

Company No: SC222440

**THE COMPANIES ACT 1985**  
**COMPANY LIMITED BY SHARES**  
**SPECIAL RESOLUTION**  
**of**  
**UPP (Aberdeen) Limited**  
**(the "Company")**

Passed 29th March 2002

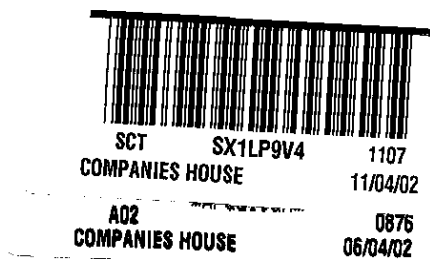
By a Written Resolution of the above named Company duly passed on the above date the following was duly passed pursuant to section 381A of the Companies Act 1985 as if it had been passed as a Special Resolution at a general meeting of the Company duly convened and held:

**SPECIAL RESOLUTION**

THAT the articles of association of the Company be and they are hereby amended by deleting the whole of the existing articles of association of the Company and substituting in lieu therefor new articles of association as set out in the print annexed hereto and for the purpose of identification titled: "Proposed new Articles of Association".



Chairman



**THE COMPANIES ACTS 1985 to 1989**

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**PRIVATE COMPANY HAVING A SHARE CAPITAL**

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**ARTICLES OF ASSOCIATION**

- of -

**UPP (ABERDEEN) LIMITED**

(adopted by written resolution passed on 29.03. 2002)

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**THE COMPANIES ACTS 1985 to 1989**

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**PRIVATE COMPANY HAVING A SHARE CAPITAL**

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**PRELIMINARY**

1. In these articles, any reference to:-

**"A" Director** means any director from time to time appointed and holding office pursuant to Article 17.1(a);

**"A" ordinary share** means an ordinary share of £1 designated an "A" ordinary share in the capital of the Company from time to time;

**"Act"** means the Companies Act 1985, including any statutory modification or re-enactment thereof for the time being in force;

**"Articles"** means these article of association and **"Article"** shall be construed accordingly;

**"B" Director** means any director from time to time appointed and holding office pursuant to Article 17.1(b);

**"B" ordinary share** means an ordinary share of £1 designated a "B" ordinary share in the capital of the Company from time to time;

**"BEIL"** means Barclays European Infrastructure Limited (company number 4170097);

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**"BIL"** means Barclays Infrastructure Limited (company number 3027846);

**"BIL Group"** means:-

- (a) BIL, BEIL and any company which is a subsidiary of either BIL or BEIL, any holding company of BIL or BEIL or a subsidiary of such holding company;
- (b) any unit trust, investment fund, partnership or other fund including any investor or potential investor therein or other entity of which any entity referred to in paragraph (a) of this definition is the general partner, trustee, principal or manager (either directly or indirectly) and including without limitation the Barclays UK Infrastructure Fund Limited Partnership and the general partner thereof, the Barclays European Infrastructure Fund Limited Partnership and the general partner thereof; and
- (c) any nominee or trustee of any entity falling within paragraphs (a) or (b) of this definition acting in such capacity (whether on a change of nominee or trustee or otherwise);

**"Business Day"** means a day (excluding a Saturday or Sunday) on which banks are generally open for business in London;

**"Chairman"** means the chairman of the board of Directors from time to time;

**"Company"** means UPP (Aberdeen) Limited (company number SC216377);

**"Directors"** means the directors of the Company, from time to time;

**"Holding Company"** means Jarvis UPP Holdings Limited (company number 4312388);

**"Jarvis"** means Jarvis plc (company number 2238084);

**"Jarvis Group"** means Jarvis and any subsidiaries of Jarvis from time to time;

**"Loan Agreement"** means any loan agreement entered into by the Company as borrower from time to time as any such loan agreement may be supplemented, varied, amended or replaced hereafter;

