company and to deal with and dispose of all or any of the foregoing as the Directors may consider appropriate;
- 3.11 to amalgamate or enter into partnership or joint venture or profit and/or loss sharing arrangement with any person or company;
- 3.12 to make experiments in connection with any business or proposed business of the Company, and to apply for or otherwise acquire and protect, prolong, renew, experiment upon, test and improve in any part of the world any inventions, patents, patent rights, brevets d'invention, trade marks, service marks, trade or brand names, designs, industrial designs, copyright, moral rights, licences, concessions, protections or similar rights which may appear likely to be advantageous or useful to the Company, and to use and manufacture under or grant licences or privileges in respect of the same, and to expend money thereon;
- 3.13 to insure against losses, damages, risks and liabilities of all kinds which may affect the Company and to purchase and maintain for any officer of the Company or the auditors of the Company insurance against any liability as is mentioned in section 310 of the Companies Act 1985;
- 3.14 to issue and allot securities of the Company for cash or in payment or part payment for any property purchased or otherwise acquired by the Company or any services rendered to the Company or as security for any obligation or amount or for any other purpose;
- 3.15 to pay out of funds of the Company all expenses which the Company may lawfully pay of, or incidental to, the formation and registration of or the raising of money for the Company or the issue of any securities, or the application to any recognised investment exchange for listing for, or dealing in, any or all of its securities, including brokerage and commissions for obtaining applications for or taking, placing or underwriting or procuring the underwriting of securities or rights of the Company;
- 3.16 to grant or procure the grant of donations, gratuities, pensions, annuities, allowances, or other benefits, including benefits on death, to any directors, officers or employees or former directors,

officers or employees of the Company or any company which at any time is or was a subsidiary or a holding company of the Company or another subsidiary of a holding company of the Company or otherwise associated with the Company or of any predecessor in business of any of them, and to the relations or dependants of any such persons, and to other persons whose service or services have directly or indirectly been of benefit to the Company or whom the Directors of the Company consider have any moral claim on the Company or to their relations, connections or dependants, and to establish or support any funds, trusts, insurances or schemes (including in particular but without detracting from the generality of the foregoing any trust or scheme relating to the grant of any option over, or other interest in, any share in the capital of the Company or of any other company, or in any debenture or security of any corporation or company (including the Company) and including the provision of financial assistance as described in section 153(4)(b) and (bb) of the Companies Act 1985) or any associations, institutions, clubs or schools, or to do any other thing likely to benefit any such persons or otherwise to advance the interests of such persons or the Company or its members, and to subscribe, guarantee or pay money for any purpose likely, directly or indirectly, to further the interests of such persons or the Company or its members or for any national, charitable, benevolent, educational, social, public, general useful object;

- 3.17 to compensate for loss of office any directors or other officers of the Company and to make payments to any persons whose office, employment or duties may be terminated by virtue of any transaction in which the Company is engaged;
- 3.18 to promote or establish or concur in promoting or establishing any other company for the purpose of purchasing or taking over all or any of the properties, rights and liabilities of the Company or carrying on any business or operations which the Company is authorised to carry on or for any other purpose which may, directly or indirectly, benefit or advance the objects or interests of the Company and to acquire and hold as investments of the Company or otherwise deal with as may be considered fit any securities of any such company;
- 3.19 to sell or otherwise dispose of the whole or any part of the undertaking, property and assets of the Company either together or in portions;
- 3.20 to distribute among the members in specie any property of the Company, or any proceeds of sale or disposal of any property of the Company, but so that no distribution amounting to a reduction of capital be made except with the sanction (if any) for the time

being required by law;

- 3.21 to do all or any of the above things in any part of the world, and either as principals, agents, trustees, contractors or otherwise and either alone or in conjunction with others, and either by or through agents, sub-contractors, trustees, subsidiaries or otherwise;
- 3.22 to carry on any other activity and do anything of any nature which may seem to the Directors capable of being conveniently carried on or done by the Company in connection with the above, or may seem to the Company calculated directly or indirectly to benefit the Company;
- 3.23 to exercise all powers which would be available to the Company under section 3A of the Companies Act 1985 if its object was to carry on business as a general commercial company;
- 3.24 to do all such things as in the opinion of the Directors are or may be incidental or conducive to the above objects or any of them;

And it is hereby declared that for the purposes of this Clause:

- (a) the word "company" in this clause shall (except where referring) to the Company) be deemed to include any person or partnership or other body of persons, whether incorporated or not incorporated, and whether formed, incorporated, resident or domiciled in the United Kingdom or elsewhere;
- (b) "Directors" shall mean the directors of the Company from time to time;
- (c) "associated companies" shall mean any two or more companies if one has control of the other or others, or any person has control of both or all of them;
- (d) "securities" shall include any fully, partly or nil paid or no par value share, stock, unit, debenture or loan stock, deposit receipt, bill, note, warrant, coupon, right to subscribe or convert, or similar right or obligation;
- (e) "and" and "or" shall mean "and/or";
- (f) "other" and "otherwise" shall not be construed eiusdem generis where a wider construction is not possible;
- (g) words importing the singular only shall include the plural and vice versa; words importing any gender shall include the other genders; and words importing natural persons shall include corporations and vice versa; and

- (h) the objects specified in each paragraph of this clause shall, except if at all where otherwise expressed, be in no way limited or restricted by reference to or inference from the terms of any other paragraph or the name of the Company or the nature of any business carried on by the Company or the order in which such objects are stated, but may be carried out in as full and ample a manner and shall be construed in as wide a sense as if each of the said paragraphs defined the objects of a separate and independent company.
- 4. The liability of the members is limited.
  - 5. The Company's share capital is £5 divided into 5,000 Shares of £0.001 each<sup>1</sup>.

