

**WRITTEN RESOLUTIONS OF LOCH DUART LIMITED (Company)**

**Registered Number SC0195923**

Below is a copy of resolutions of the Company (**Resolutions**) The Resolutions were passed as written resolutions in accordance with section 296 of the Companies Act 2006 (**Act**) on 23 January 2008 which was prior to the expiry of the period referred to in section 297(1) of the Act

**SPECIAL RESOLUTIONS**

- 1 THAT each of the issued A Ordinary shares of £1 each and each of the issued ordinary shares of £1 each in the capital of the Company which are registered in the names of Susan Caroline Claire Balfour Alan John Balfour, Nicholas Hebden Joy, Andrew John Collingwood Binq and which are to be acquired by Pacific Sequoia Holdings, LLC, the Skoll Foundation and the Skoll Fund (being in aggregate 21,638 A Ordinary shares of £1 each and 41,382 ordinary shares of £1 each) be converted into and redesignated effective only as of completion of such acquisition as a Preference Share of £1 in the capital of the Company having the rights and being subject to the restrictions set out in the new articles of association of the Company to be adopted pursuant to Special Resolution number 4
- 2 THAT each of the issued A Ordinary shares of £1 each not converted and redesignated pursuant to Special Resolution number 1 be converted into and redesignated as an ordinary share of £1 ranking *pari passu* with the existing ordinary shares of £1 each in the capital of the Company
- 3 THAT the authorised share capital of the Company be increased from £166,666 to £175,438 by the creation of an additional 8,772 new ordinary shares of £1 each in the capital of the Company, ranking *pari passu* in all respects with the existing ordinary shares of £1 each in the capital of the Company in issue
- 4 THAT the regulations contained in the printed document annexed hereto be adopted as the articles of association of the Company in substitution for and to the exclusion of all existing articles of association of the Company

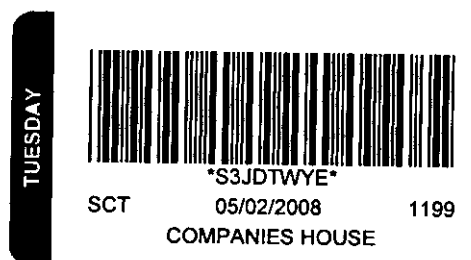


Director

Print Name

ALAN BALFOUR.

Date 31-01-2008



THE COMPANIES ACTS 1985 TO 1989

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

LOCH DUART LIMITED

INTERPRETATION

1 In these Articles

**"Accounts"** means the audited balance sheet and profit and loss account of the Company for each financial year, to be prepared under the historical cost convention and in accordance with generally accepted accounting principles

**"Act"** means the Companies Act 1985

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

**"Affiliate"** means, with respect to any person, any other person that, directly or indirectly, Controls, is Controlled by or is under common Control with such specified person, but on the basis that, in respect of the Investors, the expressions **Affiliate** and **Affiliates** shall not be taken to include the Company or any member of the Group

**"Aggregate Consideration"** shall be as defined in Article 7 8 2

**"Applicable Shares"** shall mean any Ordinary Share of the Company, whether now authorised or not, and rights, options or warrants to purchase such Ordinary Shares, and securities of any type whatsoever that are, or may become, convertible or exchangeable into such Ordinary Share, provided however, that the term "Applicable Shares" does not include

- (a) any Ordinary Shares into which the Preference Shares convert,
- (b) any securities in the capital of the Company to be issued or allotted pursuant to the Share Option Scheme or pursuant to any other employee or management share option scheme or other bonus or incentive scheme,

- (c) any securities issued by the Company in connection with any share consolidation, sub division, bonus issue or any capitalisation of profits or reserves,
- (d) any securities issued by the Company on a Qualified Quotation, or
- (e) any securities issued pursuant to the acquisition of another business, company or undertaking by the Company (or any of its subsidiaries (as defined in section 736 and 736A of the Act) by purchase of all or substantially all of the assets, or other reorganisation in which the Company (or its subsidiaries) acquires, in a single transaction or a series of related transactions, all or substantially all of the assets of such other entity or fifty percent (50%) or more of the voting power of such other entity or fifty percent (50%) or more of the equity ownership of such other entity provided that any such acquisition shall have been approved in writing by the Investor

**"Articles"** means the articles of the Company

**"Asset Sale"** means the disposal by the Company of all, or a substantial part of, its business and assets

**"Associated Company"** means in relation to a company, any holding company or subsidiary of that company or any subsidiary of any such holding company, and **"holding company"** and **"subsidiary"** shall have the same meanings as in section 736 of the Act

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

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

**"Board"** means the board of directors of the Company (or any duly authorised committee thereof) from time to time

**"Business Day"** means any day other than a Saturday, Sunday or English, Scottish or American bank or public holiday

**"Clear Days"** in relation to the period of a notice means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect

**"Co Investment Scheme"** shall be as defined in Article 29 1 7 4

**"Competitive Transfer"** shall be as defined in Article 28 2

**"Control"** means (1) the ownership of or the ability to direct (a) in the case of a corporation or body corporate (i) a majority of the issued shares entitled to vote for election of directors (or analogous persons) of such body corporate, (ii) the appointment or removal of directors having a majority of the voting rights exercisable at meetings of the board of directors (or analogous body or bodies, including, without limiting the generality of the foregoing, management boards and supervisory boards) of such body corporate on all or substantially all matters, or (iii) a majority of the voting rights exercisable at general meetings of the members of such body corporate on all, or substantially all, matters, or (b) in the case of any other person, a majority of the voting rights in such person, or (2) in the case of a corporation or body corporate or any other person, the direct or indirect possession of the power to direct or cause the direction of the management and policies of the same (whether through the ownership of voting securities, by contract or howsoever otherwise) and **Controlled** shall be construed accordingly

**"Conversion Rights"** shall be as defined in Article 7

**"Convertible Securities"** shall be as defined in Article 7 8 3

**"Deemed Issue Price"** means £60 18 per Preference Share (as such price may be adjusted to appropriately account for any share consolidation, subdivision, bonus issue or change in capitalisation)

**"Defaulting Shareholder"** shall be as defined in Article 28 3

**"Effective Price"** shall be as defined in Article 7 8 4

**"Employee Trust"** means any trust established to enable or facilitate the holding of Shares by, or for the benefit of, bona fide employees of any Group Company

**"executed"** means any mode of execution

**"Existing Family Trust"** means Rachel Barstow and Turcan Connell Trustees Ltd acting as Trustees of J C and Doctor E J Balfour's Marriage Contract Trust

**"Extra Shares"** shall be as defined in Article 30 4

**"Family Member"** means, in relation to a Shareholder, any one or more of that person's spouse or children or grand children (including step children and step grand-children)

**"Family Trust"** means, in relation to a Shareholder, a trust or settlement set up wholly for the benefit of that person and/or that person's Family Members

**"Financial Services Authority"** means the Financial Services Authority or any body with responsibility under legislation replacing the FSMA for carrying out regulatory actions

**"First Dilutive Issuance"** shall be as defined in Article 7 8 5

**"FSMA"** means the Financial Services and Markets Act 2000

**"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)(d) of the Financial Services and Markets Act 2000 (Financial Promotion Order) 2001 (the **FPO**)), any high net worth company or unincorporated association or high value trust (as defined in article 49(2) (a) to (c) of the FPO), any pension fund or insurance company or any person who is an authorised person under the FSMA

**"Fund Participant"** shall be as defined in Article 28 4

**"Group"** means the Company and any company which is a subsidiary undertaking of the Company from time to time and references to **Group Company** and **members of the Group** shall be construed accordingly

**"the holder"** in relation to Shares means the member whose name is entered in the register of members as the holder of the Shares

**"Investors"** means each of Pacific Sequoia and the Skoll Funds and any other person who has at any time in the future acquired Preference Shares in accordance with Article 29 or 30,

**"Investor Associate"** means, in relation to an Investor

- (a) each member of that Investor's Investor Group (other than the Investor itself),
- (b) any general partner, limited partner or member of that Investor or any member of its Investor Group,
- (c) any member of the same group of companies as any operator or manager of that Investor or any member of its Investor Group,
- (d) any Fund which has the same general partner operator or manager as that Investor or any member of its Investor Group,

or

- (e) any Fund in respect of which that Investor or any member of its Investor Group is a general partner

**"Investor Group"** means, in relation to an Investor, that Investor and its wholly owned subsidiaries or, as the case may be, that Investor, any holding company of which that Investor is, directly or indirectly, a wholly owned subsidiary and any other wholly-owned subsidiary of

any such holding company from time to time and references to **member** or **members** of the or an **Investor Group** shall be construed accordingly

**"Issue Price"** means the price at which the relevant Share was issued, being the aggregate of the amount paid up or credited as paid up in respect of the nominal value thereof and any share premium thereon

**"Minimum Transfer Condition"** shall be as defined in Article 30 2

**"Ordinary Shares"** means the ordinary shares of £1 each in the capital of the Company

**"Pacific Sequoia"** means Pacific Sequoia Holdings, LLC

**"Parent Undertaking"** shall be as defined in the Act

**"Preference Consent"** shall mean the giving of a written consent by the holders of more than 50% in nominal value of the Preference Shares in issue from time to time, , which consent requirement shall only apply for so long as at least 50 per cent of the Preference Shares held by the Investors on the date of these Articles (as appropriately adjusted for any sub divisions, consolidations, bonus issues or similar event with respect to such Preference Shares) continue to be so held,

**"Preference Share Conversion Price"** shall be as defined in Article 7 3

**"Preference Share Conversion Rate"** shall be as defined in Article 7 2

**"Preference Share Issue Date"** shall be as defined in Article 7 5

**"Preference Shares"** means the preference shares of £1 each in the capital of the Company

**"Preferred Dividend"** means the fixed cumulative preferential dividend referred to in Article 4 3

**"Proportionate Allocation"** shall be as defined in Article 3 4 (as such term is used in Articles 3 4 and 3 5) and Article 30 4 (as such term is used in these Articles other than in Articles 3 4 or 3 5)

**"Proposed Transferee"** shall be as defined in Article 30 1 2

**"Qualifying Dilutive Issuance"** shall be as defined in Article 7 8 1

**"Qualifying Quotation"** means a fully underwritten Quotation with a price per Ordinary Share of not less than five (5) times the Deemed Issue Price per Preference Share or more and with gross proceeds of not less than £25,000 000

**"Quotation"** means the admission of the whole of the issued Ordinary Shares of the Company to (i) the Official List of the UK Listing Authority and to trading on the London Stock Exchange's market for listed securities or (ii) to trading on the Alternative Investment Market of the London Stock Exchange or (iii) on any other recognised investment exchange (as defined in section 285(1) of the FSMA)

