

Company number **SC473027**

**PRIVATE COMPANY LIMITED BY SHARES**

**WRITTEN RESOLUTIONS of KINGSWELLIES NURSERY LIMITED ("Company")**

**25 JUNE 2015** ("Circulation Date")

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006 ("2006 Act"), the sole director of the Company proposes that resolutions 1 and 2 below are passed as special resolutions ("Special Resolutions").

#### **SPECIAL RESOLUTIONS**

1. THAT the issued share capital of the Company consisting of 2 ordinary shares of £1 each in the capital of the Company, of which 1 ordinary share of £1 has been issued to and is registered in the name of Kerry Jane Robertson and 1 ordinary share of £1 has been issued to and is registered in the name of P4Tel Limited, and both of which are fully paid up, be converted into and re-designated as 1 Y ordinary share of £1 and 1 X ordinary share of £1 respectively, 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 resolution 2.
2. THAT the draft regulations attached to this resolution be adopted as the articles of association of the Company in substitution for, and to the exclusion of, the existing articles of association.

#### **AGREEMENT**

Please read the notes at the end of this document before signifying your agreement to the Special Resolutions.

The undersigned, being the persons entitled to vote on the Special Resolutions on the Circulation Date, hereby irrevocably agree to the Special Resolutions:

Signed by:

Signature	<i>KJ Robertson</i>
Print Name	Kerry Jane Robertson
Date	25/6/15

Signed by:

Signature	<i>[Signature]</i>
Print Name	P4Tel Limited
Date	03/07/15

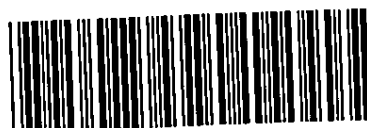
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**BRODIES LLP  
Solicitors**

**22/07 2015**

**REF: Ges.**

FRIDAY



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24/07/2015

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COMPANIES HOUSE



**NOTES**

1. You can choose to agree to all of the Special Resolutions or none of them but you cannot agree to only some of the Special Resolutions. If you agree to all of the Special Resolutions, please indicate your agreement by signing and dating this document where indicated above and returning it to the Company using one of the following methods:

- **By Hand:** delivering the signed copy to Brodies LLP, Brodies House, 31 – 33 Union Grove, Aberdeen, AB10 6SD.
- **Post:** returning the signed copy by post to Brodies House, 31 – 33 Union Grove, Aberdeen, AB10 6SD.

If you do not agree to all of the Special Resolutions, you do not need to do anything. You will not be deemed to agree if you fail to reply.

2. Once you have indicated your agreement to the Special Resolutions, you may not revoke your agreement.
3. Unless, by 28 days from the Circulation Date, sufficient agreement has been received for the Special Resolutions to pass, they will lapse. If you agree to the Special Resolutions, please ensure that your agreement reaches us before or during this date.
4. If you are signing this document on behalf of a person under a power of attorney or other authority please send a copy of the relevant power of attorney or authority when returning this document.

**THE COMPANIES ACT 2006**  
**PRIVATE COMPANY LIMITED BY SHARES**  
**ARTICLES OF ASSOCIATION**  
**OF**  
**KINGSWELLIES NURSERY LIMITED**  
(Adopted by special resolution passed on 3 JULY 2015)

**Brodies LLP**  
**Brodies House**  
**31-33 Union Grove**  
**Aberdeen, AB10 6SD**  
**T: 01224 392 242**  
**F: 01224 392 244**  
**Ref: GES/LMAH/P4T1.3**

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**THE COMPANIES ACT 2006**

**PRIVATE COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

**OF**

**KINGSWELLIES NURSERY LIMITED (SC473027) (the "Company")**

(Adopted by special resolution passed on 3 JULY 2015)

**AGREED TERMS**

**1 Interpretation**

**1.1** In these Articles, the following words have the following meanings:

<b>"Act"</b>	the Companies Act 2006;
<b>"appointor"</b>	has the meaning given in article 10.1;
<b>"Articles"</b>	the Company's articles of association for the time being in force;
<b>"Board"</b>	means the board of directors of the Company as constituted from time to time;
<b>"Business Day"</b>	any day (other than a Saturday, Sunday or public holiday in the United Kingdom) on which clearing banks in Edinburgh are generally open for business;
<b>"Conflict"</b>	has the meaning given in article 7.1;
<b>"Continuing Shareholder"</b>	has the meaning given in article 13.5;
<b>"Controlling Interest"</b>	an interest in shares giving to the holder or holders control of the Company within the meaning of section 1124 of the Corporation Tax Act 2010;
<b>"Eligible Director"</b>	any Eligible X Director or Eligible Y Director (as the case may be);
<b>"Eligible X Director"</b>	an X Director who would be entitled to vote on the matter at a meeting of directors (but excluding any X Director whose vote is not to be counted in respect of the particular matter);