**"Regulation"** means the appropriate regulation from Table A;

**"Shareholders' Agreement"** means the shareholders' agreement entered into on or about the date of adoption of these articles between (1) BEIL, in its capacity as general partner of the Barclays European Infrastructure Fund Limited Partnership, (2) BIL, in its capacity as general partner of the Barclays UK Infrastructure Fund Limited Partnership, (3) Jarvis and (4) the Company, as the same may be amended, supplemented, restated or novated from time to time;

**"subsidiary"** has the meaning ascribed thereto in section 736 of the Act;

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**"Table A"** means Table A set out in the schedule to the Companies (Tables A to F) Regulations 1985 (SI 1985 No. 805) as amended by the Companies (Tables A to F) (Amendment) Regulations 1985 (SI 1985 No. 1052); and

**"Unclassified Shares"** means ordinary shares in the capital of the Company which are not "A" ordinary shares or "B" ordinary shares.

2. The Company is a private company. The Regulations, save insofar as they are excluded or varied hereby, and these Articles shall constitute the regulations of the Company. Regulations 2, 3, 24, 40, 50, 54, 64 to 69 (inclusive), 72 to 81 (inclusive), 89 to 91 (inclusive), 101 and 118 shall not apply to the Company.

### SHARES

- 3.1 All shares of the Company shall be under the control of the Directors who may (subject to section 80 of the Act and to these Articles) allot, grant options over or otherwise dispose of the same, to such persons, on such terms and in such manner as they think fit.
- 3.2 The Directors may allot any relevant securities (as defined by section 80(2) of the Act) of the Company to a nominal amount of £169,900 (being the amount of the existing authorised share capital of the Company at the date of the adoption of these Articles) in accordance with the provisions of these Articles.
- 3.3 The general authority conferred by Articles 3.1 and 3.2 shall extend to all relevant securities of the Company from time to time unissued during the currency of such authority. The said general authority shall expire on the fifth anniversary of the date of the adoption of these Articles unless varied or revoked or renewed by the Company in general meeting.
- 3.4 The Directors shall be entitled under the general authority conferred by Article 3.2 to make at any time before the expiry of such authority any offer or agreement which will or may require relevant securities to be allotted after the expiry of such authority.
- 3.5 Subject always to the provisions of Article 5, sections 89(1) and 90(1) to (6) (inclusive) of the Act shall not apply to any allotment of shares in the Company.
- 4.1 The share capital of the Company at the date of the adoption of these articles is £169,900 divided into 84,950 "A" ordinary shares and 84,950 "B" ordinary shares.
- 4.2 The "A" ordinary shares and the "B" ordinary shares and any Unclassified Shares in issue from time to time shall be separate classes of shares but save as herein expressly provided shall rank *pari passu* in all respects.
- 5.1 Save as the holders of the "A" ordinary shares and the holders of the "B" ordinary shares shall otherwise agree in writing, all new shares created upon any increase of capital and any issue of unissued shares shall consist of such numbers of "A" ordinary shares, "B" ordinary shares and Unclassified Shares as reflect the proportions as nearly as may be in which the "A"

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ordinary shares, the "B" ordinary shares and Unclassified Shares were held prior to such issue.

- 5.2 Upon any issue of shares, the Directors shall first offer the "A" ordinary shares to be issued to the holders for the time being of the existing issued "A" ordinary shares and if such offer shall not be fully accepted within 21 days of the making thereof or on the receipt of an intimation from the member concerned that he declines to accept such offer in full the Directors shall thereupon offer any remaining "A" ordinary shares to be issued to the holders for the time being of the existing issued "B" ordinary shares. If such last mentioned offer shall not be fully accepted within 14 days from the making thereof the Directors shall offer any remaining "A" ordinary shares to the holders for the time being of any Unclassified Shares. If such last mentioned offer shall not be accepted within 14 days the Directors may allot or otherwise dispose of the remaining unissued "A" ordinary shares as they may in their discretion think fit subject always to compliance with Article 5.1.
- 5.3 The provisions of Article 5.2 shall also apply to any issue of "B" ordinary shares save that references to "A" ordinary shares shall be construed as references to "B" ordinary shares and references to "B" ordinary shares shall be construed as references to "A" ordinary shares.
- 5.4 The provisions of Article 5.2 shall also apply to any issue of Unclassified Shares save that such shares shall be offered first to the holders of Unclassified Shares and subsequently to the holders of both the "A" ordinary shares and the "B" ordinary shares pro rata to their current holdings.
6. The lien conferred by Regulation 8 shall attach to fully paid shares and to all shares registered in the name of any person indebted or under liability to the Company whether he is the sole registered holder thereof or one of two or more joint holders.