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<sup>1</sup>By written resolutions dated 9/7/99 the Company diminished its share capital from £1,000 and sub-divided each ordinary share of £1 into 1,000 ordinary shares of £0.001.

WE, the subscribers to this Memorandum of Association, wish to be formed into a company pursuant to this Memorandum; and we agree to take the number of shares shown opposite our respective names.

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NAMES AND ADDRESSES OF SUBSCRIBERS

NUMBER OF SHARES TAKEN  
BY EACH SUBSCRIBER

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Jordans (Scotland) Limited  
24 Great King Street  
Edinburgh  
EH3 6QN

-1-

Oswalds of Edinburgh Limited  
24 Great King Street  
Edinburgh  
EH3 6QN

-1-

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Total Shares Taken

-2-

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Dated 3rd September 1997

Witness to the above signatures:-

Cathy Balneaves  
24 Great King Street  
Edinburgh EH3 6QN

Company Registration Agent

*Certified a true copy*

*Kerry Kilmer*

FOR AND ON BEHALF OF

ARTICLES OF ASSOCIATION

DIAGNOSTIC POTENTIALS  
LIMITED

OF

DIAGNOSTIC POTENTIALS LIMITED

Adopted by special resolution on 9 July 1999

Interpretation

1. In these Articles the undernoted expressions shall have the meanings set opposite them below:-

“the Act” shall mean the Companies Act 1985 (as amended) including any statutory modification or re-enactment for the time being in force;

“Dunbartonshire Enterprise” shall mean Dunbartonshire Enterprise, a company limited by guarantee and not having a share capital and whose registered office is at Spectrum House, Clydebank Business Park, Clydebank G81 2DR;

“the Dunbartonshire Enterprise Group” shall mean Dunbartonshire Enterprise and any subsidiary or holding company for the time being of Dunbartonshire Enterprise, or any body of persons which shall have acquired the whole or substantially the whole of the undertaking of Dunbartonshire Enterprise or a Dunbartonshire Enterprise Successor and the expression “member of the Dunbartonshire Enterprise Group” shall be construed accordingly;

“Dunbartonshire Enterprise Successor” shall mean any party succeeding in whole or in part to the interest of Dunbartonshire Enterprise;

“Exempt Allotment” shall mean any allotment of shares in the capital of the Company pursuant to the Subscription



## Agreement;

"3i"	shall mean 3i Group plc registered number 1142830 and having its registered office at 91 Waterloo Road, London SE1 8XP;
"3i Group"	shall mean 3i, any subsidiary of 3i and any company of which 3i is a subsidiary and the expression "member of the 3i Group" shall be construed accordingly;
"the Founder Member"	Dr Kerry W Kilborn residing at 53 St Andrew's Drive, Bridge of Weir, Renfrewshire PA11 3HU;
"the Institutional Investors"	shall mean those members of the Scottish Enterprise Group, the SEP Group, the Dunbartonshire Enterprise Group and the 3i Group that are, for the time being, the holders of shares in the capital of the Company;
"the Investors"	shall mean the Institutional Investors and those of the Private Investor Group that are, for the time being, the holders of shares in the capital of the Company;
"an Investor Majority"	shall mean those Investors who are, at the relevant time, the holders of 75% or more of the issued Ordinary Shares in the capital of the Company which are owned by Investors from time to time;
"the Private Investors"	shall mean Hugh Mitchell of 11 Grange View, Linlithgow, West Lothian EH49 7HY and Peter Kevin Moore of 14 Eden Park, Bothwell, Glasgow G71 8SZ;
"the Private Investor Group"	shall mean the Private Investors and the Privileged Relations and Family Trusts of the Private Investors;
"Scottish Enterprise"	shall mean Scottish Enterprise, established by the Enterprise and New Towns (Scotland) Act 1990 and having its principal place of business at 120 Bothwell Street, Glasgow G2 7JP;
"the Scottish Enterprise Group"	shall mean Scottish Enterprise, any subsidiary for the time being of Scottish Enterprise and any company, corporation or other body of persons which shall have acquired the whole or substantially the whole of the undertaking of Scottish Enterprise or any subsidiary of such company, corporation or body and any other body to which the statutory functions of Scottish Enterprise have been delegated or a Scottish Enterprise Successor and the expression "member of the Scottish Enterprise

Group" shall be construed accordingly;

"SEP"

shall mean Scottish Equity Partnership, a limited partnership established under the Limited Partnerships Act 1907 under number 2874 and having its place of registration at 120 Bothwell Street, Glasgow G2 7JP acting through its general partner Scottish Enterprise;

"SEP Group"

shall mean SEP and any general or limited partner for the time being in SEP or any guarantor or indemnifier of the investment of any partner for the time being in SEP and any subsidiary or holding company from time to time of any limited or general partner of SEP and any subsidiary of such holding company and any member of the Scottish Enterprise Group;

"Scottish Enterprise Successor"

shall mean any party succeeding in whole or in part to the interest of Scottish Enterprise in SEP; and

"Subscription Agreement"

shall mean the agreement among the Company, Dr Kerry W Kilborn, the Institutional Investors and the Private Investors executed by the Company of even date with the adoption of these articles of association.