<b>"Eligible Y Director"</b>	a Y Director who would be entitled to vote on the matter at a meeting of directors (but excluding any Y Director whose vote is not to be counted in respect of the particular matter);
<b>"Expert"</b>	means a person appointed in accordance with clause 15 to resolve a matter under these Articles;
<b>"Fair Value"</b>	in relation to shares, as determined in accordance with article 14.4;
<b>"Interested Director"</b>	has the meaning given in article 7.1;
<b>"Model Articles"</b>	the model articles for private companies limited by shares contained in Schedule 1 of the Companies (Model Articles) Regulations 2008 ( <i>SI 2008/3229</i> ) as amended on or prior to the date of adoption of these Articles;
<b>"Original Shareholder"</b>	a shareholder who transfers its shares to a Permitted Transferee in accordance with article 13.4;
<b>"Permitted Group" or "Group"</b>	in relation to a company (wherever incorporated), any Subsidiary of that company, any company of which it is a Subsidiary (its holding company) and any other Subsidiaries of any such holding company; and each company in a Permitted Group or Group is a member of the Permitted Group or Group. Unless the context otherwise requires, the application of the definition of Permitted Group or Group to any company at any time will apply to the company as it is at that time;
<b>"Permitted Transferee"</b>	in relation to a holder of X Shares that is a company, any member of the same Permitted Group as that company;
<b>"Subsidiary"</b>	in relation to a company wherever incorporated (a holding company) means <b>"subsidiary"</b> as defined in section 1159 of the Act and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c) of the Act, as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. Unless the context requires otherwise, the application of the definition of Subsidiary to any company at any time shall apply to the company as it is at that time;

<b>"Transfer Notice"</b>	an irrevocable notice in writing given by any shareholder to the other shareholder where the first shareholder desires, or is required by these Articles, to transfer or offer for transfer (or enter into an agreement to transfer) any shares. Where such notice is deemed to have been served it shall be referred to as a <b>"Deemed Transfer Notice"</b> ;
<b>"Writing or written"</b>	the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise, save that, for the purposes of article 13, article 14, article 16 and article 17, <b>"writing"</b> or <b>"written"</b> shall not include the sending or supply of notices, documents or information in electronic form (other than by fax);
<b>"X Director"</b>	any director appointed to the Company by holders of the X Shares;
<b>"Y Director"</b>	any director appointed to the Company who is the holder of Y Shares;
<b>"X Share"</b>	an ordinary share of £1 in the capital of the Company designated as an X Share; and
<b>"Y Share"</b>	an ordinary share of £1 in the capital of the Company designated as a Y Share.

- 1.2 Save as otherwise specifically provided in these Articles, words and expressions which have particular meanings in the Model Articles shall have the same meanings in these Articles, subject to which and unless the context otherwise requires, words and expressions which have particular meanings in the Act shall have the same meanings in these Articles but excluding any statutory modification of them not in force on the date when these Articles become binding on the Company.
- 1.3 Headings in these Articles are used for convenience only and shall not affect the construction or interpretation of these Articles.
- 1.4 A reference in these Articles to an "article" is a reference to the relevant article of these Articles unless expressly provided otherwise.
- 1.5 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.6 Unless the context otherwise requires, a reference to one gender includes a reference to the other gender.



- 1.7 Save as expressly provided otherwise in these Articles, any reference to any statutory provision shall be deemed to include a reference to each and every statutory amendment, modification, re-enactment and extension thereof for the time being in force.

## **2 Adoption of the Model Articles**

- 2.1 The Model Articles shall apply to the Company, except in so far as they are modified or excluded by these Articles or are inconsistent with these Articles, and, subject to any such modifications, exclusions or inconsistencies, shall together with these Articles constitute the articles of association of the Company to the exclusion of any other articles or regulations set out in any statute or in any statutory instrument or other subordinate legislation.
- 2.2 Articles 6(2), 7, 8, 9(1), 11 to 14 (inclusive), 16, 17, 22, 26(5), 27 to 29 (inclusive), 36, 38, 39, 43, 44(2) and 50 to 53 (inclusive) of the Model Articles shall not apply to the Company.
- 2.3 Article 20 of the Model Articles shall be amended by the insertion of the words "(including alternate directors and the secretary)" before the words "properly incur".
- 2.4 In article 25(2)(c) of the Model Articles, the words "evidence, indemnity and the payment of a reasonable fee" shall be deleted and replaced with the words "evidence and indemnity".
- 2.5 Articles 31(1)(a) to (d) (inclusive) of the Model Articles shall be amended by the deletion, in each case, of the words "either" and "or as the directors may otherwise decide".

## **DIRECTORS**

### **3 Directors' meetings**

- 3.1 Any decision of the directors must be taken at a meeting of directors in accordance with these Articles.
- 3.2 Subject as provided in these Articles, the Board has responsibility for the supervision and management of the Company and its business, and directors may regulate their meeting as they think fit.
- 3.3 All decisions made at any meeting of the directors or of any committee of the directors shall be made only by resolution and resolutions at any meeting of the directors or committee of the directors shall be passed if more votes are cast for it than against it. If there is only one director appointed, a resolution of the sole director shall suffice for the passing of a director's or Board resolution.
- 3.4 If at any time at or before any meeting of the directors or of any committee of the directors all X Directors participating should request that the meeting be adjourned or reconvened to another time or date (whether to enable further consideration to be given to any matter or for other directors to participate or for any other reason, which need not be stated) then such meeting shall be adjourned or reconvened accordingly, and no business shall be conducted at that meeting after

such a request has been made. No meeting of directors may be adjourned pursuant to this article more than once.