## RESOLUTIONS

7. Any resolution in writing as is referred to in Regulation 53 may consist of several documents in the like form each signed by one or more of the members (or their duly authorised representatives) referred to in that Regulation.

## TRANSFERS

- 8.1 The Directors shall register a transfer made either in accordance with the provisions of Articles 9 and 10 or pursuant to the written agreement of all the members for the time being or in accordance with the terms of the Shareholders' Agreement.
- 8.2 Subject to the provisions of Article 8.1, the Directors may in their absolute discretion and without assigning any reason therefor decline to register any transfer of any share.
- 8.3 The Directors shall decline to register any transfer of shares unless the transferee has, if so required by the terms of the Shareholders' Agreement or otherwise, first entered into an appropriate deed of adherence pursuant to the Shareholders' Agreement and will decline to register a transfer of shares in breach of the Finance Documents.

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- 8.4 If any "A" ordinary shares are transferred to a holder of "B" ordinary shares, they shall be redesignated as "B" ordinary shares and if any "B" ordinary shares are transferred to a holder of "A" ordinary shares, they shall be redesignated as "A" ordinary shares.
- 8.5 If any Unclassified Shares are issued or transferred to a holder of "A" ordinary shares or to a holder of "B" ordinary shares, then such Unclassified Shares shall be redesignated as "A" ordinary shares or "B" ordinary shares, as the case may be.
- 8.6 If any "A" ordinary shares or "B" ordinary shares are transferred to or held by a person other than a member of the BIL Group or the Jarvis Group, then such shares shall be redesignated as Unclassified Shares except where or until such time as all the "A" ordinary shares or "B" ordinary shares (as the case may be) have been transferred to the same person in which case such shares shall continue to be designated as "A" ordinary shares or "B" ordinary shares as the case may be.
- 9.1 For the purpose of this Article 9:-
- (a) the word "**company**" includes any body corporate;
  - (b) the expression a "**member of the same Group**", means:-
    - (i) in relation to any company which is not within the BIL Group or the Jarvis Group:-
      - (A) any other company which is for the time being its subsidiary; or
      - (B) any company of which it is the subsidiary or any other subsidiary of such company; and
    - (ii) in relation to a company falling within the BIL Group, any other company falling within the BIL Group or, in relation to a company falling within the Jarvis Group, any other company falling within the Jarvis Group;
  - (c) the expression "**Transferor Company**" means a company (other than a Transferee Company) which has transferred or proposes to transfer shares to a member of the same Group;
  - (d) the expression "**Transferee Company**" means a company for the time being holding shares in consequence, directly or indirectly, of a transfer or series of transfers of shares between members of the same Group (the relevant Transferor Company in the case of a series of such transfers being the first transferor in such series); and
  - (e) the expression "**Relevant Shares**" means and includes (so far as the same remain for the time being held by any Transferee Company) the shares originally transferred to such Transferee Company and any additional shares issued to such Transferee Company by way of capitalisation or acquired by such Transferee Company in

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exercise of any right or option granted or arising by virtue of the holding of the "Relevant Shares" or any of them or the membership thereby conferred.

### 9.2 Any shares may be transferred:-

- (a) at any time by any member being a company to a member of the same Group as the Transferor Company; and
- (b) at any time to any person with the consent in writing of all other members of the Company;

provided that no transfer may be made and the Directors shall not register a transfer unless the provisions of Article 8.3 have been observed.