2. The Regulations contained in Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 as amended by the Companies (Tables A to F) (Amendment) Regulations 1985 (such Table being hereinafter called "Table A") shall apply to the Company save in so far as they are excluded or varied hereby and such Regulations (save as so excluded or varied) and the Articles hereinafter contained shall be the regulations of the Company.

### 3. Share Capital

- 3.1 The authorised Share Capital of the Company at the date of adoption of these Articles is £5 divided into 5000 Ordinary Shares of £0.001 each (in these Articles referred to as "Ordinary Shares").

### 3.2 Income

Unless an Investor Majority agree otherwise and so direct in writing, a minimum of 30% of the distributable profits of the Company in respect of each financial year of the Company shall be distributed to the members on the date on which the audited accounts for the year in question are approved by the directors and auditors of the Company, without any recommendation by the directors or resolution of the Company in general meeting being required and Regulations 102 to 108 of Table A shall be modified accordingly.

4. Transactions requiring authority of a Special Resolution

- 4.1 The Company shall not without either the prior authority of a Special Resolution or the consent in writing of the holders of 75% of the issued shares of the Company:-
- 4.1.1 grant any option or other right to subscribe for shares or alter or increase or reduce the authorised or issued capital of the Company, or vary the rights attached to any of the shares for the time being in the capital of the Company (other than in the case of an Exempt Allotment); or
- 4.1.2 dispose of the undertaking of the Company or any substantial part thereof; or
- 4.1.3 dispose of any share in the capital of any subsidiary of the Company; or
- 4.1.4 alter the restrictions on the powers of the directors of the Company and its subsidiaries to borrow, give guarantees or create charges; or
- 4.1.5 acquire any interest in any share in the share capital of any company; or
- 4.1.6 apply by way of capitalisation any sum in or towards paying up any share or loan capital of the Company; or
- 4.1.7 other than in the case of insolvency, call a meeting of the Company for the purpose of considering a resolution for the winding up of the Company; or
- 4.1.8 call a meeting of the Company to approve the purchase or redemption by the Company of any of the Company's shares; or
- 4.1.9 call a meeting of the Company for the purpose of considering a resolution for amending the memorandum and articles of association of the Company; or
- 4.1.10 change the accounting reference date of the Company; or
- 4.1.11 enter into new service contracts or contracts for services with directors or their connected persons or material alterations to such existing contracts; or
- 4.1.12 enter into any dealings which are not for full value and on an arms length basis.
- 4.2 The Company shall (in so far as it is able to do so by exercising votes at General Meetings) procure that any company which is for the time being a subsidiary of the Company shall not without either the prior authority of a Special Resolution or the consent in writing of the holders of 75% of the issued shares of the Company do anything which were such subsidiary the Company would require such authority or consent in terms of article 4.1.

5. Issue of further shares

- 5.1 Notwithstanding any other provisions of these Articles, in the event of an allotment of any shares in the capital of the Company other than an Exempt Allotment, the directors shall be bound to offer to each member for the time being holding shares in the capital of the Company such a proportion of any shares forming part of the equity share capital of the Company which the directors determine to issue as the aggregate nominal value of shares in the equity share capital of the Company for the time being held by such member bears to the total nominal value of the issued equity share capital of the Company immediately prior to the issue of the shares. Any shares issued to a member pursuant to such offer shall be issued upon terms and conditions that are no less beneficial as to payment and otherwise than those made available to other shareholders or such other terms as such member and the Company shall agree.

6. Transfers of Shares held by members of the Scottish Enterprise Group, the SEP Group, the 3i Group and the Dunbartonshire Enterprise Group

- 6.1 Notwithstanding any other provisions of these Articles a transfer of shares in the Company held by any member of the Scottish Enterprise Group may be made between the member of the Scottish Enterprise Group holding such shares and any other member of the Scottish Enterprise Group without restriction as to price or otherwise and the directors shall register any such transfer.
- 6.2 Notwithstanding any other provisions of these Articles a transfer of shares in the Company held by any member of the Scottish Enterprise Group may be made between the member of the Scottish Enterprise Group holding such shares and any member of the SEP Group without restriction as to price or otherwise and the directors shall register any such transfer.
- 6.3 Notwithstanding any other provisions of these Articles a transfer of shares in the Company held by any member of the SEP Group may be made between the member of the SEP Group holding such shares and any other member of the SEP Group without restriction as to price or otherwise and the directors shall register any such transfer.
- 6.4 Notwithstanding any other provisions of these Articles a transfer of shares in the Company held by any member of the 3i Group may be made between the member of the 3i Group holding such shares and any other member of the 3i Group without restriction as to price or otherwise and the directors shall register any such transfer.
- 6.5 Notwithstanding any other provisions of these Articles a transfer of shares in the Company held by any member of the Dunbartonshire Enterprise Group may be made between the member of the Dunbartonshire Enterprise Group holding such shares and any other member of the Dunbartonshire Enterprise Group without restriction as to price or otherwise and the directors shall register any such transfer.
- 6.6 Without prejudice to the foregoing provisions, a transfer of all or any of the shares in the Company held by any member of the SEP Group may be made between the member in the SEP Group holding such shares (hereinafter called "the SEP Member") and any person, company, corporation or other body whatsoever who is an authorised person in terms of the Financial Services Act 1986 (hereinafter referred to as an "Authorised Person")