- 3.5 At a meeting of directors, each director has one vote.

#### **4 Number of directors**

- 4.1 There shall be a minimum of one and maximum of three directors.
- 4.2 Where the Company has a sole director, the provisions of these articles shall be construed so as to take into account this sole directorship.

#### **5 Calling a directors' meeting**

- 5.1 Any director may call a meeting of directors by giving not less than seven Business Days' notice of the meeting (or such shorter period of notice as agreed in writing by at least one X Director (if any holds office at the relevant time)) to each director.
- 5.2 Notice of any directors' meeting must be accompanied by:
- 5.2.1 an agenda specifying in reasonable detail the matters to be raised at the meeting; and
  - 5.2.2 copies of any papers to be discussed at the meeting.
- 5.3 A shorter period of notice of a meeting may be given if at least one X Director (if any holds office at the relevant time) agrees in writing.

#### **6 Quorum for directors' meetings**

- 6.1 The quorum at any meeting of the directors (including adjourned meetings) shall be one Eligible Director, provided that where one or more X Directors hold office, the quorum at any meeting of directors (including adjourned meetings) shall be at least one Eligible X Director (or his alternate). No business shall be conducted at any meeting of the directors unless a quorum is participating at the beginning of the meeting and also when that business is voted on. If a quorum is not present within 30 minutes of the time specified for the relevant meeting in the notice of the meeting then the meeting shall be adjourned for five Business Days at the same time and place.

#### **7 Directors' interests**

- 7.1 The directors may, in accordance with the requirements set out in this article, authorise any matter or situation proposed to them by any director which would, if not authorised, involve a director (the "Interested Director") breaching his duty under section 175 of the Act to avoid conflicts of interest ("Conflict").
- 7.2 Any authorisation under this article will be effective only if:

- 7.2.1 to the extent permitted by the Act, the matter in question shall have been proposed by any director for consideration in the same way that any other matter may be proposed to the directors under the provisions of these Articles or in such other manner as the directors may determine;
  - 7.2.2 any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director; and
  - 7.2.3 the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's vote had not been counted.
- 7.3 Any authorisation of a Conflict under this article may (whether at the time of giving the authorisation or subsequently):
- 7.3.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter or situation so authorised;
  - 7.3.2 provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the directors or otherwise) related to the Conflict;
  - 7.3.3 provide that the Interested Director will or will not be an Eligible Director in respect of any future decision of the directors in relation to any resolution related to the Conflict;
  - 7.3.4 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the directors think fit;
  - 7.3.5 provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a director of the Company) information that is confidential to a third party, he will not be obliged to disclose that information to the Company, or to use it in relation to the Company's affairs where to do so would amount to a breach of that confidence; and
  - 7.3.6 permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the directors and be excused from reviewing papers prepared by, or for, the directors to the extent they relate to such matters.
- 7.4 Where the directors authorise a Conflict, the Interested Director will be obliged to conduct himself in accordance with any terms and conditions imposed by the directors in relation to the Conflict.
- 7.5 The directors may revoke or vary such authorisation at any time but this will not affect anything done by the Interested Director prior to such revocation or variation in accordance with the terms of such authorisation.
- 7.6 A director, notwithstanding his office, may be a director or other officer of, employed by, or otherwise interested (including by the holding of shares) in, the shareholder who appointed him as

a director of the Company, or any other member of such shareholder's Permitted Group, and no authorisation under article 7.1 shall be necessary in respect of any such interest.

- 7.7 Any X Director or Y Director shall be entitled from time to time to disclose to the holders of the X Shares or (as the case may be) the holders of the Y Shares such information concerning the business and affairs of the Company as he shall at his discretion see fit, subject only to the condition that if there be more than one X shareholder or (as the case may be) Y shareholder, the director concerned shall ensure that each of the shareholders of the same class receives the same information on an equal footing.
- 7.8 A director is not required, by reason of being a director (or because of the fiduciary relationship established by reason of being a director), to account to the Company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the directors in accordance with these Articles or by the Company in general meeting (subject in each case to any terms and conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.
- 7.9 Subject to sections 177(5) and 177(6) of the Act, a director who is in any way, whether directly or indirectly, interested in a proposed transaction or arrangement with the Company shall declare the nature and extent of his interest to the other directors before the Company enters into the transaction or arrangement in accordance with the Act.
- 7.10 Subject to sections 182(5) and 182(6) of the Act, a director who is in any way, whether directly or indirectly, interested in a transaction or arrangement that has been entered into by the Company shall declare the nature and extent of his interest to the other directors as soon as is reasonably practicable in accordance with the Act, unless the interest has already been declared under article 7.9.
- 7.11 Subject, where applicable, to any terms and conditions imposed by the directors in accordance with article 7.3, and provided a director has declared the nature and extent of his interest in accordance with the requirements of the Act, a director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction or arrangement with the Company:
- 7.11.1 may be a party to, or otherwise interested in, any such transaction or arrangement with the Company, or in which the Company is otherwise (directly or indirectly) interested;
  - 7.11.2 shall be an Eligible Director for the purposes of any proposed decision of the directors (or committee of directors) in respect of such transaction or arrangement or proposed transaction or arrangement in which he is interested;
  - 7.11.3 shall be entitled to vote at a meeting of directors (or of a committee of directors) or participate in any unanimous decision, in respect of such transaction or arrangement or proposed transaction or arrangement in which he is interested;