### 9.3 If a Transferee Company ceases to be a member of the same Group as the Transferor Company from which the Relevant Shares were derived (because of the change of ownership of the Transferee Company rather than the change of ownership of the Transferor Company), it shall be the duty of the Transferee Company forthwith to notify the Directors in writing that such event has occurred and it shall be the duty of the Transferor Company and each other member of the same Group (including the Transferee Company) to procure that the Relevant Shares are thereupon transferred to the Transferor Company or another member of the same Group (excluding the Transferee Company) (any such transfer being deemed to be authorised under the foregoing provisions of this Article 9).

### 10.1 Except in the case of a transfer or disposal permitted under Article 9, the right to transfer or to dispose of any shares or any interest therein, shall be subject to the restrictions and provisions of this Article 10.

### 10.2 Before transferring or disposing of any shares or any interest of any shares, any shareholder proposing to transfer or dispose of the same (the "**Proposing Transferor**") shall give a notice in writing (the "**Transfer Notice**") to the Company that it desires to transfer or dispose of some or all of the shares (the "**Sale Shares**"). The Transfer Notice shall constitute the Company as the agent of the Proposing Transferor for the sale of the Sale Shares referred to therein (together with all rights and obligations attached thereto) at the Prescribed Price (as defined in and to be determined in accordance with Article 10.3) during the Prescribed Period (as defined in Article 10.4) and otherwise in accordance with this Article 10. The Transfer Notice shall not be revocable except with the consent of all the Directors unless the Proposing Transferor is not willing to sell at the Prescribed Price as determined by an independent accountant in accordance with Article 10.3 and has given prior notice to this effect.

### 10.3 If an offer is made by a bona fide arm's length purchaser to the Proposing Transferor for the Sale Shares, then the agreed price for Sale Shares shall constitute the "**Prescribed Price**". If no such bona fide offer is made but the Proposing Transferor and the Directors have agreed a price per Sale Share (which price is believed by the board of Directors to represent the fair value thereof) and such agreement was reached not more than one month before the proposed transfer, then the agreed price shall be the "Prescribed Price". In all other circumstances on the giving of the Transfer Notice, the Directors shall request an independent accountant of



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international standing (acting as an expert and not an arbitrator) to determine and give an opinion as to the price per share for the Sale Shares considered by him to be the fair value thereof taking into account the rights and regulations attaching to such Sale Shares as at the date of the proposed transfer which when so determined and certified shall be the "Prescribed Price". In any case there shall be deducted from the Prescribed Price, so agreed or certified, save to the extent that such has already been taken into account in calculating the Prescribed Price, any dividend or other distribution declared or made on or paid after the date of the agreement or, as the case may be, certification of the Prescribed Price which is to be retained by the Proposing Transferor. If the Proposing Transferor is not willing to sell at the Prescribed Price, where determined by an independent accountant, then the Proposing Transferor may within a period of 15 Business Days following the date of determination of the Prescribed Price withdraw the Sale Shares from sale by serving notice on the Company to that effect. Any costs of the independent accountant incurred pursuant to this Article 10 shall be borne by the Proposing Transferor.

- 10.4 All shares included in any Transfer Notice shall first be offered by the Company by notice in writing to all the shareholders (other than the Proposing Transferor) for purchase at the Prescribed Price on terms that, in the case of competition, the Sale Shares shall (in accordance with the provisions of these Articles) be sold to members wishing to accept such offer in proportion (as nearly as may be without involving fractions or increasing the number of Sale Shares sold) to their existing holding of shares. Such offer shall specify a time limit (not being less than ten Business Days) within which it must be accepted or in default of acceptance will lapse (the "**Prescribed Period**").
- 10.5 If the Company shall within the Prescribed Period find shareholders (the "**Buyers**") to purchase all of the Sale Shares, it shall give notice in writing thereof to the Proposing Transferor who shall be bound upon payment of the Prescribed Price to transfer the Sale Shares to the respective Buyers. Each such notice shall state the name and address of the Buyer and the number of Sale Shares agreed to be purchased by the Buyer and the purchase shall be completed at a place and time being not less than ten Business Days after the date of such notice and as are contained in such notice.
- 10.6 If the Company shall not within the Prescribed Period find Buyers willing to purchase all the Sale Shares shall give notice in writing thereof to the Proposing Transferor and the Buyers who shall have the right to purchase those Sale Shares for which no other Buyer has been found in proportion (as nearly as may be without involving fractions or increasing the number of Sale Shares sold) to their existing holdings of shares by giving notice to the Company within ten Business Days (the "**Second Period**"). If the Company shall not within the Second Period find Buyers wishing to purchase all the Sale Shares it shall give to the Proposing Transferor a notice in writing that the Company has not found Buyers for the shares and then the Proposing Transferor, at any time thereafter up to the expiration of two months after the expiry of the Second Period, shall be at liberty to transfer the Sale Shares to any person on a bona fide sale at any price not being less than the Prescribed Price (after deducting where appropriate any dividend or other distribution paid, declared or made after the date of the Transfer Notice and being retained by the Proposing Transferor and which was not taken into account in the determination of the Prescribed Price), provided that no transfer