without restriction as to price or otherwise and any such transfer shall be registered by the directors provided the following provisions have first been complied with:-

- 6.6.1 Following an offer for any or all the shares held by any SEP Member by an Authorised Person the SEP Member who desires to transfer such shares (hereinafter called "the SEP Vendor") shall give to the Company notice in writing of such offer and the desire to transfer such shares (hereinafter called a "SEP Transfer Notice"). Subject as hereinafter mentioned a SEP Transfer Notice shall constitute the Company the SEP Vendor's agent for the sale of the shares specified therein (hereinafter called "the SEP Sale Shares") to all the holders of Ordinary Shares at the Sale Price. The Sale Price shall be the price which the SEP Vendor shall have been offered for the SEP Sale Shares by such Authorised Person, immediately prior to the giving of the SEP Transfer Notice.
- 6.6.2 The Company shall forthwith offer the SEP Sale Shares to all holders of Ordinary Shares (other than the SEP Vendor) pro rata as nearly as may be in proportion to the existing numbers of Ordinary Shares held by such members giving details of the number and the Sale Price of such SEP Sale Shares. The Company shall invite each such member as aforesaid to state in writing within seven days from the date of the notice whether he is willing to purchase any of the SEP Sale Shares so offered to him and if so the maximum number thereof which he is willing to purchase. If at the expiration of the said period of seven days there are any SEP Sale Shares offered which any of the members hereinbefore mentioned have not so stated their willingness to purchase the Company shall offer such shares to such members as have stated in writing their willingness to purchase all the shares previously offered to them. Such remaining shares shall be offered pro rata as nearly as may be in proportion to existing numbers of Ordinary Shares then held by such members which offer shall remain open for a further period of seven days.
- 6.6.3 If the Company shall pursuant to the above provisions and/or the following provisions of this Article find a member or members of the Company willing to purchase any or all of the SEP Sale Shares the SEP Vendor shall be bound upon receipt of the Sale Price to transfer such of the SEP Sale Shares as have been sold to such member or members. If the SEP Vendor shall make default in transferring such SEP Sale Shares the Company shall if so required by the persons willing to purchase such SEP Sale Shares receive and give good discharge for the purchase money on behalf of the SEP Vendor and shall authorise some person to execute transfers of such SEP Sale Shares in favour of the purchasers and shall enter the names of the purchasers in the Register of Members as the holders of such of the SEP Sale Shares as shall have been transferred to them as aforesaid.
- 6.6.4 If the directors shall not have found a member or members of the Company willing to purchase any or all of the SEP Sale Shares or the SEP Vendor shall not have received the Sale Price within 28 days of the date of the Transfer Notice the SEP Vendor shall be at liberty to sell and transfer such of the SEP Sale Shares, as shall not have been sold or paid for pursuant to the provisions of this Article 6.8 to such Authorised Person at the Sale Price.

## 7. Transfer of Shares

The directors shall refuse to register any transfer of shares made in contravention of the provisions of these Articles but (subject to Regulation 24 of Table A) shall not otherwise be entitled to refuse to register (and shall register) any transfer of shares. For the purpose of ensuring that a particular transfer of shares is permitted under the provisions of these Articles, the directors may request the transferor, or the person named as the transferee in

any transfer lodged for registration, to furnish the Company with such information and evidence as the directors may reasonably think necessary or relevant. Failing such information or evidence being furnished to the satisfaction of the directors within a period of 28 days after such request the directors shall be entitled to refuse to register the transfer in question.

8. For the purposes of these Articles:

8.1 "Privileged Relation" in relation to a member means the spouse or widow or widower of the member and the member's children and grandchildren (including step and adopted children and their issue) and step and adopted children of the member's children.

8.2 "Family Trust" in relation to any member means a trust which does not permit any of the settled property or the income therefrom to be applied otherwise than for the benefit of that member and/or a Privileged Relation of that member and under which no power of control is capable of being exercised over the votes of any shares which are the subject of the trust by any person other than the trustees or such member or his Privileged Relations;

8.3 "settlor" includes a testator or an intestate in relation to a Family Trust arising respectively under a testamentary disposition or an intestacy of a deceased member.

9.1 Notwithstanding any other provision in these Articles any member being an individual person, may at any time transfer (or by will bequeath or otherwise dispose of on death) all or any shares held by him to a Privileged Relation, or to trustees to be held upon a Family Trust of which he is the settlor provided that any transfer of shares to trustees to be held upon a Family Trust made during the lifetime of such member may only be made with the consent in writing of an Investor Majority.