**"Realisation Price"** means the value of each Ordinary Share in issue immediately before a Quotation, determined by reference to the price per Share at which Ordinary Shares in the Company are to be offered for sale, placed or otherwise marketed pursuant to the Quotation

**"Relevant Shares"** shall be as defined in Article 28 3 3

**"Sale"** means an Asset Sale or a Share Sale

**"Sale Notice"** shall be as defined in Article 30 8

**"Sale Price"** shall be as defined in Article 30 1 3

**"Sale Shares"** shall be as defined in Article 30 1 1

**"the Seal"** means the common seal of the Company

**"secretary"** means the secretary of the Company or any other person appointed to perform the duties of the secretary of the Company, including a joint assistant or deputy secretary

**"Seller"** shall be as defined in Article 30 1

**"Share"** means any share in the capital of the Company from time to time

**"Share Option Scheme"** means the share option scheme to be adopted by the Company relating to up to a maximum 8,772 Ordinary Shares

**"Share Sale"** means the sale of (or the grant of a right to acquire or to dispose of) any of the shares in the capital of the Company (in one transaction or as a series of transactions) which will result in the buyer of those shares (or grantee of that right) and persons Acting in Concert with him together acquiring Control of the Company, except where the shareholders and the proportion of shares held by each of them following completion of the sale are the same as the shareholders and their shareholdings in the Company immediately before to the sale Provided that if the buyer of those shares (or grantee of that right) and persons Acting in Concert with him together acquiring Control of the Company is or are an Investor or Investors, or an Investor Associate or Investor Associates, this shall not constitute a Share Sale

**"Shareholder"** means any holder of a Share from time to time

**"Shearwater"** means Shearwater Assets Limited, a Shareholder of the Company

**"Skoll Funds"** means the Skoll Foundation , a California corporation and the Skoll Fund, a California corporation

**"Subsequent Dilutive Issuance"** shall be as defined in Article 7 8 5

**"Transfer Notice"** shall be as defined in Article 30 1

**"UK Listing Authority"** means the Financial Services Authority acting in its capacity as competent authority for the purposes of the FSMA

**"the United Kingdom"** means Great Britain and Northern Ireland

- 2 Unless the context otherwise requires, words and expressions defined in or having a meaning provided by the Act as at the date of adoption of these Articles shall have the same meaning in these Articles
- 2 1 unless the context otherwise requires, references in these articles to
- 2 2 any of the masculine, feminine and neuter genders shall include other genders,
- 2 3 the singular shall include the plural and vice versa,
- 2 4 a person shall include a reference to any natural person, body corporate, unincorporated association, partnership, firm or trust,
- 2 5 any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re enacted,
- 2 6 The headings in these Articles are for convenience only and shall not affect their meaning
- 2 7 A reference in these Articles to the transfer of any Share shall mean the transfer of either or both of the legal and beneficial ownership in such Share and/or the grant of an option to acquire either or both of the legal and beneficial ownership in such Share and the following shall be deemed (but without limitation) to be a transfer of a Share
  - 2 7 1 any direction (by way of renunciation or otherwise) by a Shareholder entitled to an allotment or issue of any Share that such Share be allotted or issued to some person other than himself,
  - 2 7 2 any sale or other disposition of any interest in a Share (including any voting right attached thereto) and whether or not by the registered holder thereof and whether or not for consideration or otherwise and whether or not effected by an instrument in writing, and
  - 2 7 3 any grant of a legal or equitable mortgage or charge over any Share

- 2 8 In construing these Articles, general words introduced by the word other shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words

### 3 SHARE CAPITAL AND PRE EMPTION ON ALLOTMENT OF SHARES

- 3 1 The authorised share capital of the Company at the date of adoption of these Articles is £175,438 , divided into

112,418 Ordinary Shares including 8,772 Ordinary Shares reserved for issue pursuant to the Share Option Scheme, and

63,020 Preference Shares (convertible into Ordinary Shares in accordance with the provisions of these Articles)

- 3 2 Sections 89(1) and 90(1) to (6) of the Act shall not apply to the allotment by the Company of any equity security
- 3 3 No unissued Shares in the capital of the Company shall be issued or allotted except in accordance with the provisions of this Article 3
- 3 4 Subject to Article 3 6, any Applicable Share which the directors of the Company propose to issue or allot shall be offered, before it is issued, or allotted, simultaneously and on the same terms to all existing Shareholders on a *pro-rata* basis to the number of Shares held by those holders (assuming conversion of all Preference Shares to Ordinary Shares consistent with Article 7) Each such offer shall be made by a written notice specifying the number, price and terms of payment of the Applicable Shares on offer The notice shall invite each recipient to state in writing within a period of 10 days whether it is willing to take the number of Applicable Shares offered to it (the **Proportionate Allocation**), or such lesser number than its Proportionate Allocation
- 3 5 At the expiration of the time stipulated by an offer pursuant to Article 3 4, the directors shall allot and issue the Applicable Shares offered to or amongst those Shareholders who have notified to the Company their willingness to take the Proportionate Allocation, or such lesser number than its Proportionate Allocation
- 3 6 Any Applicable Shares not capable of being allotted among Shareholders except by way of fractions shall not be issued or allotted

3 7 Any Applicable Shares not accepted by the Shareholders pursuant to an offer made under Article 3 4 shall be offered (on the same terms) first to the holders of the Preference Shares (the "**Preference Offer**") and the holders of the Preference Shares shall have a period of 10 days in which to state in writing to the Company whether they are willing to acquire some or all of such Applicable Shares. On the expiration of the Preference Offer, the directors shall offer (on the same terms) any Applicable Shares forming part of the Preference Offer which are not subscribed by the holders of the Preference Shares pursuant thereto to the holders of Ordinary Shares (the "**Ordinary Offer**") and the holders of the Ordinary Shares shall have a period of 10 days in which to state in writing to the Company whether they are willing to acquire some or all of such Applicable Shares. On the expiration of the Ordinary Offer, the directors may allot or issue any Applicable Shares which are not subscribed by the holders of the Ordinary Shares, to such other persons as they deem fit provided that such offer is made within 60 days of the expiration of the Ordinary Offer on the same terms as set out in the Preference Offer and the Ordinary Offer

3 8 Except as provided in these Articles, the Ordinary Shares and the Preference Shares shall rank *pari passu* in all respects but shall constitute separate classes of Shares

#### 4 DIVIDEND RIGHTS

4 1 The rights as regards income attaching to each class of Shares shall be as set out in this Article 4

4 2 In any financial year, the Available Profits of the Company may be used to pay dividends as set out in this Article 4

4 3 The Preference Shares shall confer upon the holders thereof the right of a preferential dividend (**Preferred Dividend**) which shall be calculated at the date when it shall become payable in accordance with Articles 5, 8 1 or 8 2 to be the sum which is equal to an annual rate of 8% of the Deemed Issue Price per Preference Share to the person registered as its holder on the relevant date which dividend shall be calculated as if it had accrued daily from the Preference Share Issue Date. The Preferred Dividend shall become payable in accordance with Articles 5, 8 1 or 8 2 but only if the Preference Shares are not converted to Ordinary Shares

4 4 In respect of any distribution made in respect of the Ordinary Shares, each Preference Share shall rank *pari passu* and *pro rata* with each Ordinary Share as if the Preference Shares had been converted into Ordinary Shares in accordance with Article 7 of these Articles immediately prior to the record date in respect of the relevant dividend, in that respect as if they were one class

- 4 5 Subject to the Act and these Articles, the Board may, provided a Preference Consent is obtained in respect of any dividend or dividends totalling more than £50,000 in respect of any financial year and without a Preference Consent in respect of any dividend or dividends totalling £50,000 or any lesser sum, pay dividends if the Available Profits for the relevant period lawfully enable such payment to be made
- 4 6 Each dividend shall be distributed to the appropriate Shareholders pro rata in conformity with Article 4 4 All dividends are expressed net and shall be paid in cash
- 4 7 If the Company is unable to pay the Preferred Dividend in full on the due date because there are insufficient Available Profits, it shall pay the Preferred Dividend on the next date that it is lawfully able to do so
- 4 8 Unless the Company has insufficient Available Profits, the Preferred Dividend shall be paid immediately on the due date Such payment shall be made notwithstanding any other provision of these Articles
- 4 9 If the Company is in arrears in paying the Preferred Dividend, the first Available Profits arising shall be applied first, in or towards paying off any arrears of Preferred Dividend
- 4 10 The Company shall procure that the profits of any other Group Company available for distribution shall from time to time (and to the extent that it is lawful to do so), be paid by way of dividend to the Company (or, as the case may be the relevant Group Company that is its immediate holding company or Parent Undertaking) as are necessary to permit lawful and prompt payment by the Company of the Preferred Dividend by the Company

## **5 LIQUIDATION PREFERENCE**

- 5 1 On a return of assets on liquidation, winding up, dissolution, capital reduction or otherwise (other than a conversion, redemption or purchase of Shares), the surplus assets of the Company remaining after the payment of its liabilities shall (to the extent that the Company is lawfully able to do so) be applied in the following order of priority
- 5 1 1 first, in paying to the holders of the Preference Shares (i) their pro rata amount (based on the number of Preference Shares then at issue) of an amount equivalent to the product of the Deemed Issue Price multiplied by the number of Preference Shares issued by the Company, together with (ii) the Preferred Dividend and, if there is a shortfall of assets remaining to satisfy the entitlements of holders of Preference Shares in full, the proceeds shall be distributed to the holders of the Preference Shares in proportion to the amounts due to each such Share held, and
- 5 1 2 second, in paying the holders of Ordinary Shares pro rata to their holdings of Ordinary Shares

## 6 VOTING RIGHTS

- 6.1 Holders of Preference Shares shall be entitled to receive notice of, attend, speak and vote (as provided below) at a general meeting of the Company and receive a copy of every document sent to the holders of Ordinary Shares at the same time as it is sent to the holders of Ordinary Shares
- 6.2 On a poll each holder of Preference Shares present in person or by proxy or (being a corporation) by a representative, is entitled to exercise such number of votes which he would have been entitled to exercise if all the Preference Shares held by him had been converted into Ordinary Shares in accordance with Article 7 of these Articles immediately before the holding of such general meeting
- 6.3 Holders of Ordinary Shares shall be entitled to receive notice of, attend, speak and vote (as provided below) at a general meeting of the Company and receive a copy of every document sent to the holders of Shares
- 6.4 On a poll each holder of Ordinary Shares present in person or by proxy or (being a corporation) by a representative, is entitled to exercise one vote for every Share held by him

## 7 CONVERSION

The holders of the Preference Shares shall have the following rights with respect to the conversion of the Preference Shares into Ordinary Shares (the **Conversion Rights**)