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may be made and the Directors shall not register a transfer unless the provisions of Article 8.3 have been observed.

10.7 If a bona fide arm's length purchaser shall make an offer to purchase the entire issued share capital of the Company which values all the shares in the Company equally (a "**Full Offer**") and any shareholder which is the registered holder of 60 per cent. or more (by nominal value) of the issued share capital of the Company as at that date (the "**Majority Shareholder**") intends to accept the Full Offer and is permitted so to do by the operation of Article 9 and Articles 10.1 to 10.6 inclusive, then:-

- (a) the Majority Shareholder shall be able, by written notice in writing to the other shareholders of the Company, to compel the other shareholders to accept the Full Offer and to sell all of their shares in the Company to that bona fide arm's length purchaser on the same terms, and at the same price;
- (b) completion of the sale and purchase of the shares of the other shareholders shall take place at the registered office of the Majority Shareholder at the same time as the sale and purchase of the shares of the Majority Shareholder to the bona fide arm's length purchaser; and

the compulsory sale of the shares of the other shareholders shall not be subject to pre-emption under this Article 10.

## PROCEEDINGS AT GENERAL MEETINGS

- 11. No business shall be transacted at any general meeting unless a quorum is present at the *commencement and throughout the whole of the meeting*. Two members present (of whom one shall be or represent a holder of "A" ordinary shares and one shall be or represent a holder of "B" ordinary shares) shall be a quorum for all purposes. **PROVIDED ALWAYS THAT** in the event that and for so long as the entire issued share capital of the Company is held by a single member the quorum for any general meeting shall be one member.
- 12. In Regulation 41 the following words are to be added at the end: "and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the meeting shall stand dissolved".
- 13. It shall not be necessary to give any notice of an adjourned meeting and Regulation 45 shall be construed accordingly.
- 14. A poll may be demanded by any member present in person or by proxy and Regulation 46 shall be modified accordingly.
- 15.1 On a show of hands every member who is present in person shall have one vote and on a poll every member shall have one vote for every share of which he is the holder provided that:-

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- (a) no "A" ordinary shares or Unclassified Shares shall confer any right to vote upon a resolution for the removal from office of a "B" Director;
- (b) no "B" ordinary shares or Unclassified Shares shall confer any right to vote upon a resolution for the removal from office of an "A" Director; and
- (c) no "A" ordinary shares or "B" ordinary shares shall confer any right to vote upon a resolution for the removal of a Director appointed by the holders of Unclassified Shares.