9.2 Where the consent of an Investor Majority is requested to a transfer to a Family Trust such consent shall only be given when the holders of such shares are satisfied:-

9.2.1 with the terms of the trust instrument and in particular with the powers of the trustees;

9.2.2 with the identity of the proposed trustees;

9.2.3 that the proposed transfer will not result in 50% or more in the aggregate of the Company's equity share capital being held by trustees of that and any other trusts; and

9.2.4 that no costs incurred in connection with the setting up or administration of the Family Trust in question are to be paid by the Company.

9.3 Where any shares are held by trustees upon a Family Trust:-

9.3.1 on any change of trustees such shares may be transferred to the new trustees of that Family Trust;

9.3.2 such shares may be transferred at any time to the settlor or to another Family Trust of the settlor or to any Privileged Relation of the settlor; and

- 9.3.3 if and whenever any such shares cease to be held upon a Family Trust (otherwise than in consequence of a transfer to the settlor or to another Family Trust of the settlor or to any Privileged Relation of the settlor) a Transfer Notice (as hereinafter defined) shall be deemed to have been given in respect of the relevant shares (as hereinafter defined) and such shares may not otherwise be transferred);
- 9.3.4 for the purposes of this Article the expression "relevant shares" means and includes the shares originally transferred to the trustees and any additional shares issued or transferred to the trustees by virtue of the holding of the relevant shares or any of them.
- 9.3.5 Subject to the provisions of Article 9.3.7, if any person who is an employee ceases to be an employee or (save in respect of a director appointed by any of the Investors) a director of the Company or its subsidiaries by reason of resignation or removal from office and/or dismissal which is not wrongful (such ceasing employee or director being an "Employee Member") then:
- 9.3.6 a Transfer Notice (as hereinafter defined) shall be deemed to have been served forthwith upon such cessation in respect of all shares held by:-
- (i) the relevant Employee Member immediately before such cessation; and
  - (ii) the Employee Member's Privileged Relations and/or Family Trust immediately before such cessation (other than shares which the directors are satisfied were not acquired by such holders either (i) directly or indirectly from the Employee Member (ii) by reason of their connection with the Employee Member, and the decision of the board of directors in this respect will be final).
- 9.3.7 Articles 9.3.5 and 9.3.6 shall not apply to the Founder Member.
- 9.3.8 If the Founder Member ceases to be an employee or director of the Company by reason of resignation or removal from office and/or dismissal which is not wrongful then:-
- 9.3.8.1 a Transfer Notice (as hereinafter defined) shall be deemed to have been served forthwith upon such cessation in respect of 80% (by nominal value) of the shares held by:-
- 9.3.8.1.1 the Founder Member immediately before such cessation; and
  - 9.3.8.1.2 the Founder Member's Privileged Relations and/or Family Trust immediately before such cessation (other than shares which the directors are satisfied were not acquired by such holders either (i) directly or indirectly from the Founder Member (ii) by reason of their connection with the Founder Member, and the decision of the board of directors in this respect shall be final).
- 10.1 Save as otherwise provided in these Articles every member who desires to transfer any shares (hereinafter called "the Vendor") shall give to the Company notice in writing of such desire (hereinafter called a "Transfer Notice"). Subject as hereinafter mentioned a Transfer Notice shall constitute the Company the Vendor's agent for the sale of the shares specified therein (hereinafter called "the Sale Shares") in one or more lots at the discretion of the directors to all the holders of equity shares in the Company other than the Vendor at

the Sale Price. The Sale Price shall be the price agreed by the Vendor and the directors or if the Vendor and the directors are unable to agree a price within 28 days of the Transfer Notice being given or if the Transfer Notice is a deemed Transfer Notice the price which a chartered accountant (acting as an expert and not as an arbiter) nominated by agreement between the Vendor and the Company or, in default of such agreement, by the President for the time being of the Institute of Chartered Accountants of Scotland shall by writing under his hand certify to be in his opinion a fair value thereof on a going concern basis as between a willing seller and a willing buyer ignoring any reduction in value which may be ascribed to the Sale Shares by virtue of the fact that they represent a minority interest and on the assumption that the Sale Shares are capable of transfer without restriction. Save for shares sold pursuant to a deemed Transfer Notice the Transfer Notice may contain a provision (a Total Transfer Provision) that unless all the shares comprised therein are sold by the Company pursuant to this Article none shall be sold and any such provision shall be binding on the Company.