- 7.1 **Optional Conversion.** Subject to and in compliance with the provisions of this Article 7, Preference Shares may, at the option of the holder(s), be converted at any time into fully paid Ordinary Shares. The number of Ordinary Shares to which a holder of Preference Shares shall be entitled upon conversion shall be the product obtained by multiplying the "Preference Share Conversion Rate" then in effect and applicable to such Preference Shares (determined as provided in Article 7.2) by the number of Preference Shares being converted
- 7.2 **Preference Share Conversion Rate** The conversion rate in effect at any time for conversion of the Preference Shares (the **Preference Share Conversion Rate**) shall be the quotient obtained by dividing the Deemed Issue Price by the "Preference Share Conversion Price," calculated as provided in Article 7.3
- 7.3 **Preference Share Conversion Price.** The conversion price for the Preference Shares shall initially be the Deemed Issue Price of the Preference Shares (the **Preference Share Conversion Price**). Such initial Preference Share Conversion Price shall be adjusted from time to time in accordance with this Article 7. All references to the Preference Share Conversion Price herein shall mean the Preference Share Conversion Price as so adjusted

## 7 4 Mechanics of Conversion; Automatic Conversion

7 4 1 All Preference Shares shall automatically be converted into Ordinary Shares, based on the then effective Preference Share Conversion Rate applicable to such Preference Shares, (A) at any time upon the delivery of a Preference Consent to convert all Preference Shares into Ordinary Shares, or (B) immediately upon the closing of a Qualified Quotation. Any Preference Shares which are the subject of a Competitive Transfer shall be automatically converted in Ordinary Shares based on the then effective Preference Share Conversion Rate applicable to such Preference Shares immediately prior to the consummation of any such Competitive Transfer. Upon such automatic conversion, any declared and unpaid dividends (but not the Preferred Dividend) shall be paid in accordance with the provisions of Articles 4 3 and 4 7 to 4 10 inclusive.

7 4 2 Upon the occurrence of either of the events specified in Article 7 4 1 above, the outstanding Preference Shares to be converted shall be converted automatically without any further action by the holders of such Shares and whether or not the certificates representing such Shares are surrendered to the Company or its transfer agent, provided, however, that the Company shall not be obligated to issue certificates evidencing the Ordinary Shares issuable upon such conversion unless the certificates evidencing such Preference Shares are either delivered to the Company as provided below, or the holder notifies the Company that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Preference Shares, the holders of such Preference Shares shall surrender the certificates representing such Shares at the office of the Company. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of Ordinary Shares into which such Preference Shares surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends (but not the Preferred Dividend) shall be paid in accordance with the provisions of Articles 4 3 and 4 7 to 4 10 inclusive.

7 5 **Adjustment for Subdivisions and Bonus Issues.** If at any time or from time to time after the date of adoption of these Articles (the **Preference Share Issue Date**) the Company effects a subdivision of the outstanding Ordinary Shares without a corresponding subdivision of the Preference Shares, the Preference Share Conversion Price in effect immediately before such subdivision or bonus issue shall be proportionately decreased. Conversely, if at any time or from time to time after the Preference Share Issue Date the Company consolidates or combines the outstanding Ordinary Shares into a smaller number of Shares without a corresponding consolidation or combination of the Preference Shares, the Preference Share Conversion Price in effect immediately before the combination shall be

proportionately increased. Any adjustment under this Article 7.5 shall become effective at the close of business on the date the subdivision, bonus issue, consolidation or combination becomes effective.

**7.6 Adjustment for Dividends and Distributions.** If at any time or from time to time after the Preference Share Issue Date the Company pays to holders of Ordinary Shares a dividend, bonus issue or other distribution in additional Ordinary Shares without a corresponding dividend, bonus issue or other distribution to holders of Preference Shares, the Preference Share Conversion Price then in effect shall be decreased as of the time of such issuance, as provided below:

7.6.1 the applicable Preference Share Conversion Price with respect to a series of Preference Shares shall be adjusted by multiplying the applicable Preference Share Conversion Price then in effect by a fraction equal to

7.6.1.1 the numerator of which is the total number of Ordinary Shares issued and outstanding immediately prior to the time of such issuance, and

7.6.1.2 the denominator of which is the total number of Ordinary Shares issued and outstanding immediately prior to the time of such issuance plus the number of Ordinary Shares issuable in payment of such dividend, bonus issue or distribution,

7.6.2 if the Company fixes a record date to determine which holders of Ordinary Shares are entitled to receive such dividend, bonus issue or other distribution, the Preference Share Conversion Price shall be fixed as of the close of business on such record date and the number of Ordinary Shares shall be calculated immediately prior to the close of business on such record date, and

7.6.3 If such record date is fixed and such dividend is not fully paid or if such bonus issue or distribution is not fully made on the date fixed therefor, the applicable Preference Share Conversion Price with respect to the Preference Shares shall be recomputed accordingly as of the close of business on such record date and thereafter the applicable Preference Share Conversion Price shall be adjusted pursuant to this Article 7.6 to reflect the actual payment of such dividend or distribution.

**7.7 Adjustment for Reclassification, Exchange, Substitution, Reorganisation or Consolidation.** If at any time or from time to time after the Preference Share Issue Date and before conversion of the Preference Shares, the Ordinary Shares arising upon the conversion of the Preference Shares are changed into the same or a different number of Shares of any class or classes of Share, or other securities, rights or entitlements, whether by recapitalization, redesignation, reclassification, or otherwise (other than as provided in Article

7 5 or Article 7 6), in any such event each holder of Preference Shares shall then have the right to convert such Preference Shares into such kind and amount of securities and other rights or entitlement receivable upon such recapitalisation, redesignation, reclassification, or other change by holders of the maximum number of Ordinary Shares into which such Preference Shares could have been converted immediately prior to such recapitalisation, redesignation, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or rights or entitlement by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Article 7 with respect to the rights of the holders of Preference Shares after the capital reorganisation to the end that the provisions of this Article 7 (including adjustment of the applicable Preference Share Conversion Price then in effect and the number of Shares issuable upon conversion of the Preference Shares) shall be applicable after that event and be as nearly equivalent as practicable.

## **7.8 Sale of Shares Below Preference Share Conversion Price.**

7 8 1 Subject to Article 7 9, if at any time or from time to time on or after the Preference Share Issue Date the Company issues or sells, or is deemed by the express provisions of this Article 7 8 to have issued or sold, Applicable Shares, other than as provided in Article 7 5, 7 6 or 7 7 above, for an Effective Price (as defined below) less than the then effective Preference Share Conversion Price (a **Qualifying Dilutive Issuance**), then and in each such case, the then existing Preference Shares Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the Preference Shares Conversion Price in effect immediately prior to such issuance or sale by a fraction equal to

7 8 1 1 the numerator of which shall be (A) the number of Ordinary Shares deemed outstanding (as determined below) immediately prior to such issue or sale, plus (B) the number of Ordinary Shares which the Aggregate Consideration (as defined below) received or deemed received by the Company for the total number of Applicable Shares so issued would purchase at such then existing Preference Shares Conversion Price, and

7 8 1 2 the denominator of which shall be the number of Ordinary Shares deemed outstanding (as determined below) immediately prior to such issue or sale plus the total number of Applicable Shares so issued

For the purposes of the preceding sentence, the number of Ordinary Shares deemed to be outstanding as of a given date shall be the sum of (A) the number of Ordinary Shares outstanding, (B) the number of Ordinary Shares into which the then outstanding Preference

Shares could be converted if fully converted on the day immediately preceding the given date, and (C) the number of Ordinary Shares which are issuable upon the exercise or conversion of all other rights, options and Convertible Securities outstanding on the day immediately preceding the given date

7 8 2 For the purpose of making any adjustment required under this Article 7 8, the aggregate consideration received by the Company for any issue or sale or deemed issue or sale of Applicable Shares (the **Aggregate Consideration**) shall be defined as (A) to the extent it consists of cash, be computed at the gross amount of cash received by the Company before deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale and without deduction of any expenses payable by the Company, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board, and (C) if Applicable Shares, Convertible Securities (as defined below) or rights or options to purchase either additional Ordinary Shares or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Applicable Shares, Convertible Securities or rights or options

7 8 3 For the purpose of the adjustment required under this Article 7 8, if the Company issues or sells (x) Preference Shares or other Shares, options, warrants, purchase rights or other securities convertible into, Applicable Shares (such convertible stock or securities being herein referred to as **Convertible Securities**) or (y) rights or options for the purchase of Applicable Shares or Convertible Securities and if the Effective Price of such additional Ordinary Shares is less than the Preference Share Conversion Price, in each case the Company shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Applicable Shares issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such Shares an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such rights or options or Convertible Securities plus

7 8 3 1 in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Company upon the exercise of such rights or options, and

7 8 3 2 in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company upon the conversion

thereof (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities), *provided* that if the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses

- 7 8 3 3 If the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced, *provided further*, that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities
- 7 8 3 4 No further adjustment of the Preference Share Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Applicable Shares or the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Preference Share Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Preference Shares Conversion Price which would have been in effect had an adjustment been made on the basis that the only Applicable Shares so issued were the additional Ordinary Shares, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Applicable Shares, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or

obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, *provided* that such readjustment shall not apply to prior conversions of Preference Shares

7 8 4 The **Effective Price** of Applicable Shares shall mean the quotient determined by dividing the total number of Applicable Shares issued or sold, or deemed to have been issued or sold by the Company under this Article 7 8, into the Aggregate Consideration received, or deemed to have been received by the Company for such issue under this Article 7 8, for such Applicable Shares In the event that the number of Applicable Shares or the Effective Price cannot be ascertained at the time of issuance, such Applicable Shares shall be deemed issued immediately upon the occurrence of the first event that makes such number of Applicable Shares or the Effective Price, as applicable, ascertainable

7 8 5 In the event that the Company issues or sells, or is deemed to have issued or sold, Applicable Shares in a Qualifying Dilutive Issuance (the **First Dilutive Issuance**), then in the event that the Company issues or sells, or is deemed to have issued or sold, Applicable Shares in a Qualifying Dilutive Issuance other than the First Dilutive Issuance as a part of the same transaction or series of related transactions as the First Dilutive Issuance (a **Subsequent Dilutive Issuance**), then and in each such case upon a Subsequent Dilutive Issuance the Preference Shares Conversion Price shall be reduced to the Preference Shares Conversion Price that would have been in effect had the First Dilutive Issuance and each Subsequent Dilutive Issuance all occurred on the closing date of the First Dilutive Issuance

7 9 **Certificate of Adjustment** In each case of an adjustment or readjustment of the Preference Share Conversion Price for the number of Ordinary Shares or other securities issuable upon conversion of the Preference Shares, if the Preference Shares are then convertible pursuant to this Article 7, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and shall prepare a certificate showing such adjustment or readjustment, and shall send such certificate, by first class post, postage prepaid, to each registered holder of Preference Shares at the holder's address as shown in the Company's books The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Company for any Applicable Shares issued or sold or deemed to have been issued or sold, (ii) the Preference Share Conversion Price at the time in effect, (iii) the number of additional Ordinary Shares and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Preference Shares

- 7 10 **Fractional Shares.** No fractional Ordinary Shares shall be issued upon conversion of Preference Shares. All Ordinary Shares (including fractions thereof) issuable upon conversion of more than one Preference Share by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the fair market value of one Ordinary Share (as determined by the Board) on the date of conversion.
- 7 11 **Reservation of Ordinary Shares Issuable Upon Conversion.** The Company shall at all times reserve and keep available out of its authorised but unissued Ordinary Shares, solely for the purpose of effecting the conversion of the Preference Shares, such number of its Ordinary Shares as shall from time to time be sufficient to effect the conversion of all outstanding Preference Shares. If at any time the number of authorised but unissued Ordinary Shares shall not be sufficient to effect the conversion of all then outstanding Preference Shares, the Company will take such corporate action as may be necessary to increase its authorised but unissued Ordinary Shares to such number of Ordinary Shares as shall be sufficient for such purpose.
- 7 12 **Payment of Taxes.** The Company will pay all UK taxes (other than taxes based upon income) and other UK governmental charges that may be imposed upon it with respect to the issue or delivery of Ordinary Shares upon conversion of Preference Shares, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of Ordinary Shares in a name other than that in which the Preference Shares so converted were registered.