- 7.11.4 may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a director;
  - 7.11.5 may be a director or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate in which the Company is otherwise (directly or indirectly) interested; and
  - 7.11.6 shall not, save as he may otherwise agree, be accountable to the Company for any benefit which he (or a person connected with him (as defined in section 252 of the Act)) derives from any such contract, transaction or arrangement or from any such office or employment or from any interest in any such body corporate and no such contract, transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit nor shall the receipt of any such remuneration or other benefit constitute a breach of his duty under section 176 of the Act.
- 7.12 The shareholders hereby authorise any Conflict which arises solely by virtue of the X Director being connected to the holder of the X Shares (or any other member of such holder's Group) and the provisions of clause 7.11 shall apply to the X Director as if he had received authorisation under article 7.1 with no conditions attaching to it.

## **8 Records of decisions to be kept**

Where decisions of the directors are taken by electronic means, such decisions shall be recorded by the directors in permanent form, so that they may be read with the naked eye.

## **9 Appointment and removal of directors**

- 9.1 For as long as it holds at least one X Share, the holder of the majority of the X Shares has the right to appoint, maintain and remove up to two directors, by giving notice to the Company and to the holders of the Y Shares.
- 9.2 Any appointment or removal of a director pursuant to this article shall be in writing and signed by or on behalf of the holder of a majority of the X Shares and served on the holders of the majority of the Y Shares and the Company at its registered office or delivered to a duly constituted meeting of the directors of the Company. Any such appointment or removal shall take effect when received by the Company or at such later time as shall be specified in such notice.
- 9.3 No X Director or Y Director shall be appointed or removed otherwise than pursuant to these Articles, save as provided by law or as agreed between the holder of the majority of the X Shares and the holder of the majority of the Y Shares.

**10 Alternate directors**

10.1 Any Eligible X Director (other than an alternate director) (in this article, "the appointor") may appoint any person (whether or not a director) except for an existing director representing the other class of shares to be an alternate director to exercise that director's powers, and carry out that director's responsibilities, in relation to the taking of decisions by the directors, in the absence of the alternate's appointor. In these Articles, where the context so permits, the term "X Director" shall include an alternate director appointed by an X Director. A person may be appointed an alternate director by more than one director provided that each of his appointors represents the same class of shares but not otherwise.

10.2 Any appointment or removal of an alternate director must be effected by notice in writing to the Company signed by the appointor, or in any other manner approved by the directors.

10.3 The notice must:

10.3.1 identify the proposed alternate; and

10.3.2 in the case of a notice of appointment, contain a statement signed by the proposed alternate that he is willing to act as the alternate of the director giving the notice.

10.4 An alternate director has the same rights, in relation to any decision of the directors, as the alternate's appointor.

10.5 Except as the Articles specify otherwise, alternate directors:

10.5.1 are deemed for all purposes to be directors;

10.5.2 are liable for their own acts and omissions;

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

10.5.4 are not deemed to be agents of or for their appointors,

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

10.6 A person who is an alternate director but not a director:

10.6.1 may be counted as participating for the purposes of determining whether a quorum is present (but only if that person's appointor is not participating); and

10.6.2 may participate in a unanimous decision of the directors (but only if his appointor is an Eligible Director in relation to that decision, and does not himself participate).

- 10.7 A director who is also an alternate director is entitled, in the absence of his appointor, to a separate vote on behalf of his appointor, in addition to his own vote on any decision of the directors (provided that his appointor is an Eligible Director in relation to that decision).
- 10.8 An alternate director may be paid expenses and may be indemnified by the Company to the same extent as if he were a director but shall not be entitled to receive from the Company any remuneration in his capacity as an alternate director except such part (if any) of the remuneration otherwise payable to the alternate's appointor as the appointor may by notice in writing to the Company from time to time direct.
- 10.9 An alternate director's appointment as an alternate terminates:
- 10.9.1 when the alternate's appointor revokes the appointment by notice to the Company in writing specifying when it is to terminate;
  - 10.9.2 on the occurrence, in relation to the alternate, of any event which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a director; or
  - 10.9.3 when the alternate director's appointor ceases to be a director for whatever reason.

## SHARES

### 11 Share capital

- 11.1 Except as otherwise provided in these Articles, the X Shares and the Y Shares shall rank *pari passu* in all respects but shall constitute separate classes of shares.
- 11.2 On the transfer of any share as permitted by these Articles:
- 11.2.1 a share transferred to a non-shareholder shall remain of the same class as before the transfer; and
  - 11.2.2 a share transferred to a shareholder shall automatically be redesignated on transfer as a share of the same class as those shares already held by the shareholder.

If no shares of a class remain in issue following a redesignation under this article, these Articles shall be read as if they do not include any reference to that class or to any consents from, or attendance at any meeting or votes to be cast by, shareholders of that class or directors appointed by that class.