- 10.2 If a chartered accountant is asked to certify the fair value as aforesaid his certificate shall be delivered to the Company and as soon as the Company receives the certificate it shall furnish a certified copy thereof to the Vendor and save for shares sold pursuant to a deemed Transfer Notice the Vendor shall be entitled by notice in writing given to the Company within ten days of the service upon him of the certified copy to cancel the Company's authority to sell the Sale Shares. The cost of obtaining the certificate shall be borne by the Company unless the Vendor shall give notice of cancellation as aforesaid in which case the Vendor shall bear the cost.
- 10.3 Upon the price being fixed as aforesaid and provided the Vendor shall not give a valid notice of cancellation the Company shall forthwith offer the Sale Shares to all holders of equity shares (other than the Vendor) pro rata as nearly as may be in proportion to the existing numbers of equity shares held by such members giving details of the number and the Sale Price of such Sale Shares. The Company shall invite each such member as aforesaid to state in writing within twenty-one days from the date of the notice whether he is willing to purchase any of the Sale Shares so offered to him and if so the maximum thereof which he is willing to purchase. If at the expiration of the said period of twenty-one days there are any Sale Shares offered which any of the members hereinbefore mentioned have not so stated their willingness to purchase the Company shall offer such shares to such members as have stated in writing their willingness to purchase all the shares previously offered to them. Such remaining shares shall be offered pro rata as nearly as may be in proportion to existing numbers of equity shares then held by such members which offer shall remain open for a further period of twenty-one days.
- 10.4 If the Company shall pursuant to the above provisions of this Article find a member or members of the Company willing to purchase all or (in the event of a Transfer Notice which does not contain a Total Transfer Provision) any of the Sale Shares the Vendor shall be bound upon receipt of the Sale Price to transfer the Sale Shares (or such of the same for which the Company shall have found a purchaser or purchasers) to such persons. If the Vendor shall make default in so doing the Company shall if so required by the person or persons willing to purchase such Sale Shares receive and give a good discharge for the purchase money on behalf of the Vendor and shall authorise some person to execute transfers of the Sale Shares in favour of the purchasers and shall enter the names of the purchasers in the Register of Members as the holders of such of the Sale Shares as shall have been transferred to them as aforesaid.
- 10.5 If the directors shall not have found a member or members of the Company willing to purchase all or any of the Sale Shares pursuant to the foregoing provisions of this Article



the Vendor shall at any time within six months after the final offer by the Company to its members be at liberty to sell and transfer such of the Sale Shares as have not been so sold to any person at a price being no less than the Sale Price. If the Sale Shares were the subject of a Total Transfer Provision, such a sale may only compromise all the Sale Shares and not part only.

10.6 If a member being a company ceases to be within the control (as such term is defined by Section 840 of the Income and Corporation Taxes Act 1988) of the person(s) who controlled such company on the date on which it became a member of the Company or on the date of adoption of these Articles (whichever shall be the later) it shall be deemed to have immediately given a Transfer Notice in respect of all the shares as shall then be registered in its name; provided that this Sub-Article shall have no application to SEP or to any member of the SEP Group or to any member of the 3i Group.

10.7 A Transfer Notice shall be deemed to have been given to the Company by any member who purports to transfer any shares other than in accordance with these Articles without giving a Transfer Notice to the Company and, in those circumstances, the deemed Transfer Notice shall:-

10.7.1 be deemed to apply to the number and class of shares purported to have been transferred;

10.7.2 entitle the Company to require delivery to it of the certificate for the shares purported to have been transferred

and where the context admits reference in these Articles to a Transfer Notice shall include a deemed Transfer Notice and references in these Articles to a Vendor shall include a member deemed to have served a Transfer Notice.

10.8 The foregoing provisions of this Article shall not apply to a transfer if the holders of 75% of the equity share capital of the Company so direct in writing and the directors shall be obliged to register any such transfer.

#### 11. Limitation on Transfer

11.1 Notwithstanding any other provision of these Articles of Association to the contrary, no sale or transfer of any shares in the share capital of the Company shall be made or registered without the previous written consent of an Investor Majority if as a result of such sale or transfer and registration thereof a Controlling Interest (as hereinafter defined) would be obtained in the Company:-

11.1.1 by a company (other than a company to which the immediately following sub-article applies) or by a person or persons (other than a company) who are not Original Members (as hereinafter defined) unless the proposed transferee or transferees or his or their nominees are independent third parties acting in good faith and has or have offered to purchase all the shares in the capital of the Company at the Specified Price (as hereinafter defined); or

11.1.2 by a company in which one or more of the members of the Company or persons acting in concert (which expression shall have the meaning ascribed to it in the July 1993 edition of

the City Code on Takeovers and Mergers) with any member of the Company has a Controlling Interest.

11.2 For the purpose of this article:-

11.2.1 the expression "a Controlling Interest" shall mean an interest in shares (as defined in Schedule 13 Part 1 and section 324 of the Act) in a company conferring in the aggregate 50% or more of the total voting rights conferred by all the issued shares in that company;

11.2.2 the expression "Original Members" shall mean persons who were members of the Company on the date of the adoption of these Articles and Family Trusts and Privileged Relations of such members;

11.2.3 the expressions "transfer" and "transferee" shall include respectively the renunciation of a renounceable letter of allotment and the renouncee under any such letter of allotment; and

11.2.4 the expression "the Specified Price" shall mean at the option of an Investor Majority either:-

11.2.4.1 a price per share of £0.10 save in the case of an offer made pursuant to the provisions of this Article 11 to any member of the Private Investor Group within two years of the date of adoption of these Articles, in which case the price per share shall be £ 0.10; or

11.2.4.2 the consideration (in cash or otherwise) per share equal to that offered or paid or payable by the proposed transferee or transferees or his or their nominees for any other shares in the Company plus the relevant proportion of any other consideration in cash or otherwise) received or receivable by the holders of such other shares which having regard to the substance of the transaction as a whole can reasonably be regarded as an addition to the price paid or payable for such other shares provided that if any part of the price per share is payable otherwise than by cash any Investor may at his option elect to take a price per share of such cash sum as may be agreed by them having regard to the substance of the transaction as a whole;

and in the event of disagreement the calculation of the Specified Price shall be referred to an umpire (acting as an expert and not as an arbiter) nominated by the parties concerned (or in the event of disagreement as to nomination, appointed by the President for the time being of the Institute of Chartered Accountants of Scotland) whose decision shall be final and binding.