## 8 RIGHTS ON A SHARE SALE OR AN ASSET SALE

- 8 1 The proceeds of a Share Sale shall be distributed in the order of priority set out in Article 5. The Directors shall not register any transfer of Shares if the proceeds of sale are not distributed in that manner (save in respect of any Shares not sold in connection with that Share Sale), provided that, if the proceeds of sale are not settled in their entirety on completion of the Share Sale:
- 8 1 1 the Directors may register the transfer of the relevant Shares, provided that the proceeds have been distributed in the order of priority set out in Article 5, and
- 8 1 2 the Shareholders shall take any action required by the Investors to ensure that the proceeds of sale are distributed in the order of priority set out in Article 5.
- 8 2 On an Asset Sale, the surplus assets of the Company remaining after payment of its liabilities shall be distributed (to the extent that the Company is lawfully able to do so) in the order of priority set out in Article 5. If it is not lawful for the Company to distribute its surplus assets in accordance with the provisions of these Articles, the Shareholders shall take any action

required by the Investors (including (but not limited to) any actions that may be necessary to put the Company into voluntary liquidation so that Article 5 applies)

- 9 The Company may exercise the powers of paying commissions conferred by the Act Subject to the provisions of the Act, any such commission may be satisfied by the payment of cash or by the allotment of fully or partly paid Shares partly in one way and partly in the other
- 10 The Company shall not have power to issue Share warrants to bearer

#### SHARE CERTIFICATES

- 11 Every member, upon becoming the holder of any Shares, shall be entitled without payment to one certificate for all the Shares of each class held by him (and, upon transferring a part of his holding of Shares of any class, to a certificate for the balance of such holding) or several certificates each for one or more of his Shares upon payment for every certificate after the first of such reasonable sum as the directors may determine The Company shall not be bound to issue more than one certificate for Shares held jointly by several persons and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them
- 12 If a Share certificate is defaced, worn out, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and payment of the expenses reasonably incurred by the Company in investigating evidence as the directors may determine but otherwise free of charge, and (in the case of defacement or wearing out) on delivery up of the old certificate

#### LIEN

- 13 The Company shall have a first and paramount lien on every Share of any class whether fully paid up or not for all moneys (whether presently payable or not) or other liability due to the Company by any person in whose name such Share is registered, whether it be the sole registered holder thereof or one or two or more joint holders in respect of that Share The directors may at any time declare any Share to be wholly or in part exempt from the provisions of this regulation, provided that the Company shall not exempt any Ordinary Share unless all Preference Shares have been exempted The Company's lien on a Share shall extend to any amount payable in respect of it
- 14 The Company may sell in such manner as the directors determine any Shares on which the Company has a lien if a sum in respect of which the lien exists presently payable and is not paid within fourteen clear days after notices has been given to the holder of the Share or to the person entitled to it in consequence of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the Shares may be sold
- 15 To give effect to a sale the directors may authorise some persons to execute an instrument of transfer of the Shares sold to, or in accordance with the directions of, the purchaser The title

of the transferee of the Shares shall not be affected by any irregularity in or invalidity of the proceedings in reference to the sale

- 16 The net proceeds of the sale, after payment of the costs, shall be applied in payment of so much of the sum for which the lien exists as is presently payable, and any residue shall (upon surrender to the Company for cancellation of the certificate for the Shares sold and subject to a like lien for any moneys not presently payable as existed upon the Shares before the sale) be paid to the person entitled to the Shares at the date of the sale

#### CALLS ON SHARES AND FORFEITURE

- 17 Subject to the terms of allotment, the directors may make calls upon the members in respect of any moneys unpaid on their Shares (whether in respect of nominal value or premium) and each member shall (subject to receiving at least fourteen clear days' notice specifying when and where payment is to be made) pay the Company as required by the notice the amount called on his Shares. A call may be required to be paid by instalments. A call may, before receipt by the Company of any sum due thereunder, be revoked in whole or part and payment of a call may be postponed in whole or part. A person upon whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the Shares in respect whereof the call was made
- 18 A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed
- 19 The joint holders of a Share shall be jointly and severally liable to pay all calls in respect thereof
- 20 If a call remains unpaid after it has become due and payable the person from whom it is due and payable shall pay interest on the amount unpaid from the day it became due and payable until it is paid at the rate fixed by the terms of allotment of the Share or in the notice of the call or, if no rate is fixed, at the appropriate rate (as defined by the Act) but the directors may waive payment of the interest wholly or in part
- 21 An amount payable in respect of a Share on allotment or at any fixed rate, whether in respect of nominal value or premium or as an instalment of a call, shall be deemed to be a call and if it is not paid the provisions of the articles shall apply as if that amount had become due and payable by virtue of a call
- 22 Subject to the terms of allotment, the directors may make arrangements on the issue of Shares for a difference between the holders in the amounts and times of payment of calls on their Shares

- 23 If a call remains unpaid after it has become due and payable the directors may give to the person from whom it is due not less than fourteen clear days' notice requiring payment of the amount unpaid together with any interest which may have accrued and all expenses that may have been incurred by the Company by reason of such non payment. The notice shall name the place where payment is to be made and shall state that if the notice is not complied with the Shares in respect of which the call was made will be liable to be forfeited.
- 24 If the notice is not complied with any Share in respect of which it was given may, before the payment required by the notice has been made, be forfeited by a resolution of the directors and the forfeiture shall include all dividends or other moneys payable in respect of the forfeited Shares and not paid before the forfeiture.
- 25 Subject to the provisions of the Act, a forfeited Share may be sold, re allotted or otherwise disposed of on similar terms as if the forfeited Share was part of a new issue of Shares not comprised in the Share capital with which the Company is incorporated. Where for the purposes of its disposal a forfeited Share is to be transferred to any person the directors may authorise some person to execute an instrument of transfer of the Share to that person.
- 26 A person any of whose Shares have been forfeited shall cease to be a member in respect of them and shall surrender to the Company for cancellation the certificate for the Shares forfeited but shall remain liable to the Company for all moneys which at the date of forfeiture were presently payable by him to the Company in respect of those Shares with interest at the rate at which interest was payable on those moneys before the forfeiture or, if no interest was so payable at the appropriate rate (as defined in the Act) from the date of forfeiture until payment but the directors may waive payment wholly or in part or enforce payment without any allowance for the value of the Shares at the time of forfeiture or for any consideration received on their disposal.
- 27 A statutory declaration by a director or the secretary that a Share has been forfeited on a specified date shall be conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the Share and the declaration shall (subject to the execution of an instrument of transfer if necessary) constitute a good title to the Share and the person to whom the Share is disposed of shall not be bound to see to the application of the consideration, if any, nor shall his title to the Share be affected by any irregularity of the proceedings in reference to the forfeiture or disposal of the Share.

## **28 TRANSFER AND TRANSMISSION OF SHARES**

### **28 1 Prohibited Transfers**

Any person who holds, or become entitled to, any Share shall not effect a transfer, except a transfer in accordance with Article 29 (Permitted Transfers), Article 30 (Pre-emption) or Article 31 (Co-Sale) of such Shares

28.2 For the purposes of this Article any transfer of shares to a person, a major part of whose business is in aquaculture (a **Competitive Transfer**), shall be a prohibited transfer and shall be dealt with in terms of Article 28.3.1 unless

28.2.1 such transfer shall first have been approved by the board after provision to it of any information and/or evidence which it may require pursuant to Article 28.3, or

28.2.2 if not so approved by the board, and any of the Shares which are the subject of such transfer are Preference Shares, such Preference Shares shall automatically convert (in accordance with the provisions of Article 7.4) to Ordinary Shares prior to the registration of such transfer as provided in Article 7.4.1 and the rights of Co-Sale shall apply in accordance with Article 31 to such transfer

28.3 For the purpose of ensuring compliance with Article 28.1, the Company shall require any Shareholder to procure that (i) he, or (ii) and Proposed Transferee or (iii) such other person as is reasonably believed to have information and/or evidence relevant to such purpose provides, at their expense, to the Company any information and/or evidence relevant to such purpose and failing such information and/or evidence being provided the Board shall notify the relevant Shareholder (the **Defaulting Shareholder**) that a breach of the transfer provisions of these Articles is deemed to have occurred, whereupon

28.3.1 the Company shall refuse to register any transfer of the Relevant Shares (otherwise than with a Preference Consent and Board approval),

28.3.2 the Relevant Shares shall cease to confer on the holder thereof (or any proxy thereof) any rights

28.3.2.1 to vote (whether on a show of hands or on a poll and whether exercisable at a general meeting of the Company or at any separate meeting of the class in question), or

28.3.2.2 to receive dividends or other distributions (other than the Issue Price of the Relevant Shares upon a return of capital),

28.3.3 The expression Relevant Shares shall mean the Shares which the Defaulting Shareholder holds or to which he is entitled and any Shares formerly held by him which have been transferred in breach of Article 28.3 or in accordance with Article 29 (Permitted Transfers)