- 11.3 No variation of the rights attaching to any class of shares shall be effective except with the sanction of a special resolution of the holders of the relevant class of shares.

Where a special resolution to vary the rights attaching to a class of shares is proposed at a separate general meeting of that class of shares, all the provisions of these Articles as to general

meetings of the Company shall mutatis mutandis apply, but so that the necessary quorum shall be one holder of the relevant class present in person or by proxy or (being a corporation) by a duly authorised representative. For the purpose of this article, one holder present in person or by proxy or (being a corporation) by a duly authorised representative may constitute a meeting.

## **12 Issuing shares**

- 12.1 No shares in the Company shall be allotted nor any right to subscribe for or to convert any security into any shares in the Company shall be granted unless within one month before that allotment or grant (as the case may be) every shareholder for the time being has consented in writing to that allotment or grant and its terms and to the identity of the proposed allottee or grantee.
- 12.2 No share of any class nor any right to subscribe for or to convert any security into a share of any class shall be allotted or granted otherwise than to the holder of a share of that same class.
- 12.3 In accordance with section 567(1) of the Act, sections 561 and 562 of the Act shall not apply to an allotment of equity securities (as defined in section 560(1) of the Act) where the consent to that allotment of every shareholder has been obtained as required by these Articles and that allotment otherwise conforms to the requirements of these Articles.

## **13 Share transfers**

- 13.1 In these Articles, reference to the transfer of a share includes the transfer, assignation or other disposal of a beneficial or other interest in that share, or the creation of a trust or encumbrance over that share, and reference to a share includes a beneficial or other interest in a share.
- 13.2 No share shall be transferred unless the transfer is permitted or required under these Articles and carried out in accordance with the terms of these Articles. If a shareholder transfers (or purports to transfer) any shares other than in accordance with this clause, it shall be deemed to have served a Transfer Notice.
- 13.3 A shareholder may do anything prohibited in this article if all of the other shareholders have consented to it in writing.
- 13.4 A holder of X Shares may at any time transfer all (but not some only) of its shares in the Company:-
  - 13.4.1 to a Permitted Transferee without being required to serve a Transfer Notice or comply with the pre-emption procedure set out in this article 13. If a Permitted Transferee ceases to be a member of the Permitted Group, the Permitted Transferee must, not later than the date five Business Days after the date on which it so ceases, transfer all (but not some only) of its shares in the Company back to the Original Shareholder or to a member of the same Permitted Group as the Original Shareholder (which in either case is not in liquidation), failing which the Company may execute a transfer of the



shares on behalf of the Permitted Transferee and register the Original Shareholder as the holder of such shares; or

- 13.4.2 to a bona fide arm's length purchaser without being required to serve a Transfer Notice or comply with the pre-emption procedure set out in this article 13.
- 13.5 A holder of Y Shares wishing to transfer its shares (in this article the "Seller") must give a Transfer Notice to the other shareholder (in this article the "Continuing Shareholder") giving details of the proposed transfer including, in particular, the identity of the buyer, the price of the shares and other payment terms and conditions.
- 13.6 If the Continuing Shareholder gives written notice to the Seller within 28 days of receiving the Transfer Notice (the first day being the day after it receives the Transfer Notice) that it wishes to buy all the Seller's shares in the Company, the Continuing Shareholder will have the right to do so at the price specified in the Transfer Notice.
- 13.7 The Continuing Shareholder is bound to buy all the Seller's shares when it gives notice to the Seller under article 13.6 that it wishes to do so.
- 13.8 If, at the expiry of the period specified in article 13.6, the Continuing Shareholder has not notified the Seller that it wants to buy the shares, the Seller may not transfer any of the shares identified in the Transfer Notice and shall remain registered as the holder thereof.
- 13.9 Subject to article 13.10, the directors shall forthwith register any duly stamped transfer made in accordance with these Articles and shall not have any discretion to register any transfer of shares which has not been made in compliance with these Articles.
- 13.10 The directors may, as a condition to the registration of any transfer of shares in the Company (whether to a Permitted Transferee or otherwise) require the transferee to execute and deliver to the Company a deed agreeing to be bound by the terms of any shareholders' agreement (or similar document) in force between the shareholders in such form as the directors may reasonably require (but not so as to oblige the transferee to have any obligations or liabilities greater than those of the proposed transferor under any such agreement or other document). If any such condition is imposed in accordance with this article 13.10, the transfer may not be registered unless that deed has been executed and delivered to the Company's registered office by the transferee.

