

Company Number: 00610757

**WRITTEN RESOLUTION**

of

**W.PORTSMOUTH & CO., LIMITED (Company)**

Passed on 18th November 2019

The resolution below was duly passed as a special resolution by way of written resolution under Chapter 2 of Part 13 of the Companies Act 2006.

**SPECIAL RESOLUTION**

THAT the draft regulations attached to this written resolution be adopted as the articles of association of the Company in substitution for, and to the exclusion of, the existing articles of association

Signed

Y. Shanahan  
Director



**Company Number: 00610757**

**THE COMPANIES ACT 2006**

**PRIVATE COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

**of**

**W. PORTSMOUTH & CO., LIMITED**

**(Adopted by special resolution passed on 18<sup>th</sup> November 2019)**

## **Introduction**

### **1. Interpretation**

#### **1.1 The following definitions and rules of interpretation apply in these Articles:**

**Accepting Shareholder:** has the meaning set out in article 22.5.

**Act:** the Companies Act 2006.

**Allocation Notice:** has the meaning given in article 18.14.

**Applicant:** has the meaning given in article 18.14.

**Appointor:** has the meaning given in article 11.1.

**Articles:** the Company's articles of association from time to time in force.

**Bad Leaver:** an Employee who becomes a Departing Employee in any circumstances where he is not a Good Leaver.

**Board:** the board of directors of the Company from time to time.

**Business Day:** any day other than a Saturday, Sunday or public holiday in England on which banks in London are open for business.

**Buyer:** has the meaning given in article 22.1.

**Call:** has the meaning given in article 29.1.

**Call Notice:** has the meaning given in article 29.1.

**Called Shares:** has the meaning given in article 21.1.

**Called Shareholders:** has the meaning given in article 21.1.

**Chairman:** such person as is nominated pursuant to article 7.1.

**Civil Partner:** in relation to a Shareholder, a civil partner as defined in the Civil Partnership Act 2004.

**Company:** W. Portsmouth & Co., Limited (Company Number: 00610757).

**Company's Lien:** has the meaning given in article 27.1.

**Completion Date:** has the meaning given in article 21.5.

**Conflict:** a situation in which a director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company.

**Connected:** has the meaning given in section 1122 of the Corporation Tax Act 2010.

**Consideration:** has the meaning given in article 18.14.

**Continuing Shareholders:** has the meaning given in article 18.8.

**Convertible Securities:** has the meaning given in article 22.2.

**Deemed Transfer Notice:** has the meaning given in article 20.1.

**Departing Employee:** an Employee who ceases to be a director and/or employee of any Group Company, including where such a company ceases to be a Group Company.

**Determination Date:** the later of:

- (a) receipt of a Transfer Notice (or in the case of a Deemed Transfer Notice, the date such notice is deemed to be served); and
- (b) the determination of the Transfer Price.

**Drag Along Notice:** has the meaning given in article 21.2.

**Drag Along Option:** has the meaning given in article 21.1.

**Employee:** a Shareholder (other than an Excluded Shareholder) who is, or has been a director and/or employee of any Group Company.

**Eligible Director:** any director who would be entitled to vote on the matter at a meeting of directors (but excluding any director whose vote is not to be counted in respect of the particular matter).

**Excess Securities:** has the meaning given in article 16.2(b).

**Excluded Shareholder:** David Norsworthy, Jeffrey Shanahan, Dorothy Parker and HHL (or any of them, and/or any of their Permitted Transferees).

**Family Trust:** in relation to a Shareholder, a trust set up for the benefit of that Shareholder and/or that Shareholder's Privileged Relations.

**First Offer Period:** has the meaning given in article 18.9.

**First Surplus Shares:** has the meaning given in article 18.10.

**Good Leaver:** means an Employee who becomes a Departing Employee by reason of:

- (i) death; or
- (ii) retirement, serious or permanent disability or serious or permanent incapacity through ill-health; or
- (iii) redundancy (as defined in the Employment Rights Act 1996); or
- (iv) dismissal by the Company which is determined, by an employment tribunal or at a court of competent jurisdiction from which there is no right to appeal, to be wrongful or unfair;

or by any other reason as determined in the absolute and sole discretion of the Board.