- 28 4 Notwithstanding the provisions of Article 28 1, any transfer by any partner, unitholder, shareholder or other participant in, or operator, manager or custodian of, any Fund (a **Fund Participant**) (or by any trustee or nominee for any such Fund Participant) of any interest in such Fund to any person who is, or as a result of such transfer becomes, a Fund Participant, shall not, and shall not be deemed to, be a transfer of Shares for any purpose under these Articles
- 29 Permitted transfers
- 29 1 Notwithstanding the provisions of Article 30 (Pre-emption) and Article 31 (Co-Sale) and subject to Article 29 3
- 29 1 1 any Shareholder may at any time transfer any Share to a Family Member over the age of 18 or to the trustees of a Family Trust,
- 29 1 2 any Shareholder who is a trustee of a Family Trust may at any time transfer any Share to
- 29 1 2 1 the new or remaining trustees of the Family Trust upon any change of trustees, and
- 29 1 2 2 any persons (being a Family Member of a Shareholder or of a former Shareholder who has previously transferred some or all of his Shares in accordance with Article 29 1 1) on their becoming entitled to the same under the terms of the Family Trust,
- 29 1 3 Any Shareholder who is a Trustee of the Existing Family Trust may at any time transfer any share to the beneficiaries of such Trust
- 29 1 4 Shearwater may at any time transfer any Share to Robert Bing and/or Mrs Sarah Bing
- 29 1 5 any Shareholder who is a trustee of an Employee Trust may at any time transfer any Share to
- 29 1 5 1 the new or remaining trustees of the Employee Trust upon any change of trustees, and
- 29 1 5 2 any beneficiary of the Employee Trust,
- 29 1 6 any Shareholder may at any time transfer any Share to an Associated Company, provided that if the transferee ceases to be an Associated Company it will forthwith transfer all the Shares then held by it to the original transferor or to another Associated Company of the original transferor,

- 29 1 7 any Shareholder who is an Investor or any person who holds Shares as a nominee, custodian or trustee or otherwise on behalf of an Investor may at any time transfer any Share to
- 29 1 7 1 another Investor,
- 29 1 7 2 any Investor Associate of that Investor or to another member of that Investor's Investor Group,
- 29 1 7 3 on a distribution in kind or otherwise under the relevant partnership agreement or trust deed or other constitutive document(s) of a Fund, the partners of a limited partnership (or their nominees) or to the holders of units in a unit trust (or their nominees) or to the shareholders of, participants in, or holders of any other interest in, any Fund,
- 29 1 7 4 any co investment scheme, being a scheme under which certain officers, employees or partners of an Investor or its adviser, manager, operator, nominee or any member of its Investor Group are entitled or required (as individuals or through a Fund or any other vehicle) to acquire Shares which the Investor would acquire or has acquired (**Co Investment Scheme**),
- 29 1 7 5 any investment trust (as defined in the Listing Rules of the UK Listing Authority) whose shares are listed on a recognised investment exchange and which is also managed by the manager of such Shareholder, or
- 29 1 7 6 that Investor's nominee or bare trusts
- 29 1 8 any Shareholder holding Shares in connection with a Co Investment Scheme may at any time transfer any Share to
- 29 1 8 1 another person who holds or is to hold Shares in connection with such Co Investment Scheme, or
- 29 1 8 2 any persons on their becoming entitled to the same under the terms of such Co Investment Scheme,
- 29 1 9 any Shareholder holding Shares as a result of a transfer made after the date of the adoption of these Articles by a person in relation to whom such Shareholder was a permitted transferee under the provisions of this Article may at any time transfer

any Share to the person who originally transferred such Shares (or to any other permitted transferee of such original transferor), and

- 29 1 10 Subject to the covenants set forth in any other agreement to which the Shareholder is a party, any Shareholder may transfer any Shares to any person with the prior written consent of the holders of not less than 90 per cent the Shares then in issue (treating, for this purpose, all outstanding Preference Shares as converted into Ordinary Shares in accordance with Article 7 of these Articles at the time of such consent
- 29 2 Subject to Article 28 3, the Company shall be obliged to register any transfer made pursuant to the above provisions
- 29 3 Any Shareholder holding Shares as a result of a transfer made after the date of the adoption of these Articles by a person in relation to whom such Shareholder was a permitted transferee under the provisions of this Article and who ceases to be a permitted transferee in relation to such person, shall be required to immediately transfer such Shares back to the person who originally transferred such Shares
- 30 Pre-emption
- 30 1 Except in the case of a transfer pursuant to Article 29 (Permitted Transfers) and Article 31 (Co Sale), a Shareholder who wishes to transfer any Shares (the **Seller**) shall give notice in writing of such wish to the Company (the **Transfer Notice**) Each Transfer Notice shall
- 30 1 1 specify the number and class of Ordinary Shares or Preference Shares which the Seller wishes to transfer (the **Sale Shares**),
- 30 1 2 (if applicable) specify the identity of any person to whom the Seller wishes to transfer the Sale Shares (the **Proposed Transferee**),
- 30 1 3 specify the price per Share (the **Sale Price**) at which the Seller wishes to transfer the Sale Shares,
- 30 1 4 be deemed to constitute the Company as the Seller's agent for the sale of the Sale Shares at the Sale Price in the manner prescribed by these Articles, and
- 30 1 5 not be varied or cancelled (without the approval of the Board)
- 30 2 The Seller may provide in the Transfer Notice that unless buyers are found for all or not less than a specified number of the Sale Shares, he shall not be bound to transfer any of such Shares (**Minimum Transfer Condition**) and any such provision shall be binding on the Company Notwithstanding the other provisions of this Article, if the Transfer Notice contains a Minimum Transfer Condition the Company may not make any allocation of Sale Shares

unless and until it has found buyers for the minimum number specified in the Minimum Transfer Condition

- 30 3 The Company shall, within 10 Business Days following receipt of the Transfer Notice, give notice in writing to each of the Shareholders (other than the Seller) offering for sale the Sale Shares at the Sale Price. The notice shall specify that the Shareholders shall have a period of 25 Business Days from the date of such notice within which to apply for some or all of the Sale Shares
- 30 4 Subject to Article 30 5, It shall be a term of the offer that, if there is competition for the Sale Shares, such Sale Shares shall be treated as offered among the Shareholders (other than the Seller) in proportion (as nearly as may be) to their existing holdings of Shares (the **Proportionate Allocation**). However, in his application for Sale Shares a Shareholder may, if he so desires, indicate that he would be willing to purchase a particular number of Shares in excess of his Proportionate Allocation (**Extra Shares**)
- 30 5 In the case of a transfer of Preference Shares priority shall be given to applications from holders of Preference Shares (other than the Seller)
- 30 6 In respect of each of the categories of offeree referred to in Article 30, the Company shall allocate the Sale Shares as follows subject always to Article 30 6 in respect of transfers of Preference Shares
- 30 6 1 if the total number of Sale Shares applied for is equal to or less than the available number of Sale Shares, each Shareholder shall be allocated the number applied for in accordance with his application, or
- 30 6 2 if the total number of Sale Shares applied for is greater than the available number of Sale Shares, each Shareholder shall be allocated his Proportionate Allocation or such lesser number of Sale Shares for which he has applied and applications for Extra Shares shall be allocated first to the Investors and if the Investors do not take up all of the Extra Shares, such Extra Shares that are not taken up shall be allocated in accordance with those applications referred to in Article 30 or, in the event of competition among those Shareholders applying for Extra Shares, in such proportions as equal (as nearly as may be) the proportions of all the Shares of the same class held by such Shareholders
- 30 7 Allocations of Sale Shares made by the Company pursuant to this Article shall constitute the acceptance by the persons to whom they are allocated of the offer to purchase those Sale Shares on the terms offered to them, provided that no person shall be obliged to take more than the maximum number of Sale Shares that he has indicated to the Company he is willing to purchase

- 30 8 The Company shall forthwith upon allocating any Sale Shares give notice in writing (a **Sale Notice**) to the Seller and to each person to whom Sale Shares have been so allocated of the number of Sale Shares so allocated and the aggregate price payable therefor. Completion of the sale and purchase of those Sale Shares in accordance with the Sale Notice shall take place within five Business Days of the date of the Sale Notice whereupon the Seller shall, upon payment of the price due in respect thereof, transfer those Sale Shares specified in the Sale Notice to the persons to whom they have been allocated and deliver the relevant Share certificates.
- 30 9 If the Seller defaults in transferring any Sale Shares pursuant to Article 30, the Company may receive such purchase money and may nominate some person to execute an instrument of transfer of such Sale Shares in the name and on behalf of the Seller and thereafter, when such instrument has been duly stamped, the Company shall cause the name of the proposed transferee to be entered in the register of members as the holder of such Sale Shares and shall hold the purchase money on trust (without interest) for the Seller. The receipt of the Company for the purchase money shall be a good discharge to the proposed transferee (who shall not be bound to see to the application thereof) and, after his name has been so entered in the register of members, the validity of the proceedings shall not be questioned by any person. In the case of an acquisition of Sale Shares by the Company, if the Seller defaults in transferring any Sale Shares pursuant to Article 12 8, the Company may nominate some person to execute an instrument of transfer of such Sale Shares in the name and on behalf of the Seller and thereafter, when such instrument has been duly stamped, the Company shall cause such share capital to be cancelled in accordance with the Act and shall hold the purchase money on trust (without interest) for the Seller.
- 30 10 If all the Sale Shares are not sold under the pre-emption provisions contained in Articles 30 1 to 30 9 (inclusive), the Company shall (forthwith upon the exhaustion of such provisions) so notify the Seller and the Seller may, subject to Article 31, at any time, within 60 days after receiving such notification, transfer to the Proposed Transferee any unsold Sale Shares at any price not less than the Sale Price, provided that
- 30 10 1 if the Seller stipulated in the Transfer Notice a Minimum Transfer Condition which has not been satisfied, the Seller shall not be entitled to sell any Sale Shares unless he, together with all Shares transferred pursuant to Article 31, complies with such Minimum Transfer Condition, and
- 30 10 2 any such sale shall be a sale in good faith and the Board may require to be satisfied (in such manner as they may reasonably think fit) that the Sale Shares are being sold for not less than the Sale Price without any deduction, rebate or allowance whatsoever and if not so satisfied may refuse to register the transfer.