#### **14 Obligatory transfers**

- 14.1 If any of the following events ("Obligatory Transfer Events") happen to a holder of Y Shares (in this article, the "Seller"), it shall serve a Transfer Notice in respect of all of its shares in the Company on the other shareholder (in this article, the "Buyer") as soon as possible, which shall include details of the Obligatory Transfer Event:

- 14.1.1 the passing of a resolution for the liquidation of the shareholder other than a solvent liquidation for the purpose of the reconstruction or amalgamation of all or part of the shareholder's Group in which a new company assumes (and is capable of assuming) all the obligations of the shareholder or, where the shareholder is an individual, the making of a bankruptcy order against him/her, or an arrangement or composition being made with his/her creditors, or, him/her otherwise taking the benefit of any statutory provision from time to time being in force for the relief of insolvent debtors; or
- 14.1.2 the presentation at court by any competent person of a petition for the winding up of the shareholder and which has not been withdrawn or dismissed within seven days of such presentation; or
- 14.1.3 a change of control (as control is defined in section 1124 of the Corporation Tax Act 2010) of the shareholder; or
- 14.1.4 the issue at court by any competent person of a notice of intention to appoint an administrator to the shareholder, a notice of appointment of an administrator to the shareholder or an application for an administration order in respect of the shareholder; or
- 14.1.5 any step is taken by any person to appoint a receiver, administrative receiver or manager in respect of the whole or a substantial part of the assets or undertaking of the shareholder; or
- 14.1.6 the shareholder being unable to pay its debts as they fall due for the purposes of section 123 of the Insolvency Act 1986; or
- 14.1.7 the shareholder entering into a composition or arrangement with its creditors; or
- 14.1.8 any chargor taking any step to enforcing any charge created over any shares held by the shareholder in the Company (other than by the appointment of a receiver, administrative receiver or manager); or
- 14.1.9 a process being instituted that could lead to the shareholder being dissolved and its assets being distributed among the shareholder's creditors, shareholders or other contributors; or
- 14.1.10 the shareholder ceasing to carry on its business or substantially all of its business; or
- 14.1.11 the shareholder committing a material or persistent breach of any shareholders' agreement to which it is a party in relation to the shares in the Company which if capable of remedy has not been so remedied within 20 Business Days of the other shareholder requiring such remedy; or

- 14.1.12 in the case of the Obligatory Transfer Events set out in paragraphs 14.1.1 to 14.1.11 above, any competent person takes any analogous step in any jurisdiction in which the Seller carries on business; or
- 14.1.13 a bankruptcy order being made against him, or an arrangement or composition being made with his creditors, or where he otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or any competent person takes any analogous step;
- 14.1.14 the death of the shareholder; or
- 14.1.15 the shareholder being an individual who is an employee of the Company ceasing to be employed by the Company; or
- 14.1.16 the shareholder being an individual who is director of the Company ceasing to be a director of the Company.

If the holder of Y Shares that has suffered the Obligatory Transfer Event fails to serve a Transfer Notice, it shall be regarded as giving a Deemed Transfer Notice in relation to all its shares in the Company on the date on which the other shareholder becomes aware of the Obligatory Transfer Event.

- 14.2 As soon as practicable after service, or deemed service, of the Transfer Notice, the shareholders shall appoint an Expert in accordance with Article 15 to determine the Fair Value of the Seller's shares in the Company.
- 14.3 The Buyer has the right, within twenty days of receiving notification of the Fair Value determined by the Expert (the first day being the day after the Buyer receives the Fair Value notification) to serve a written notice on the Seller to buy all of the Seller's shares at the Fair Value.
- 14.4 In this article the Fair Value of the shares to be sold in the Company shall be the value that the Expert certifies to be the fair market value in his opinion based on the following assumptions and bases:
  - 14.4.1 the value of the shares in question is that proportion of the fair market value of the entire issued share capital of the Company that the Seller's shares bear to the then total issued share capital of the Company (applying a discount for the size of the Seller's shareholding and taking into account the restrictions applying to the shares under the Articles or otherwise);
  - 14.4.2 the sale is between a willing buyer and a willing seller on the open market;
  - 14.4.3 the sale is taking place on the date that the Obligatory Transfer Event occurred;
  - 14.4.4 if the Company is then carrying on its business as a going concern, on the assumption that it shall continue to do so;

- 14.4.5 the shares are sold free of all encumbrances;
  - 14.4.6 taking into account the effect of the Obligatory Transfer Event on the value of the Company; and
  - 14.4.7 taking into account any other factors that the Expert reasonably believes should be taken into account.
- 14.5 If any problem arises in applying any of the assumptions set out in this article 14.4, the Expert shall resolve the problem in whatever manner he shall, in his absolute discretion, think fit.
- 14.6 The Expert shall be requested to determine the Fair Value within twenty Business Days of his appointment and to notify the shareholders in writing of his determination.
- 14.7 Subject to any confidentiality provisions, the Expert may have access to all accounting records and other relevant documents of the Company.
- 14.8 The Expert's determination shall be final and binding on the shareholders (in the absence of fraud or manifest error).
- 14.9 If the Seller fails to complete the transfer of shares as required under this article, the Company:
- 14.9.1 is irrevocably authorised to appoint any person as agent to transfer the shares on the Seller's behalf and to do anything else that the Buyer may reasonably require to complete the sale; and
  - 14.9.2 may receive the purchase price in trust for the Seller, giving a receipt that shall discharge the Buyer.
- 15 Expert**
- 15.1 An Expert is a person appointed in accordance with this clause to resolve a matter under the Articles.
- 15.2 The holders of the majority of the X Shares and the holder of the majority of the Y Shares (for the purposes of this article 15, the "parties") shall endeavour to agree on the appointment of an independent Expert and to agree the terms of appointment with the Expert.
- 15.3 If the parties are unable to agree on an Expert or the terms of his appointment within seven days of either party serving details of a suggested expert on the other, either party shall then be entitled to request the then President of the Institute of Chartered Accountants in Scotland to appoint an Expert who is an accountant of repute with experience in the valuation of private companies limited by shares and agree the Expert's terms of appointment.