**Group Company:** the Company and any subsidiary or any holding company from time to time of the Company and any subsidiary from time to time of a holding company of the Company.

**HHL:** Helmar Hire Limited (Company Number: 10092865).

**holding company:** has the meaning given in article 1.9.

**Interested Director:** has the meaning given in article 8.1.

**Lien Enforcement Notice:** has the meaning given in article 28.2.

**Majority Shareholder:** the holder or holders of 60% or more in nominal value of the Shares from time to time.

**Majority Shareholder Consent:** the consent in writing of the Majority Shareholder.

**Minimum Transfer Condition:** has the meaning given in article 18.3.

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

**New Shareholder:** has the meaning given in article 21.10.

**Offer:** has the meaning given in article 22.2.

**Offer Notice:** has the meaning given in article 22.3.

**Offer Shares:** has the meaning given in article 22.3.

**Open Market Value:** means, in relation to a Share, as determined in accordance with article 19.

**Ordinary Shares:** the ordinary shares of £1.00 each in the capital of the Company having the rights and restrictions set out in the Articles.

**Permitted Group:** in relation to a company, any wholly owned 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 is a **member of the Permitted Group**. Unless the context otherwise requires, the application of the definition of Permitted Group to a company at any time will apply to the company as it is at that time.

**Permitted Transfer:** a transfer of Shares made in accordance with article 17.2.

**Permitted Transferee:** in relation to an Excluded Shareholder, any of his Privileged Relations, the trustees of his Family Trust(s) or any member of his Permitted Group.

**Privileged Relation:** the spouse or Civil Partner of an Excluded Shareholder and the Excluded Shareholder's children and grandchildren (including step and adopted children and grandchildren).

**Proposed Buyer:** has the meaning given in article 21.1.

**Proposed Transfer:** has the meaning given in article 22.1.

**Qualifying Offer:** an offer in writing by or on behalf of any person (**Offeror**) to purchase the entire issued share capital of the Company not already owned by the Offeror or persons Connected with the Offeror.

**Sale Date:** has the meaning given in article 22.3.

**Sale Shares:** has the meaning given in article 18.3.

**Second Offer Period:** has the meaning given in article 18.11.

**Second Surplus Shares:** has the meaning given in article 18.12.

**Seller:** has the meaning given in article 18.3.

**Sellers' Shares:** has the meaning given in article 21.1.

**Selling Shareholder:** has the meaning given in article 21.1.

**Shareholder:** a holder from time to time of any Share or Shares.

**Shares:** shares (of any class) in the capital of the Company and **Share** shall be construed accordingly.

**Specified Price:** has the meaning given in article 22.2.

**subsidiary:** has the meaning given in article 1.9.

**Third Offer Period:** has the meaning given in article 18.14.

**Transfer Notice:** has the meaning given in article 18.3.

**Transfer Price:** has the meaning given in article 18.3.

**Valuers:** such independent firm of chartered accountants appointed by the Company (at the direction of the Majority Shareholder) and in default of such appointment, an independent firm of accountants appointed by the President, for the time being, of the Institute of Chartered Accountants in England and Wales (in each case acting as an expert and not as an arbitrator).

- 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.

- 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 Unless expressly provided otherwise, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.6 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.
- 1.7 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.8 Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.9 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Act and for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), a company shall be treated 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), by way of security or in connection with the taking of security; or
  - (b) its nominee.
- In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Act shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 1.10 The Model Articles shall apply to the Company, except in so far as they are modified or excluded by, or are inconsistent with, these Articles.
- 1.11 Articles 6(2), 7, 8, 9(1), 11 to 14 (inclusive), 16, 17, 21, 22, 26(5), 38, 39, 43, 44(2), 49, 52 and 53 of the Model Articles shall not apply to the Company.

- 1.12 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".
- 1.13 Article 29 of the Model Articles shall be amended by the insertion of the words ", or the name of any person(s) named as the transferee(s) in an instrument of transfer executed under article 28(2) of the Model Articles," after the words "the transmittee's name".
- 1.14 Articles 31(1)(a) to (c) (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". Article 31(d) of the Model Articles shall be amended by the deletion of the words "either" and "or by such other means as the directors decide".