- 31 1 Subject to the prior operation of the relevant provisions of Article 30, and to the extent that the pre-emption rights set out in Article 30 are not exercised in full, if at any time one or more Sellers proposes to sell any unsold Sale Shares (to the extent and only to the extent such unsold Sale Shares are Ordinary Shares or are Preference Shares to be converted into Ordinary Shares as a consequence of a Competitive Transfer) to the Proposed Transferee, the Sellers may only sell such unsold Sale Shares if they comply with the provisions of Articles 31 2 to 31 4
- 31 2 The Sellers shall give written notice (the **Co Sale Sale Notice**) to the other holders of the equity share capital in the Company of such intended sale at least 10 Business Days prior to the date thereof. The Proposed Sale Notice shall set out, to the extent not described in any accompanying documents, the identity of the Proposed Transferee, the purchase price and other terms and conditions of payment, the proposed date of sale and the number of Sale Shares proposed to be purchased by the Proposed Transferee
- 31 3 Each Shareholder other than the Sellers (a **Non Selling Shareholder**) shall be entitled, by written notice given to the Sellers and the Company within five Business Days of receipt of the Co Sale Sale Notice, to require the Proposed Transferee to acquire that number of Shares equal to the product obtained by multiplying (i) the aggregate number of Sale Shares proposed to be sold by (ii) a fraction, the numerator of which is the number of Shares held (on an as converted to Ordinary Share basis) by such Non Selling Shareholders on the date of the Co Sale Sale Notice and the denominator of which is the total number of Shares held (on an as converted to Ordinary Share basis) in the aggregate by the Seller and all Non Selling Shareholders (the **Tagged Shares**) on the same terms and conditions as those set out in the Co Sale Sale Notice. The Investor shall be entitled to offer for sale to such Proposed Transferee such number of Preference Shares that, if converted in accordance with Article 7 of these Articles, would be equal at the time of sale to the number of Tagged Shares
- 31 4 If any other holder of equity share capital in the Company is not given the rights accorded him by the provisions of this Article and/or the Proposed Transferee is unwilling to purchase the Tagged Shares, the Sellers shall be required not to complete their sale and the Company shall be bound to refuse to register any transfer intended to carry such a sale into effect
- 32 (A) Upon the happening of any Relevant Event as defined in paragraph (C) of this article the member in question shall be deemed to have immediately given a Transfer Notice at the Fair Value per Share as determined in accordance with Article 32(D) under Article 30 1 (which deemed Transfer Notice shall not under any circumstances be revocable and shall not be treated as having a Minimum Transfer Condition attached to it) in respect of all the Shares as shall then be registered in the name of such member or which such member shall have contracted to acquire

- (B) If the Relevant Event shall be either of the events described in sub paragraphs (i) or (ii) of paragraph (C) (a) below and if any of the Shares ("the Unsold Shares") for which the members are invited to apply pursuant to the Transfer Notice deemed to be given under paragraph (A) shall not be sold to members then the person who has become entitled to the Unsold Shares in consequence of the death or bankruptcy of the member shall be entitled either
- (i) to sell the Unsold Shares to any person in the same manner and subject to the same conditions *mutatis mutandis* as a transferor could under Article 30 10, or
  - (ii) to elect at any time to be registered himself as a holder of the Unsold Shares (but so that such election shall not give rise to any obligation to serve a Transfer Notice in respect of the Unsold Shares)
- (C) In this Article a "Relevant Event" means
- (a) in relation to a member being an individual
    - (i) such member becoming bankrupt, or
    - (ii) the expiry of six months after the death of such member without transfer(s) having taken place and/or transfer notice(s) having been served in respect of in aggregate all the Shares registered in the name of that individual or which he was entitled to transfer, or
    - (iii) the happening to a member who is a director of any such event as is referred to in paragraph (b) of article 76,
  - (b) a member making any arrangement or composition with his creditors generally
  - (c) in relation to a member being a body corporate (including any Fund)
    - (i) a receiver, manager or administrative receiver being appointed of such member or over all or any part of its undertaking or assets, or
    - (ii) a petition being presented for the making of an administration order, or
    - (iii) such member entering into liquidation (other than a voluntary liquidation for the purpose of a bona fide scheme of solvent amalgamation or reconstruction)

(d) failure by a member to supply to the directors within 28 days of a request in writing by them such information and evidence as the directors may reasonably require for the purpose of determining whether, in relation to the Shares held by that member, circumstances have occurred which give rise to, or would with the lapse of time, give rise to a deemed Transfer Notice being given under this or the preceding Article

(D) For the purposes of Article 32(A) Fair Value shall be such value as agreed between the Company and the member whose shares are the subject of the Deemed Transfer Notice or failing such agreement, on the application of the Company, at such Fair Value as is determined by a valuer to be appointed by the President of the Institute of Chartered Accountants of Scotland ("the Valuer") to determine and certify in his opinion the sum per share considered by him to be the Fair Value of the Offered Shares as at the date of the Transfer Notice as between a willing vendor and a willing purchaser on an arm's length sale. The Valuer shall act hereunder as an expert and not as an arbiter and shall take into account inter alia any proposed offer to purchase all or any of the Offered Shares and any recent transactions in shares of the Company and the Valuer's determination shall be final and binding on all concerned. The Company shall procure that intimation of the Valuer's determination shall forthwith be made to the Proposing Transferor. The costs and expenses of any valuation shall be borne by the Company.

33 For the purposes of the preceding Article

- (a) "transfer" shall extend to and include the undertaking or arrangement whereby the holder of a Share holds the same upon trust for the benefit of or as nominee for any other person or whereby any interest in the Share passes to any person,
- (b) any deemed Transfer Notice shall be deemed not to contain a Minimum Transfer Condition, and
- (c) any obligation to transfer a Share shall be deemed to be an obligation, to transfer the entire legal and beneficial interest therein free from any lien, charge or other encumbrance
- (d) the Offered Shares shall mean the Shares deemed to be subject to a Transfer Notice by Article 32(A)

34 A transferor shall be deemed to remain the holder of any Share transferred by any instrument of transfer until the name of the transferee is entered in the Register of Members in respect thereof

- 35 The instrument of transfer of a Share may be in usual form or in any other form which the directors may approve and shall be executed by or on behalf of the transferor and, unless the Share is fully paid, by or on behalf of the transferee
- 36 The registration of transfers of Shares or of transfers of any class of Shares pursuant to Article 32 may be suspended at such times and for such periods (not exceeding thirty days in any year) as the directors may determine
- 37 No fee shall be charged for the registration of any instrument of transfer or other document relating to or affecting the title to any Share
- 38 The Company shall be entitled to retain any instrument of transfer which is registered, but any instrument of transfer which the directors refuse to register shall be returned to the person lodging it when notice of the refusal is given

#### ALTERATION OF SHARE CAPITAL

- 39 The Company may by special resolution and with a Preference Consent
- (a) increase or alter its share capital by new Shares of such amount as the resolution prescribes,
  - (b) consolidate and divide all or any of its share capital into Shares of larger amount than its existing Shares,
  - (c) subject to the provisions of the Act, sub divide its Shares, or any of them, into Shares of smaller amount and the resolution may determine that, as between the Shares resulting from the sub division, any of them may have any preference or advantage as compared with the others, and
  - (d) cancel Shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person and diminish the amount of its share capital by the amount of the Shares so cancelled
- 40
- 40 1 Whenever as a result of a consolidation of Shares any member would become entitled to fractions of a Share, the directors may, on behalf of those members, sell the Shares representing the fractions for the best price reasonably obtainable to any person (including, subject to the provisions of the Act, the Company) and distribute the net proceeds of sale in due proportion among those members, and the directors may authorise some persons to execute an instrument of transfer of the Shares to, or in accordance with the directions of, the

purchaser The transferee shall not be bound to see to the application of the purchase money nor shall his title to the Shares be affected by any irregularity in or invalidity of the proceedings in reference to the sale

- 40 2 Subject to the provisions of the Act and with a Preference Consent, the Company may by special resolution reduce in share capital, any capital redemption reserve and any share premium account in any way

#### PREFERENCE CONSENT

- 41 The following shall require a Preference Consent and without a Preference Consent shall be of no effect
- 41 1 the consolidation, sub division, capitalisation, conversion (except any conversion arising under these Articles), redenomination, variation or cancellation of any share capital of the Company,
- 41 2 the purchase, reduction, buy back, return or redemption of any share capital of the Company or the repayment of capital or assets to members,
- 41 3 any amendments to these Articles or the Company's memorandum of association,
- 41 4 the creation, issue or allotment of any Share or security or the grant or creation of any option or right to acquire any Share or security or convertible into any Share or security in the capital of the Company which has rights which are senior to or rank pari passu to the Preference Shares,
- 41 5 the amendment or alteration of any right, preference or privilege attaching to the Preference Shares,
- 41 6 the taking of any steps to wind up or dissolve the Company or enter into any reconstruction, amalgamation or consolidation of the Company or enter into or propose the entering into of any scheme of arrangement relating to the Company or taking any steps to have the Company put into administration or receivership or any other similar arrangement including where such steps result in a change of Control in relation to the Company,
- 41 7 the declaration or payment of any dividend exceeding a total of £50,000 in any financial year or the declaration or making of any other distribution or the passing of any resolution to retain, capitalise or allocate profits (other than by a Subsidiary to its parent Company),
- 41 8 the entry into of any agreement or arrangement to do any of the foregoing,

and the rights conferred in this Article 41 shall be class rights of the Preference Shares

## PURCHASE OF OWN SHARES

- 42 Subject to the provision of the Act and Article 41, the Company may purchase its own Shares (including any redeemable Shares) and, if it is a private company, make a payment in respect of the redemption or purchase of its own Shares otherwise than out of distributable profits of the Company or the proceeds of a fresh issue of Shares

## GENERAL MEETINGS

- 43 All general meetings other than annual general meetings shall be called extraordinary general meetings
- 44 The directors may call general meetings and, on the requisition of members pursuant to the provisions of the Act, shall forthwith proceed to convene an extraordinary general meeting for a date not later than eight weeks after receipt of the requisition. If there are not within the United Kingdom sufficient directors to call a general meeting, any director or any member of the Company may call a general meeting

## NOTICE OF GENERAL MEETINGS

- 45 An annual general meeting and an extraordinary general meeting called for the passing of a special resolution or a resolution appointing a person as a director shall be called by at least twenty one clear days' notice. All other extraordinary meetings shall be called by at least fourteen clear days' notice but a general meeting may be called by shorter notice if it is so agreed

- (a) in the case of an annual general meeting, by all the members entitled to attend and vote thereat, and
- (b) in the case of any other meeting by a majority in number of the members having a right to attend and vote being a majority together holding not less than ninety five per cent (treating all Preference Shares for this purpose as converted to Ordinary Shares in accordance with Article 7 of these Articles immediately prior to such vote) of the issued Shares giving that right

The notice shall specify the time and place of the meeting and the general nature of the business to be transacted and, in the case of an annual general meeting, shall specify the meeting as such

Subject to the provisions of the articles and to any restrictions imposed on any Shares, the notice shall be given to all the members, to all persons entitled to a Share in consequence of the death or bankruptcy of a member and to the directors and auditors

## SHAREHOLDER MEETINGS

### 46 Annual general meetings

- 46 1 The Board shall procure that the Annual General Meeting in respect of each financial year of the Company shall be convened to take place not later than 30 Business Days after the date of the Auditors' report relating to the Accounts for the relevant financial year
- 46 2 The Board shall cause to be laid before each such Annual General Meeting the Accounts for the relevant financial year, together with the respective reports therein of the directors and the Auditors
- 47 The accidental omission to give notice of a meeting to, or the non receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting

## PROCEEDINGS AT GENERAL MEETINGS

### 48 Proceedings of Shareholders

- 48 1 No business shall be transacted at any general meeting unless a quorum of Shareholders is present at the time when the meeting proceeds to business and, subject to Article 48 2, for its duration Four persons entitled to vote upon the business to be transacted, each being a Shareholder or a proxy for a Shareholder or a duly authorised representative of a corporation (and at least one of which shall be a holder of, or proxy for, or a duly authorised representative of, a holder of Preference Shares (unless there are no longer any Preference Shares) and one of which a holder of, or proxy for, or a duly authorised representative of, a holder of Ordinary Shares) who together represent at least fifty percent (50%) of the aggregate number of Shares outstanding (on an as converted to Ordinary Share basis), shall be a quorum
- 48 2 If within half an hour from the time appointed for the meeting a quorum is not present, or if during a meeting a quorum ceases to be present for a period exceeding 10 minutes, the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other time and place as the Shareholders present may decide provided reasonable notice of such meeting is provided to all Shareholders, if at such adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Shareholder or Shareholders present shall constitute a quorum
- 49 The chairman, if any, of the board of directors or in his absence some other director nominated by the directors shall preside as chairman of the meeting, but if neither the chairman nor such other director (if any) be present within fifteen minutes after the time appointed for holding the meeting and willing to act, the directors present shall elect one of

their number to be chairman and, if there is only one director present and willing to act, he shall be chairman

50 If no director is willing to act as chairman, or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to be chairman

51 A director shall, notwithstanding that he is not a member, be entitled to attend and speak at any general meeting and at any separate meeting of the holders of any class of Shares in the Company

52 The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen days or more, at least seven clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.

A resolution put to the vote of a meeting shall be decided on a poll

53 A poll shall be taken as the chairman directs and he may appoint scrutineers (who need not be members) and fix a time and place for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

54 In the case of an equality of votes on a poll, the chairman shall not be entitled to a casting vote.

55 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either forthwith or at such time and place as the chairman directs not being more than thirty days after the poll is demanded. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded.

56 All business shall be deemed special that is transacted at an extraordinary general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheet, and the reports of the directors and auditors, and the appointment of, and the fixing of the remuneration of, the auditors.

57 Provided all the directors agree a member may participate in a meeting of the Company by means of conference telephone or similar communication 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.

- 58 A resolution in writing which has been signed by or on behalf of all of the members who would have been entitled to vote upon it if it had been proposed at a general meeting at which they were present and which would have constituted a quorum were they present at such meeting (which signature may be evidenced by letter, telex, cable, electronic mail, facsimile or otherwise as the directors may from time to time resolve to permit) shall be as effective as a resolution passed at a meeting of members duly convened and held and may consist of several documents in the same terms each signed by or on behalf of one or more members. In the case of any corporation that holds a Share, the signature of any director or the Secretary thereof shall be sufficient for the purposes of this Article 58

#### VOTES OF MEMBERS

- 59 Subject to any rights or restrictions attached to any Shares, on a poll every member shall have one vote for every Share of which he is the holder (treating, for this purpose all Preference Shares as converted to Ordinary Shares in accordance with Article 7 of these Articles immediately prior to such vote)
- 60 In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and seniority shall be determined by the order in which the names of the holders stand in the register of members
- 61 A member in respect of whom an order has been made by any court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder may vote on a poll, by his receiver, curator bonis or other person authorised in that behalf appointed by that court, and any such receiver, curator bonis or other person may, on a poll, vote by proxy. Evidence to the satisfaction of the directors of the authority of the person claiming to exercise the right to vote shall be deposited at the officer, or at such other place as is specified in accordance with the articles for the deposit of instruments of proxy, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in default the right to vote shall not be exercisable
- 62 No member shall vote at any general meeting or at any separate meeting of the holders of any class of Shares in the Company, either in person or by proxy, in respect of any Share held by him unless all moneys presently payable by him in respect of that Share have been paid
- 63 No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive
- 64 On a poll votes may be given either personally or by proxy

- 65 An instrument appointing a proxy shall be in writing, executed by or on behalf of the appointor and shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the directors may approve)

"Loch Duart Limited"

I/We, \_\_\_\_\_, of \_\_\_\_\_

, being a member/members of the above named company, hereby appoint

of \_\_\_\_\_, or failing him,

of \_\_\_\_\_, as my/our proxy to vote in my/our name[s]

and on \_\_\_\_\_ my/our behalf at the annual/extraordinary general meeting of the company to be held on \_\_\_\_\_ 20 \_\_\_\_\_, and at any adjournment thereof

Signed on \_\_\_\_\_ 20 \_\_\_\_\_

- 66 Where it is desired to afford members an opportunity of instructing the proxy how he shall act the instrument appointing a proxy shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the directors may approve)

"Loch Duart Limited"

I/We, \_\_\_\_\_, of \_\_\_\_\_

, being a member/members of the above named company, hereby appoint

of \_\_\_\_\_, or failing him, \_\_\_\_\_, of \_\_\_\_\_

as my/our proxy to vote in my/our name[s] and on my/our behalf at the annual/extraordinary general meeting of the company to be held on \_\_\_\_\_ 20 \_\_\_\_\_, and at any adjournment thereof

This form is to be used in respect of the resolutions mentioned below as follows

Resolution No 1\* for \* against

Resolution No 2\* for \* against

\*strike out whichever is not desired

Unless otherwise instructed, the proxy may vote as he thinks fit or abstain from voting

Signed this                      day of 20

- 67      The instrument appointing a proxy and any authority under which it is executed or a copy of such authority certified notanally or in some other way approved by the Board must be delivered to the registered office of the Company not less than 48 hours before the time appointed for the holding of the meeting or to the place of the meeting at any time before the time appointed for the holding of the meeting
- 68      A vote given or a poll demanded by proxy or by the duly authonsed representative of a corporation shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the Company at the office or at such other place at which the instrument of proxy was duly deposited before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll
- 68 1    The provisions of these Articles relating to general meetings of the Company or to the proceedings thereat shall, with the necessary changes being made, apply to every separate meeting of the holders of any class of Share, except that the necessary quorum shall be a person or persons holding or representing by proxy at least a majority in nominal amount of the issued Shares of that class (but so that if at any adjourned meeting of such holders a quorum as above defined is not present then the provisions of Article 48 2 shall apply)

#### VOTES OF MEMBERS

- 69      Notwithstanding that the Act may provide for a lesser majority or may not provide for shareholder consent, the following matters require a special resolution (in addition to any Preference Consent required pursuant to Article 41), namely
- 69 1    The sale of any assets of a value in excess of £250,000
- 69 2    The sale of a controlling interest in the Company--
- 69 3    Any borrowing with or without security in excess of £500,000

#### DIRECTORS

- 70      The number of directors shall not be less than five <sup>1</sup> The maximum number of directors shall be nine
- 71      Subject to any contractual rights of a Shareholder pursuant to any agreement to which the Company is a party, 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 and may determine the rotation in which any such directors are to retire

- 72 A resolution in writing which has been signed by all the directors entitled to receive notice of a meeting of directors or of a committee of directors (which signature may be evidenced by letter, telex, cable, electronic mail, facsimile, or otherwise as the directors may from time to time resolve to permit) shall be as effective as a resolution duly passed at a meeting of the directors or (as the case may be) a committee of directors duly convened and held and may consist of several documents in the same terms each signed by one or more directors

### POWERS OF DIRECTORS

- 73 Subject to the provisions of the Act, the memorandum and the articles and to any directions given by a special resolution, the business of the Company shall be managed by the directors who may exercise all the powers of the Company. No alteration of the memorandum or articles and no such direction shall invalidate any prior act of the directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this regulation shall not be limited by any special power given to the directors by the articles and a meeting of directors at which a quorum is present may exercise all powers exercisable by the directors
- 74 The directors may, by power of attorney or otherwise, appoint any person to be the agent of the Company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers

### APPOINTMENT AND RETIREMENT OF DIRECTORS

- 75 Subject to the obligations of and restrictions on the Company and the rights of the Shareholder under any other agreement to which the Company and any Shareholder are a party, the directors may appoint a person who is willing to act to be a director, either to fill a vacancy or as an additional director, provided that the appointment does not cause the number of directors to exceed any number fixed by or in accordance with the articles as the maximum number of directors. A director so appointed shall hold office only until the next following annual general meeting and shall not be taken into account in determining the directors who are to retire by rotation at the meeting. If not reappointed at such annual general meeting, he shall vacate office at the conclusion thereof

### ROTATION OF DIRECTORS

- 76 The following provisions shall apply to any director other than an executive director of the Company or a director appointed by Preference Consent
- 76 1 At the first annual general meeting all the directors to whom this article 76 applies shall retire from office, and at every subsequent annual general meeting one third of the directors who are subject to retirement by rotation or, if their number is not three or a multiple of three, the number nearest to

one third shall retire from office, but, if there is only one director who is subject to retirement by rotation, he shall retire

- 76 2 Subject to the provisions of the Act, the directors to retire by rotation shall be those who have been longest in office since their last appointment or reappointment, but as between persons who became or were last reappointed directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot
- 76 3 If the company, at the meeting at which a director retires by rotation, does not fill the vacancy the retiring director shall, if willing to act, be deemed to have been reappointed unless at the meeting it is resolved not to fill the vacancy or unless a resolution for the reappointment of the director is put to the meeting and lost
- 76 4 Not less than seven nor more than twenty eight clear days before the date appointed for holding a general meeting notice shall be given to all who are entitled to receive notice of the meeting of any person (other than a director retiring by rotation at the meeting) who is recommended by the directors for appointment or reappointment as a director at the meeting or in respect of whom notice has been duly given to the company of the intention to propose him at the meeting for appointment or reappointment as a director The notice shall give the particulars of that person which would, if he were so appointed or reappointed, be required to be included in the company's register of directors
- 76 5 Subject as aforesaid, a director who retires at an annual general meeting may, if willing to act, be reappointed If he is not reappointed, he shall retain office until the meeting appoints someone in his place, or if it does not do so, until the end of the meeting

#### DELEGATION OF DIRECTORS' POWERS

- 77 The directors may delegate any of their powers to any committee consisting of one or more directors They may also delegate to any director such of their powers as they consider desirable to be exercised by him Any such delegation may be made subject to any conditions the directors may impose, and either collaterally with or to the exclusion of their own powers and may be revoked or altered Subject to any such conditions, the proceedings of a committee with two or more members shall be governed by the articles regulating the proceedings of directors so far as they are capable of applying

#### DISQUALIFICATION OF DIRECTORS

- 78 The office of a director shall be vacated
- (a) if he become bankrupt or insolvent or compound with his creditors,
  - (b) if he become of unsound mind or be found a lunatic,