11.3 All other regulations of the Company relating to the transfer of shares and the right to registration of transfers shall be read subject to the provisions of this Article.

## 12. General Meetings and Resolutions

12.1 A notice convening a General Meeting shall be required to specify the general nature of the business to be transacted only in the case of special business and Regulation 38 in Table A shall be modified accordingly. All business shall be deemed special that is transacted at an Extraordinary General Meeting, and also all that is transacted at an Annual General Meeting, with the exception of declaring a dividend, the consideration of the

accounts, balance sheets and the reports of the directors and Auditors, and the appointment/reappointment of, and the fixing of the remuneration of, the Auditors.

- 12.2 Every notice convening a General Meeting shall comply with the provisions of Section 372(3) of the Act as to giving information to members in regard to their right to appoint proxies; and notices of and other communications relating to any General Meeting which any member is entitled to receive shall be sent to the directors and to the Auditors for the time being of the Company.
- 12.3 Regulation 40 in Table A shall be read and construed as if the words "at the time when the Meeting proceeds to business" were added at the end of the first sentence.
- 12.4 If a quorum is not present within half an hour from the time appointed for a General Meeting the General Meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the directors may determine; and if at the adjourned General Meeting a quorum is not present within half an hour from the time appointed therefor such adjourned General Meeting shall be dissolved.
- 12.5 Clause 41 in Table A shall not apply to the Company.

13. Lien

The lien conferred by Regulation 8 in Table A shall attach also to fully paid-up shares, and the Company shall also have a first and paramount lien on all shares, whether fully paid or not, standing registered in the name of any person indebted or under liability to the Company, whether he shall be the sole registered holder thereof or shall be one of two or more joint holders, for all moneys presently payable by him or his estate to the Company. Regulation 8 in Table A shall be modified accordingly.

14. Calls on Shares

The liability of any member in default in respect of a call shall be increased by addition at the end of the first sentence of Regulation 18 in Table A of the words "and all expenses that may have been incurred by the Company by reason of such non-payment".

15. Directors

- 15.1 The directors shall not be required to retire by rotation and Regulations 73 to 80 (inclusive) in Table A shall not apply to the Company.
- 15.2 Unless otherwise determined by Ordinary Resolution in General Meeting of the Company the number of directors (other than alternate directors) shall not be subject to any maximum and the minimum number of directors shall be two.
- 15.3 No person shall be appointed a director at any General Meeting unless either:-
- 15.3.1 he is recommended by the directors; or

- 15.3.2 not less than fourteen nor more than thirty-five clear days before the date appointed for the General meeting, notice executed by a member qualified to vote at the General Meeting has been given to the Company of the intention to propose that person for appointment, together with notice executed by that person of his willingness to be appointed.
- 15.4 Subject to paragraph 15.3 above, the Company may by Ordinary Resolution in General Meeting appoint any person who is willing to act to be a director, either to fill a vacancy or as an additional director.
- 15.4.1 Notwithstanding any limitation on the number of directors imposed by these Articles from time to time so long as any member of the SEP Group or the 3i Group is the holder of any share in the capital of the Company, an Investor Majority shall following consultation with the board be entitled to appoint as a director of the Company any suitably qualified and experienced person and to remove from office any person so appointed and to appoint another suitably qualified and experienced person in his place. Any appointment or removal in terms of this paragraph shall be effected by notice in writing signed by an Investor Majority and delivered to the registered office of the Company. The director appointed in terms of this Article shall not be required to hold any share qualification nor shall he be subject to retirement by rotation and the remuneration to be paid to him shall be payable by the Company and shall be such reasonable sum as shall for the time being be agreed for that purpose between the Company and him or failing such agreement such reasonable sum as shall be fixed by an Investor Majority. Upon request by an Investor Majority the Company shall also procure that a director appointed in terms of this paragraph be appointed a director to any subsidiary of the Company. At the request of an Investor Majority any director appointed in terms of this paragraph shall act as Chairman of the board of directors.
- 15.5 Notwithstanding any limitation on the number of directors imposed by these Articles, from time to time, a Private Investor holding any share in the capital of the Company, shall be entitled to appoint as a director of the Company any suitably qualified and experienced person and to remove from office any person so appointed and to appoint another suitably qualified and experienced person in his place. Any appointment and removal in terms of this Article shall be effected by notice in writing signed by the Private Investor concerned and delivered to the registered office of the Company. The directors appointed in terms of this article shall not be required to hold any share qualification nor shall they be subject to retirement by rotation and the remuneration to be paid to them shall be payable by the Company and shall be such reasonable sum as shall for the time being be agreed for that purpose between the Company and him or failing such agreement such reasonable sum as shall be fixed by the Private Investor who has appointed such director. Upon request by the Private Investor concerned, the Company shall also procure that a director appointed in terms of this Article shall be appointed a director of any subsidiary of the Company.
16. Alternate Directors
- 16.1 An alternate director shall not be entitled as such to receive any remuneration from the Company, save that he may be paid by the Company such part (if any) of the remuneration otherwise payable to his appointor as such appointor may by notice in writing to the Company from time to time direct, and the first sentence of Regulation 66 in Table A shall be modified accordingly.
- 16.2 A director, or any such other person as is mentioned in Regulation 65 in Table A, may act as an alternate director to represent more than one director, and an alternate director shall