15.2 The Chairman of a general meeting shall not be entitled to a second or casting vote.

## DIRECTORS

16. The number of Directors shall be not less than two.

- 17.1. (a) For so long as BIL is and/or any member of the BIL Group are between them registered as the holders of 50 per cent. or more of the issued share capital of the Holding Company, it/they shall together have the right exercisable by notice in writing signed by a duly authorised officer to require the appointment of two Directors (each an **"A" Director**) from time to time and by like notice to require the removal of any "A" Director and the appointment of another person to act in place of such "A" Director and for so long as BIL is and/or any member of the BIL Group are between them registered as the holders of at least 25 per cent. but less than 50 per cent. of the issued share capital of the Holding Company it/they shall have together such rights but in respect of only one "A" Director.
- (b) For so long as Jarvis is and/or any member of the Jarvis Group are between them registered as the holders of 50 per cent. or more of the issued share capital of the Holding Company, it/they shall together have the right exercisable by notice in writing signed by a duly authorised officer to require the appointment of two Directors (each a **"B" Director**) from time to time and by like notice to require the removal of any "B" Director and the appointment of another person to act in place of such "B" Director and for so long as Jarvis and/or any member of the Jarvis Group are between them registered as the holders of at least 25 per cent. but less than 50 per cent. of the issued share capital of the Holding Company it/they shall have together such rights but in respect of only one "B" Director.
- (c) Each holder of at least 25 per cent. or more of the issued share capital of the Holding Company shall be entitled by notice in writing signed by it and left at or sent by registered post to the registered office for the time being of the Company to appoint one Director and by like notice to remove any Director so appointed and at any time and from time to time by like notice to appoint any other person to be a Director in place of the Director so removed or in place of any Director vacating office in any way and originally so appointed by it.

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- (d) Any notice given pursuant to any paragraph of this Article 17.1 shall take effect immediately upon delivery to the registered office of the Company.
- 17.2 Every Director appointed pursuant to Article 17.1 shall hold office until he is either removed or dies or vacates office pursuant to Article 22 and (subject to the provisions of section 303 of the Act) neither the Company in general meeting nor the Directors shall have power to fill any such vacancy but the provisions of this Article 17 may be relaxed or varied to any extent by agreement in writing between the holders of a majority of the "A" ordinary shares in the Holding Company for the time being issued and the holders of a majority of the "B" ordinary shares in the Holding Company for the time being issued.
- 17.3 Any Director appointed pursuant to Article 17.1 shall be at liberty from time to time to make such disclosures to the shareholder (and where such shareholder is a corporation to its holding company or any of the subsidiary companies of such holding company) appointing him as to the business and affairs of the Company as he shall in his absolute discretion determine.
- 17.4 Except in the manner provided by Article 17.1 and Article 18 no person shall be appointed to fill any vacancy occurring in the office of a Director and neither the Company in general meeting nor the Directors shall have power to fill any such vacancy.
18. For so long as BIL, BEIL and/or any member of the BIL Group and Jarvis and/or any member of the Jarvis Group are between them registered as the holders of the entire issued share capital of the Holding Company, BIL, BEIL and Jarvis may jointly from time to time by notice in writing signed by them and left at or sent by registered post to the registered office for the time being of the Company appoint additional Directors and by like notice remove any Director so appointed and at any time and from time to time by like notice appoint any other person to be a Director in place of the Director so removed or in the place of or in addition to any Director appointed under this Article 18.
19. A Director need not hold any shares of the Company to qualify him as a Director but he shall be entitled to receive notice of and attend at all general meetings of the Company and at all separate general meetings of the holders of any class of shares in the capital of the Company.
20. The Directors may exercise all the powers of the Company to borrow or raise money and to mortgage or charge its undertaking, property and uncalled capital and to issue debentures, debenture stock and other securities as security for any debt, liability or obligation of the Company or of any third party.
21. A Director entitled to vote may vote as a Director in regard to any contract or arrangement in which he is interested, or upon any matter arising therefrom, and if he does so vote his vote shall be counted and he shall be reckoned in calculating a quorum when any such contract or arrangement is under consideration and Regulation 94 shall be modified accordingly.
22. The office of Director shall be vacated if the Director:-
- 22.1 becomes bankrupt or makes any arrangement or composition with his creditors generally;