- 15.4 The Expert is required to prepare a written decision and give notice (including a copy) of the decision to the parties within a maximum of twenty Business Days of the matter being referred to the Expert.
- 15.5 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:
- 15.5.1 either party may apply to the then President of the Institute of Chartered Accountants in Scotland to discharge the Expert and to appoint a replacement Expert with the required expertise; and
- 15.5.2 this clause applies in relation to the new Expert as if he were the first Expert appointed.
- 15.6 All matters under this clause shall be conducted, and the Expert's decision shall be written, in the English language.
- 15.7 The parties are entitled to make submissions to the Expert including oral submissions and shall provide (or ensure that others including the Company provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision, subject to the Expert agreeing to give such confidentiality undertakings as the parties may reasonably require.
- 15.8 To the extent not provided for by this clause, the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate, including (to the extent he considers necessary), instructing professional advisers to assist him in reaching his determination.
- 15.9 Each party shall with reasonable promptness supply (and ensure that others including the JVC supply) each other with all information and give each other access to all documentation and personnel as the other party reasonably requires to make a submission under this clause.
- 15.10 The Expert shall act as an expert and not as an arbitrator. The Expert's written decision on the matters referred to him shall be final and binding on the parties in the absence of manifest error or fraud.
- 15.11 Each shareholder shall bear its own costs in relation to the reference to the Expert. The Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the Seller.
- 16 Tag along**
- 16.1 The provisions of article 16.2 to article 16.5 shall apply if the holder of the X Shares in issue for the time being (in this article the "Seller") proposes to transfer the X Shares to a bona fide arm's length purchaser ("Proposed Transfer") and such transfer would, if carried out, result in such person (in

this article the "Buyer") acquiring all (but not some only) of its X Shares representing not less than 50% of the shares in issue for the time being in the Company.

16.2 Before making a Proposed Transfer, the Seller shall procure that the Buyer makes an offer (in this article the "Offer") to the holder of the Y Shares in issue for the time being to purchase all of the Y Shares held by it for a consideration in cash per Share that is at least equal to the price per Share offered by the Buyer in the Proposed Transfer (in this article the "Specified Price").

16.3 The Offer shall be given by written notice (in this article the "Offer Notice"), at least ten Business Days (in this article the "Offer Period") before the proposed transfer date (in this article the "Transfer Date"). To the extent not described in any accompanying documents, the Offer Notice shall set out:

16.3.1 the identity of the Buyer;

16.3.2 the purchase price and other terms and conditions of payment;

16.3.3 the Transfer Date; and

16.3.4 the number of Shares proposed to be purchased by the Buyer ("Offer Shares").

16.4 If the Buyer fails to make the Offer in accordance with article 16.2 and article 16.3, the Seller shall not be entitled to complete the Proposed Transfer and the Company shall not register any transfer of Shares effected in accordance with the Proposed Transfer.

16.5 If the Offer is accepted by the holder of the Y Shares in writing within the Offer Period, the completion of the Proposed Transfer shall be conditional on completion of the purchase of all the Offer Shares held by such shareholder.

## **17 Drag along**

17.1 If the holder of the X Shares wishes to transfer all (but not some only) of its X Shares in issue for the time being to a bona fide arm's length purchaser (in this article the "Proposed Buyer"), the Seller may require the holder of the Y Shares (in this article the "Called Shareholder") to sell and transfer all of its shares (in this article the "Called Shares") to the Proposed Buyer (or as the Proposed Buyer directs) in accordance with the provisions of this article (in this article the "Drag Along Option").

17.2 The Seller may exercise the Drag Along Option by giving written notice to that effect to the Called Shareholder (in this article the "Drag Along Notice") at any time before the transfer of the X Shares to the Proposed Buyer. The Drag Along Notice shall specify:

17.2.1 that the Called Shareholder is required to transfer all of its Called Shares pursuant to this article 17;

17.2.2 the person to whom the Called Shares are to be transferred;