be entitled at any meeting of the directors or of any committee of the directors to one vote for every director whom he represents in addition to his own vote (if any) as a director, but he shall count as only one for the purpose of determining whether a quorum is present.

17. Disqualification of Directors

The office of a director shall be vacated if he becomes incapable by reason of illness or injury of managing and administering his property and affairs, and Regulation 81 in Table A shall be modified accordingly and in this event if the vacating director is an appointee under Article 15.4.1 or 15.5 thereof, the appointer shall not again appoint the same appointee unless the vacating director recovers from such illness, injury or inability.

18. Proceedings of Directors

18.1 A director may vote, at any meeting of the directors or of any committee of the directors, on any resolution, notwithstanding that it in any way concerns or relates to a matter in which he has, directly or indirectly, any kind of interest whatsoever, and if he shall vote on any such resolution as aforesaid his vote shall be counted; and in relation to any such resolution as aforesaid he shall (whether or not he shall vote on the same) be taken into account in calculating the quorum present at the meeting.

18.2 Regulations 94 to 97 (inclusive) in Table A shall not apply to the Company. The third sentence of Regulation 88 shall not apply to the Company and it shall be necessary to give notice of a meeting to a director who is absent from the United Kingdom.

18.3 Meetings of the directors may be held by conference telephone or similar equipment, so long as all the participants can hear and speak to each other. Such meetings shall be as effective as if the directors had met in person.

18.4 The quorum for a meeting of the directors is two, one of whom must be the chairman of the Company for the time being.

18.5 The fifth sentence of Regulation 88 shall not apply to the Company.

19. Borrowing Powers

Subject as hereinafter provided the directors may exercise all the powers of the Company (whether express or implied):-

19.1 of borrowing or securing the payment of money;

19.2 of guaranteeing the payment of money and the fulfilment of obligations and the performance of contracts; and

19.3 of mortgaging or charging the property assets and uncalled capital of the Company and (subject to Section 80 of the Act) issuing debentures, debenture stock and other securities whether outright or as security for any debt liability or obligation of the Company or of any third party;

## PROVIDED THAT:

- 19.4 the directors of the Company shall procure that the aggregate amounts for the time being remaining undischarged by virtue of any of the foregoing operations and by virtue of any like operations by any subsidiary of the Company (including any liability (whether ascertained or contingent) under any guarantee for the time being in force and amounts due under any hire purchase, credit sale, conditional sale or leasing agreements (other than leases of real or heritable property) (and excluding inter-group loans, interest-group guarantees, inter-group mortgages and inter-group charges) shall not without the previous written consent of an Investor Majority exceed £100,000;
- 19.5 no such sanction shall be required to the borrowing of any sum of money intended to be applied in the repayment (with or without premium) of any moneys then already borrowed and outstanding, notwithstanding that the same may result in such limit being exceeded;
- 19.6 no lender or other person dealing with the Company shall be concerned to see or enquire whether the limit imposed by this Article is observed and no debt or liability incurred in excess of such limit shall be invalid and no security given for the same shall be invalid or ineffectual except in the case of express notice to the lender or recipient of the security or person to whom the liability is incurred at the time when the debt or liability was incurred or the security given that the limit hereby imposed has been or was thereby exceeded;
- 19.7 except with the previous written consent of the holders of an Investor Majority no mortgage or charge shall be created on any part of the undertaking, property or assets of the Company or any subsidiary of the Company, except for the purpose of securing moneys borrowed from any member of the Scottish Enterprise Group, the SEP Group, the 3i Group or the Dunbartonshire Enterprise Group with interest thereon and the Company's bankers with interest and charges thereon.
20. The Seal
- Regulation 6 of Table A shall be modified so as to remove the reference to the Company seal and Regulation 101 of Table A shall be modified by the insertion of the words "if the Company has one" after the words "The seal" at the beginning of that clause.
21. Indemnity
22. Every director or other officer of the Company shall be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto, including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in connection with any application under Section 144 or Section 727 of the Act in which relief is granted to him by the Court, and no director or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his office or in relation thereto. But this Article shall only have effect in so far as its provisions are not avoided by Section 310 of the Act.
23. Regulation 118 in Table A shall not apply to the Company.

24. Notwithstanding any other provision of these Articles of Association (including, without limitation, Article 18.4), the chairman for the time being of the Company shall not be required to attend the meeting of the directors on 9 July 1999 and that meeting shall be quorate notwithstanding the fact that the chairman is not in attendance.