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- 22.2 becomes prohibited from being a director by reason of any order made under the provisions of the Company Directors Disqualification Act 1986;
- 22.3 in the opinion of all his co-Directors becomes incapable by reason of mental disorder of discharging his duties as a Director;
- 22.4 resigns his office by notice in writing to the Company; or
- 22.5 is removed from office under Article 17.1 or Article 18.
- 23.1 Any Director may by writing under his hand appoint any other person to be his alternate and every such alternate shall (subject to his giving to the Company an address within the United Kingdom at which notices may be served on him) be entitled to receive notices of all meetings of the Directors and, in the absence of the Director appointing him, to attend and vote at meetings of the Directors and to exercise all the powers, rights, duties and authorities of the Director appointing him. A Director may at any time revoke the appointment of an alternate appointed by him, and subject to such approval as aforesaid appoint another person in his place, and if a Director shall die or cease to hold the office of Director the appointment of his alternate shall thereupon cease and determine. An alternate director shall not be counted in reckoning the maximum number of Directors allowed by these Articles. A Director acting as alternate shall have an additional vote at meetings of Directors for each Director for whom he acts as alternate but he shall count as only one for the purpose of determining whether a quorum is present.
- 23.2 Every person acting as an alternate director shall be an officer of the Company, and shall alone be responsible to the Company for his own acts and defaults, and he shall not be deemed to be the agent of or for the Director appointing him. The remuneration of any such alternate director shall be payable out of the remuneration payable to the Director appointing him, and shall consist of such portion of the last-mentioned remuneration as shall be agreed between the alternate director and the Director appointing him.
- 24. The quorum necessary for the transaction of the business of the Directors shall be two Directors comprising one "A" Director and one "B" Director (or their alternates) present at the commencement and throughout the whole of the meeting (save to the extent that no "A" Director or "B" Director is appointed as a Director). A meeting of the Directors at which a quorum is present shall be competent to exercise all powers and discretions for the time being exercisable by the Directors. If a quorum is not present within half an hour of the time fixed for the meeting, the meeting shall stand adjourned until the same day in the next week at the same time and place.
- 25. Any resolution in writing such as is referred to in Regulation 93 may consist of several documents in the like form each signed or approved by letter or facsimile by one or more of the Directors for the time being entitled to vote at a meeting of the Directors and Regulation 93 shall be modified accordingly.
- 26. (a) The first Chairman shall be nominated by the holders of a majority of the "B" ordinary shares of £1 each in the issued share capital of the Holding Company and

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such nominee shall, subject to Article 26(c), remain as Chairman until the second anniversary of the date of adoption of these articles.

- (b) Subject to Article 26(c) below, thereafter the Chairman shall be nominated by the holders of a majority of the "A" and "B" ordinary shares of £1 each in the issued share capital of the Holding Company in turn such nominee to be Chairman for a period of two years.
  - (c) If at any time the holders of "A" ordinary shares of £1 each in the issued share capital of the Holding Company hold a different nominal amount of the issued share capital of the Company from the holders of "B" ordinary shares of £1 each in the issued share capital of the Holding Company, then the holders of such "A" ordinary shares (if they hold more shares) or the holders of such "B" ordinary shares (if they hold more shares) shall together have the right to remove and appoint the Chairman from time to time, and Articles 26(a) and 26(b) shall not apply.
  - (d) The Chairman shall not have a casting vote at any meeting of the board of Directors and Regulation 88 shall be modified accordingly. If the Chairman is not present at any meeting of the board of Directors then the other Director appointed by the same shareholder shall act as Chairman for the purpose of the meeting. The Chairman shall not be entitled to any remuneration referable to his position as the Chairman.
27. The Directors may delegate any of their powers to committees upon which both the "A" Directors and "B" Directors shall be represented (save to the extent that no "A" Director or no "B" Director (as appropriate) has been appointed as a Director). Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed by the Directors. Any such delegation may be made subject to any conditions the Directors may impose, and either collaterally with or without exclusion of their own powers and may be revoked or altered.
28. The meetings and proceedings of any committee of the Directors formed pursuant to Article 27 shall be governed by the provisions of these Articles regulating the meetings and proceedings of the Directors, so far as the same are applicable and are not superseded by any regulations made by the Directors pursuant to Article 27.
29. Any Director or alternate director or member of a committee of the Directors may participate in a meeting of the Directors or such committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other and participation in the meeting in this manner shall be deemed to constitute presence in person at such meeting.
30. The Directors may from time to time appoint one or more of their body to hold any executive office in the management of the business of the Company including the office of chief executive or managing or joint managing or deputy or assistant managing director as the Directors may decide for such fixed term or, without limitation, as to period and on such terms as they think fit and a Director appointed to any executive office shall (without prejudice to any claim for damages for breach of any service contract between him and the

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Company) if he ceases to hold the office of Director for any cause ipso facto and immediately cease to hold such executive office.