- (c) if he be convicted of any indictable offence within the meaning of Section 2 of the company directors Disqualification Act 1986 or if he becomes prohibited or *disqualified from being a director by reason of any order made under that Act*,
- (d) if he absent himself from the meetings of the directors for a period of six months without special leave of absence from the other directors, and they pass a resolution *that he has, by reason of such absence, vacated office*,
- (e) if he give notice in writing that he resigns his office,
- (f) if he, being an agent, employee or servant of the Company, cease to be employed by the Company

But any act done in good faith by a director whose office is vacated as aforesaid shall be valid unless, prior to the doing of such act, written notice shall have been served upon the directors or an entry shall have been made in the directors' minute book stating that such director has ceased to be a director of the Company

#### REMUNERATION OF DIRECTORS

- 79 The directors shall be entitled to such remuneration as the board of directors of the Company may properly determine and, unless determined otherwise, the remuneration shall be deemed to accrue from day to day

#### DIRECTORS' EXPENSES

- 80 The directors may be paid all travelling, hotel, and other expenses properly incurred by them in connection with their attendance at meetings of directors or committees of directors or general meetings of directors or separate meetings of the holders of any class of shares or of debentures of the company or otherwise in connection with the discharge of their duties

#### DIRECTORS' APPOINTMENTS AND INTERESTS

- 81 Subject to the provisions of the Act, the directors may appoint one or more of their number to the office of managing director or to any other executive office under the Company and may enter into an agreement or arrangement with any director for his employment by the Company or for the provisions by him of any service outside the scope of the ordinary duties of a director *Any such appointment, agreement or arrangement may be made upon such terms as the directors determine and they may remunerate any such director for his services as they think fit Any appointment of a director to an executive office shall terminate if he ceases to be a director but without prejudice to any claim to damages for breach of the contract of service between the director and the Company*
- 82 Subject to the provisions of the Act, and provided that he has disclosed to the directors the nature and extent of any material interest of his, a director notwithstanding his office

- (a) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested,
- (b) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Company or in which the Company is otherwise interested, and
- (c) shall not, by reason of his office, be accountable to the Company for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit

83 For the purposes of regulation 79

- (a) a general notice given to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified, and
- (b) an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his

#### DIRECTORS' GRATUITIES AND PENSIONS

- 84 The directors may, with a Preference Consent, provide benefits, whether by the payment of gratuities or pensions or by insurance or otherwise, for any director who has held but no longer holds any executive office or employment with the Company or with any body corporate which is or has been a subsidiary of the Company or a predecessor in business of the Company or of any such subsidiary, and for any member of his family (including a spouse and a former spouse) or any person who is or was dependent on him, and may (as well before as after he ceases to hold such office or employment) contribute to any fund and pay premiums for the purchase or provision of any such benefit

#### PROCEEDINGS OF DIRECTORS

- 85 Subject to the provisions of the articles, the directors may regulate their proceedings as they think fit. A director may, and the secretary at the request of a director shall, call a meeting of the directors. Questions arising at a meeting shall be decided by a majority of votes.

86 Proceedings of directors

- 86 1 The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit provided that notice of all board meetings shall be given to all Directors

A majority of the directors then in office shall constitute a quorum and a quorum of directors must be present throughout all meetings of the Board

- 86 2 If within half an hour from the time appointed for the meeting a quorum is not present, or if during a meeting a quorum ceases to be present for a period exceeding 10 minutes, the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other time and place as the directors present may decide provided reasonable notice of such meeting is provided to all directors
- 86 3 Any director may validly participate in a meeting of the Board through the medium of conference telephone or similar form of communication equipment provided that all persons participating in the meeting are able to hear and speak to each other throughout such meeting A person so participating shall be deemed to be present in person at the meeting and shall accordingly be counted in a quorum and be entitled to vote Subject to the Act, all business transacted in such manner by the Board or a committee of the Board shall for the purpose of these Articles be deemed to be validly and effectively transacted at a meeting of the Board or a committee of the Board notwithstanding that a quorum of directors is not physically present in the same place Such a meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the Chairman of the meeting then is
- 86 4 Provided that he shall have first disclosed in full his interest or duty a director may vote at a meeting of directors on any resolution concerning a matter which he has directly or indirectly an interest or duty which is material and which conflicts or may conflict with the interest of the Company 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 such meeting
- 87 The continuing directors or a sole continuing director may act notwithstanding any vacancies in their number, but, if the number of directors is less than the number fixed as the quorum, the continuing directors or director may act only for the purpose of filling vacancies or of calling a general meeting and only subject to any contractual rights of any Shareholder pursuant to an agreement to which the Company is a party
- 88 The directors may appoint one of their number to be the chairman of the board of directors and may at any time remove from that office Unless he is unwilling to do so the director so appointed shall preside at every meeting of directors at which he is present But if there is no director holding that office, or if the director holding it is unwitting to preside or is not present within five minutes after the time appointed for the meeting, the directors present may appoint one of their number to be the chairman of the meeting
- 89 All acts done by a meeting of directors, or of a committee of directors, or by a person acting as a director shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any director or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director and had been entitled to vote

- 90 Provided a director shall have disclosed his interest as in accordance with Article 86 4 above, he shall not be liable to account to the Company for any profit arising out of any matter in which he has, directly or indirectly, any kind of interest whatsoever
- 91 If a question arises at a meeting of directors or of a committee of directors as to the right of a director to vote, the question may, before the conclusion of the meeting, be referred to the chairman of the meeting and his ruling in relation to any director other than himself shall be final and conclusive

#### SECRETARY

- 92 Subject to the provisions of the Act, the secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit, and any secretary so appointed may be removed by them

#### MINUTES

- 93 The directors shall cause minutes to be made in books kept for the purpose
- (a) of all appointment of officers made by directors, and
  - (b) of all proceedings at meetings of the Company, of the holders of any class of Shares in the Company, and at the directors, and of committees of directors, including the names of the directors present at each such meeting

#### DIVIDENDS

- 94 Subject to the provisions of the Act, the Company may by ordinary resolution and, subject to Article 4 5, with Preference Consent declare dividends in accordance with the respective rights of the members, but no dividend other than the Preferred Dividend shall exceed the amount recommended by the directors
- 95 Subject to the provisions of the Act and Article 4, the directors may pay interim dividends of up to a total of £50,000 in any year if it appears to them that they are justified by the profits of the Company available for distribution and may pay greater amounts with Preference Consent
- 96 Any dividend or other moneys payable in respect of a Share may be paid by cheque sent by post to the registered address of the person entitled or, if two or more persons are the holders of the Share or are jointly entitled to it by reason of the death or bankruptcy of the holder, to the registered address of that one of those persons who is first named in the register of members or to such person and to such address as the person or persons entitled may in writing direct Every cheque shall be made payable to the order of the person or persons entitled or to such other person as the person or persons entitled may in writing direct and payment of the cheque shall be a good discharge to the Company Any joint holder or other person jointly entitled to a Share as aforesaid may give receipts for any dividend or other moneys payable in respect of the Share

- 97 No dividend or other moneys payable in respect of a Share shall bear interest against the Company unless otherwise provided by the rights attached to the Share
- 98 Any dividend which has remained unclaimed for twelve years from the date when it became due for payment shall, if the directors so resolve, be forfeited and cease to remain owing by the Company

#### ACCOUNTS

- 99 No member shall (as such) have any right of inspecting any accounting records or other book or document of the Company except as conferred by statute, pursuant to an agreement to which the Company is a party, or authorised by the directors or by ordinary resolution of the Company

#### NOTICES

- 100 Any notice to be given to or by any person pursuant to the articles shall be in writing except that a notice calling a meeting of the directors need not be in writing
- 101 The Company may give any notice to a member either personally or by sending post in a prepaid envelope addressed to the member at his registered address or by leaving it at that address. In the case of joint holders of a Share, all notices shall be given to the holder whose name stands first in the register of members in respect of the joint holding notice so given shall be sufficient notice to all the joint holders
- 102 A member present, either in person or by proxy, at any meeting of the Company the holders of any class of Shares in the Company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called
- 103 Every person who becomes entitled to a Share shall be bound by any notice in respect of that Share which, before his name is entered in the register of members, has been given to a person from whom he derives his title
- 104 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 10 business days after the envelope containing it was posted
- 105 A notice may be given by the Company to the persons entitled to a Share in consequence of the death or bankruptcy of a member by sending or delivering it, in manner authorised by the articles for the giving of notice to a member, addressed to the name, or by the title of representatives of the deceased, or trustee of the bankrupt or by like description at the address, if any, within the United Kingdom supplied for that purpose by the persons claiming to be so entitled. Until such an address has been supplied, and may be given in any manner in which it might have been given if the death or bankruptcy had not occurred

#### WINDING UP

- 106 If the Company is wound up, the liquidator may, with the sanction of an extraordinary resolution of the Company and any other sanction required by the Act and only in accordance with the provisions of Article 5, divide among the members in specie the whole or any part of the assets of the Company and may, to the extent such liquidator is and has not been a director, agent, employee or servant of the Company (except in the capacity of liquidator), for that purpose value any assets and determine how the division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction and only in accordance with Article 5, vest the whole or any part of the assets in trustees upon such trusts for the benefit of the members as he with the like sanction determines, but no member shall be compelled to accept any assets upon which there is a liability.

### INDEMNITY

#### 107 Indemnity and insurance

- 107 1 104 1 Every director of the Company or of any Associated Company shall be entitled to be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in the execution of the duties of his office or otherwise in relation thereto, provided that this Article 104 1 shall only have effect insofar as its provisions are not void under sections 309 or 309A of the Act.
- 107 2 Subject to sections 337(4) to (6) of the Act, the Company shall provide each director with funds to meet expenditure incurred or to be incurred by him in defending any civil or criminal proceedings brought or threatened against him in connection with any alleged negligence, default, breach of duty or breach of trust by him in relation to the Company or in connection with any application under section 144(3) or (4) or section 727 of the Act, and the Company shall be permitted to take or omit to take any action or enter into any arrangement which would otherwise be prohibited under section 330 of the Act to enable a director to avoid incurring such expenditure.
- 107 3 Subject to the provisions of the Act, the Company may indemnify every auditor of the Company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in which relief from liability is granted to him by the court under section 727 of the Act.
- 107 4 The Company shall be entitled to purchase and maintain insurance for any director or auditor of the Company or of any Associated Company against any liability attaching to any such person in connection with any negligence, default, breach of duty or breach of trust by him in relation to the Company or any such Associated Company.

### BORROWING POWERS

- 108 Subject to the Act and to having received any Preference Consent required by Article 41, the directors may exercise all the powers of the Company to borrow money, and to mortgage or charge its undertaking, property and assets (present and future) and uncalled capital and to issue

debentures and other securities, whether outright or as collateral security, for any debt, liability or obligations of the Company or of any third party