## **Directors**

### **2. Directors' meetings**

- 2.1 Any decision of the directors must be taken at a meeting of directors in accordance with these Articles or must be a decision taken in accordance with article 3.
- 2.2 Subject as provided in these Articles, the directors may participate in directors' meetings for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 2.3 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 decided by a majority of votes.

### **3. Unanimous decisions of directors**

- 3.1 Subject to article 3.3 a decision of the directors is taken in accordance with this article when all Eligible Directors indicate to each other by any means that they share a common view on a matter.
- 3.2 Such a decision may take the form of a resolution in writing, where each Eligible Director has signed one or more copies of it, or to which each Eligible Director has otherwise indicated agreement in writing.
- 3.3 A decision may not be taken in accordance with this article if the Eligible Directors would not have formed a quorum at a directors' meeting to vote on the matter in accordance with article 6.



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

- 4.1 The number of directors shall not be less than two and shall not be subject to any maximum.
- 4.2 No shareholding qualification for directors shall be required.

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

- 5.1 Any director may call a meeting of directors by giving not less than 5 Business Days' notice of the meeting (or such shorter period of notice as agreed by all of the directors) to each director or by authorising the company secretary (if any) to give such notice.
- 5.2 Notice of any directors' meeting must be accompanied by:
  - (a) an agenda specifying particulars of the matters to be raised at the meeting; and
  - (b) copies of any papers to be discussed at the meeting.
- 5.3 Matters not on the agenda, or business conducted in relation to those matters, may not be raised at a meeting of directors unless agreed by all of the directors.

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

- 6.1 The quorum at any meeting of the directors (including adjourned meetings) shall be four directors.
- 6.2 No business shall be conducted at any meeting of the directors unless a quorum is present at the beginning of the meeting and also when that business is voted on.
- 6.3 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 5 Business Days at the same time and place.

#### **7. Chairing of directors' meetings**

- 7.1 The post of Chairman will be held by such person as nominated from time to time by the Majority Shareholder.
- 7.2 In the case of an equality of votes the Chairman shall have a casting vote.

- 7.3 If the Chairman is unable to attend any meeting of the Board, he shall be entitled but not required to appoint another director to act as Chairman at that particular meeting.

## **8. Directors' interests**

- 8.1 The directors may, in accordance with the requirements set out in this article, authorise any Conflict proposed to them by any director which would, if not so authorised, involve a director (the **Interested Director**) breaching his duty under section 175 of the Act to avoid conflicts of interest.

- 8.2 Any authorisation under this article will be effective only if:

- (a) 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;
- (b) any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director; and
- (c) 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.

- 8.3 Any authorisation of a Conflict under this article may (whether at the time of giving the authorisation or subsequently):

- (a) extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter or situation so authorised;
- (b) 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;
- (c) 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;
- (d) impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the directors think fit;
- (e) 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
- (f) 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.

- 8.4 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.
- 8.5 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.
- 8.6 In addition, any Conflict may be authorised by Majority Shareholder Consent.
- 8.7 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.
- 8.8 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.
- 8.9 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 8.8.
- 8.10 Subject, where applicable, to any terms and conditions imposed by the directors in accordance with article 8.3, 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:
- (a) 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;
  - (b) 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;

- (c) shall be entitled to vote at a meeting of directors (or of a committee of directors) or to participate in any unanimous decision, in respect of such transaction or arrangement or proposed transaction or arrangement in which he is interested;
- (d) 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;
- (e) 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
- (f) 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.

## **9. 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 a form that enables the Company to retain a copy of such decisions.

## **10. Appointment and removal of directors**

- 10.1 Each Shareholder shall have the right, for so long as he, together with his Permitted Transferees, holds at least 15% in nominal value of the Shares in issue from time to time (excluding any Shares for the time being held in treasury), to appoint and maintain in office two persons as directors of the Company (including himself) and to remove any director so appointed and, upon his removal whether by his appointor or otherwise, to appoint another person to act as a director in his place.
- 10.2 An appointment or removal in accordance with article 10.1 shall be made by giving notice in writing to the Company, to each other Shareholder and, in the case of removal of a director, to the director being removed. The appointment or removal takes effect on the date on which the notice is received by the Company or, if a later date is given in the notice, on that date.