31. All decisions of the board of the Directors shall require the approval of at least one "A" Director and one "B" Director (save to the extent that no "A" Director or no "B" Director (as appropriate) has been appointed as a Director). Regulation 88 shall be modified accordingly.

### CAPITALISATION OF PROFITS

32. The following proviso shall be added to paragraph (b) of Regulation 110: "provided that the resulting shares distributed to the holders of the "A" ordinary shares shall be "A" ordinary shares and those distributed to the holders of the "B" ordinary shares shall be "B" ordinary shares and provided further that all new shares shall be issued in accordance with Article 5".

### CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

33. Any one of the directors or the secretary for the time being of any corporation which is a member of the Company, or any other person appointed by resolution of the directors or other governing body of such corporation, may (subject to the articles of association of that corporation) act as its representative at any meeting of the Company or any class of members of the Company and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise as if he were an individual member of the Company.
34. Any one of the Directors or the secretary for the time being of the Company or any other person appointed by resolution of the Directors or other governing body of the Company may act as its representative at any meeting of any corporation of which the Company is a member or of any class of members of such corporation and the person so authorised shall be entitled to exercise the same powers on behalf of the Company as the Company could exercise as if he were an individual member of that corporation. In addition, any "A" Director and any "B" Director may act as the representative of the respective corporation who appointed him as an "A" Director or "B" Director (as the case may be) pursuant to these Articles at any general meeting of the Company and the person so authorised shall be entitled to exercise the same powers on behalf of that corporation as that corporation could exercise as if he were an individual member of the Company.

### THE SEAL

- 35.1 If the Company has a seal it shall only be used with the authority of the Directors or of a committee of Directors. The Directors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a Director and by the secretary for the time being of the Company or a second Director. The obligation under Regulation 6 relating to the sealing of share certificates shall apply only if the Company has a seal.
- 35.2 The Company may exercise the powers conferred by section 39 of the Act with regard to having an official seal for use abroad, and such powers shall be vested in the Directors.

## **INDEMNITY**

- 36.1 Every Director or other officer (other than the auditors) of the Company shall be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto, including any liability incurred by him in defending any proceedings, whether civil or criminal or in connection with any application under section 144 or section 727 of the Act, in which relief is granted to him by the court, and no Director or other officer (other than the auditors) of the Company shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his office or in relation thereto. This Article 36.1 shall only have effect in so far as its provisions are not avoided by section 310 of the Act.
- 36.2 The Directors shall have the power to purchase and maintain for any Director or officer (other than the auditors) of the Company insurance against any such liability as is referred to in section 310(1) of the Act.

## **RELATIONSHIP TO FINANCE DOCUMENTS**

- 37.1 Notwithstanding any other provisions of these Articles or provisions of law no payment shall be declared or made by the Company by way of dividend or other distribution, purchase, redemption, reduction or return of shares or capital or by addition to or repayment of any dividend reserve if and to the extent that such payment is prohibited or restricted by the terms of any Loan Agreement or any security provided by the Company pursuant thereto. No dividends or other distributions payable in respect of shares, whether pursuant to the provisions of these Articles or otherwise shall constitute a debt of the Company unless permitted to be paid in accordance with such Loan Agreement or security.
- 37.2 Where any dividend or redemption payment is not made because of the provisions of Article 37.1 such dividend shall be paid or redemption payment made upon the necessary consent being obtained or the bar thereon ceasing to apply.

## **RELATIONSHIP TO SHAREHOLDERS' AGREEMENT**

38. In the event that any provision of these Articles is inconsistent with any express provision of the Shareholders' Agreement, then the provisions of the Shareholders' Agreement shall take precedence and the relevant provision of the Articles shall, to the extent that it is inconsistent, not take effect.