- 17.2.3 the purchase price payable for the Called Shares which shall, for each Called Share, be an amount at least equal to the price per Share offered by the Proposed Buyer for the X Shares; and
  - 17.2.4 the proposed date of the transfer.
- 17.3 Once issued, a Drag Along Notice shall be irrevocable. However, a Drag Along Notice shall lapse if, for any reason, the Seller has not sold the X Shares to the Proposed Buyer within twenty Business Days of serving the Drag Along Notice. The Seller may serve further Drag Along Notices following the lapse of any particular Drag Along Notice.
- 17.4 No Drag Along Notice shall require the Called Shareholder to agree to any terms except those specifically set out in this article 17.
- 17.5 Completion of the sale of the Called Shares shall take place on the Completion Date. Completion Date means the date proposed for completion of the sale of the X Shares unless:
  - 17.5.1 the Seller and the Called Shareholder agree otherwise in which case the Completion Date shall be the date agreed in writing by them; or
  - 17.5.2 that date is less than twenty Business Days after the date on which the Drag Along Notice is served, in which case the Completion Date shall be the twentieth Business Day after service of the Drag Along Notice.
- 17.6 Within twenty Business Days of the Seller serving a Drag Along Notice on the Called Shareholder, the Called Shareholder shall deliver a stock transfer form for the Called Shares, together with the relevant share certificate (or a suitable indemnity for any lost share certificate) to the Company. On the expiration of that twentieth Business Day period, the Company shall pay the Called Shareholder, on behalf of the Proposed Buyer, the amounts due pursuant to article 17.2 to the extent that the Proposed Buyer has put the Company in the requisite funds. The Company's receipt for the price shall be a good discharge to the Proposed Buyer. The Company shall hold the amounts due to the Called Shareholder in trust for the Called Shareholder without any obligation to pay interest.
- 17.7 To the extent that the Proposed Buyer has not, on the expiration of the twentieth Business Day period referred to in article 17.6, put the Company in funds to pay the purchase price due in respect of the Called Shares, the Called Shareholder shall be entitled to the return of the stock transfer form and share certificate (or suitable indemnity) for the relevant Called Shares and the Called Shareholder shall have no further rights or obligations under this article 17 in respect of its Shares.
- 17.8 If the Called Shareholder does not, on completion of the sale of the Called Shares, execute transfer(s) in respect of all of the Called Shares held by it, the Called Shareholder shall be deemed to have irrevocably appointed any person nominated for the purpose by the Seller to be its agent to execute all necessary transfer(s) on its behalf, against receipt by the Company (on trust for such

holder) of the purchase price payable for the Called Shares, and to deliver such transfer(s) to the Proposed Buyer (or as he may direct) as the holder thereof. After the Proposed Buyer (or its nominee) has been registered as the holder, the validity of such proceedings shall not be questioned by any such person. Failure to produce a share certificate shall not impede the registration of shares under this article 17.8.

## **DECISION MAKING BY SHAREHOLDERS**

### **18 Quorum for general meetings**

- 18.1 The quorum at any general meeting of the Company, or adjourned general meeting, shall be two persons present in person or by proxy, of whom one shall be a holder of X Shares or a duly authorised representative of such holder and one shall be a holder of Y Shares or a duly authorised representative of such holder.
- 18.2 No business shall be transacted by any general meeting unless a quorum is present at the commencement of the meeting and also when that business is voted on.

### **19 Voting**

- 19.1 At a general meeting, on a show of hands every shareholder who is present in person or by proxy shall have one vote, unless the proxy is himself a shareholder entitled to vote; on a poll every shareholder present in person or by proxy shall have one vote for each share of which he is the holder; and on a vote on a written resolution every shareholder has one vote for each share of which he is the holder.

### **20 Poll votes**

- 20.1 A poll may be demanded at any general meeting by a qualifying person (as defined in section 318 of the Act) present and entitled to vote at the meeting.
- 20.2 Article 44(3) of the Model Articles shall be amended by the insertion of the words "A demand so withdrawn shall not invalidate the result of a show of hands declared before the demand was made" as a new paragraph at the end of that article.

### **21 Proxies**

- 21.1 Article 45(1)(d) of the Model Articles shall be deleted and replaced with the words "is delivered to the Company in accordance with the Articles 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 accordance with any instructions contained in the notice of general meeting (or adjourned meeting) to which they relate".
- 21.2 Article 45(1) of the Model Articles shall be amended by the insertion of the words "and a proxy notice which is not delivered in such manner shall be invalid" as a new paragraph at the end of that article.



## **ADMINISTRATIVE ARRANGEMENTS**

### **22 Means of communication to be used**

22.1 Subject to article 22.2, any notice, document or other information shall be deemed served on, or delivered to, the intended recipient:

22.1.1 if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted or five Business Days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five Business Days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider;

22.1.2 if properly addressed and delivered by hand, when it was given or left at the appropriate address;

22.1.3 if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied; and

22.1.4 if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.

For the purposes of this article, no account shall be taken of any part of a day that is not a working day.

22.2 Any notice, document or other information served on, or delivered to, an intended recipient under article 13, article 14, article 16 or article 17 (as the case may be) may not be served or delivered in electronic form (other than by fax), or by means of a website.

22.3 In proving that any notice, document or information was properly addressed, it shall be sufficient to show that the notice, document or information was delivered to an address permitted for the purpose by the Act.

### **23 Indemnity and insurance**

23.1 Subject to article 23.2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled:

23.1.1 each relevant officer of the Company shall be indemnified out of the Company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer in the actual or purported execution and/or discharge of his duties, or in relation to them including (in each case) any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which he is

acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the Company's affairs; and

23.1.2 the Company may provide any relevant officer with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings or application referred to in article 23.1.1 and otherwise may take action to enable any such relevant officer to avoid incurring such expenditure.

23.2 This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Act or by any other provision of law.

23.3 The directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant officer in respect of any relevant loss.

23.4 In this article:

23.4.1 a "relevant officer " means any director or other officer or former director or other officer of the Company but excluding in each case any person engaged by the Company as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor; and

23.4.2 a "relevant loss" means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer's duties or powers in relation to the Company or any pension fund or employees' share scheme of the Company.