- 10.3 A Shareholder removing a director under this article 10 shall indemnify and keep indemnified the Company against any claim connected with the director's removal from office.

## **11. Alternate directors**

- 11.1 Any director (other than an alternate director) (the **Appointor**) may appoint any person (whether or not a director) to be an alternate director to exercise the Appointor's powers, and carry out the Appointor's responsibilities, in relation to the taking of decisions by the directors, in the absence of the Appointor. A person may be appointed an alternate director by more than one director.

- 11.2 Any appointment or removal of an alternate director must be effected by notice in writing to the Company (and to the alternate, on removal) signed by the Appointor, or in any other manner approved by the directors.

- 11.3 The notice must:

- (a) identify the proposed alternate; and
- (b) 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.

- 11.4 An alternate director has the same rights, in relation to any decision of the directors, as the alternate's Appointor.

- 11.5 Except as the Articles specify otherwise, alternate directors:

- (a) are deemed for all purposes to be directors;
- (b) are liable for their own acts and omissions;
- (c) are subject to the same restrictions as their Appointors; and
- (d) 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.

- 11.6 A person who is an alternate director but not a director may, subject to him being an Eligible Director:

- (a) be counted as participating for the purposes of determining whether a quorum is present at a meeting of directors (but only if that person's Appointor is an Eligible Director and is not participating); and

- (b) 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).
- 11.7 A director who is also an alternate director is entitled, in the absence of his Appointor(s), to a separate vote on behalf of each Appointor (provided that an Appointor is an Eligible Director in relation to that decision), in addition to his own vote on any decision of the directors.
- 11.8 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.
- 11.9 An alternate director's appointment as an alternate (in respect of a particular Appointor) terminates:
  - (a) when the alternate's Appointor revokes the appointment by notice to the Company and the alternate in writing specifying when it is to terminate; or
  - (b) 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
  - (c) when the alternate director's Appointor ceases to be a director for whatever reason.

## **12. Company Secretary**

The directors may appoint any person who is willing to act as the company secretary for such term, at such remuneration and upon such conditions as they may think fit and from time to time remove such person and, if the directors so decide, appoint a replacement, in each case by a decision of the directors.

## **Shares**

### **13. Share Capital**

- 13.1 At the date of the adoption of these Articles, the share capital of the Company comprises Ordinary Shares.
- 13.2 The Ordinary Shares shall carry the right to receive notice of, attend, vote and speak at any general meeting of the Company (and to receive notice of and vote on any written resolution of Shareholders), the right to receive dividends and other distributions of the Company, and the right to participate in a return of assets (and to

participate in any surplus assets) or other distributions on a winding-up of the Company.

- 13.3 Shares may be issued nil paid, partly paid or fully paid in respect of their nominal value and any premium to be paid to the Company in consideration for their issue.

**14. Purchase of own Shares**

- 14.1 Subject to the Act but without prejudice to any other provision of these Articles, the Company may purchase its own Shares in accordance with Chapter 4 of Part 18 of the Act, including (without limitation) out of capital up to any amount in a financial year not exceeding the lower of:

- (a) £15,000; and
- (b) the nominal value of 5% of the Company's fully paid share capital at the beginning of each financial year of the Company.

- 14.2 The Company shall immediately cancel any Shares acquired under Chapter 4 of Part 18 of the Act.

**15. Further issues of Shares: authority**

- 15.1 Save with Majority Shareholder Consent, the directors shall not exercise any power to allot Shares or to grant rights to subscribe for, or to convert any security into, any Shares in the Company.

**16. Further issues of Shares: pre-emption rights**

- 16.1 In accordance with section 567(1) of the Act, sections 561 and 562 of the Act shall not apply to an allotment of equity securities (as defined in section 560(1) of the Act) made by the Company.

- 16.2 Unless otherwise authorised by way of Majority Shareholder Consent, if the Company proposes to allot any equity securities, those equity securities shall not be allotted to any person unless the Company has first offered them to all the Shareholders (on the date of the offer) on the same terms and at the same price as those equity securities are being offered to other persons on a pari passu and pro rata basis relative to the number of such Shares held by those Shareholders (as nearly as possible without involving fractions). The offer:

- (a) shall be in writing, shall be open for acceptance for a period of 14 days from the date of the offer and shall give details of the number and subscription price of the relevant equity securities; and

- (b) may stipulate that any Shareholder who wishes to subscribe for a number of equity securities in excess of the proportion to which he is entitled shall, in his acceptance, state the number of excess equity securities (**Excess Securities**) for which he wishes to subscribe.
- 16.3 Any equity securities not accepted by Shareholders pursuant to the offer made to them in accordance with article 16.2 shall be used for satisfying any requests for Excess Securities made pursuant to article 16.2(b). If there are insufficient Excess Securities to satisfy such requests, the Excess Securities shall be allotted to the applicants pro rata to the number of Shares held by the applicants immediately before the offer was made to Shareholders in accordance with article 16.2 (as nearly as possible without involving fractions or increasing the number of Excess Securities allotted to any Shareholder beyond that applied for by him). After that allotment, any Excess Securities remaining shall be offered to any other person as the directors may determine, at the same price and on the same terms as the offer to the Shareholders.
- 16.4 Subject to articles 16.2 and 16.3, the directors are generally and unconditionally authorised, for the purposes of section 550 and section 551 of the Act, to exercise any power of the Company to offer or allot, grant rights to subscribe for or to convert any security into, and otherwise deal in, or dispose of, any Shares (or any options, conversion rights and all other rights to acquire or subscribe for Shares) to any person, at any time and subject to any terms and conditions as the directors think proper.

## **Share transfers**

### **17. General and Permitted Transfers**

- 17.1 Any Shareholder may transfer any of his Shares to any other person with Majority Shareholder Consent, without being required to follow the steps set out in article 18.
- 17.2 Any Excluded Shareholder may transfer Shares to any Permitted Transferee without being required to follow the steps set out in article 18.
- 17.3 The Company shall register any transfer made in accordance with article 17.1 or article 17.2.
- 17.4 Any transfer of Shares by way of a sale that is required to be made under article 17.1, article 17.2, article 20, article 21 or article 22 shall be deemed to include a warranty that the transferor sells the Shares with full title guarantee, free from all liens charges and other encumbrances and together with all rights then attaching.



- 17.5 The directors must register any duly stamped transfer of Shares made in accordance with these Articles and shall not (save with Majority Shareholder Consent) have any discretion to register any transfer of Shares which has not been made in compliance with these Articles.
- 17.6 To enable the directors to determine whether or not there has been a transfer of Shares in breach of these Articles, the directors may from time to time require any Shareholder to provide the Company with such information and evidence as they may reasonably require relevant to that purpose. If a Shareholder fails to provide information or evidence in respect of any Shares registered in its name to the reasonable satisfaction of the directors within 14 days of request, the directors may serve a notice on the Shareholder stating that the Shareholder shall not in relation to those Shares be entitled to be present or to vote in person or by proxy at any general meeting of the Company or any meeting of the holders of Shares of that class, or to vote on a written resolution of the Shareholders or to receive dividends on the Shares until such evidence or information has been provided to the directors' satisfaction. The directors may reinstate these rights at any time.
- 17.7 Any Shareholder holding Shares as a result of a Permitted Transfer made by an Excluded Shareholder in accordance with this article 17 may, at any time, transfer his Shares back to that Excluded Shareholder or to another Permitted Transferee of such Excluded Shareholder, without being required to follow the steps set out in article 18.
- 17.8 If a Permitted Transfer has been made to a Privileged Relation of an Excluded Shareholder, that Privileged Relation shall within 10 Business Days of ceasing to be a Privileged Relation of that Excluded Shareholder (whether by reason of divorce, dissolution of a civil partnership or otherwise but not by reason of death) execute and deliver to the Company a transfer of the Shares held by him to the relevant Excluded Shareholder (or, if so directed by the Excluded Shareholder, to a Permitted Transferee of the Excluded Shareholder) for such consideration as may be agreed between them, failing which he shall be deemed to have given a Transfer Notice in respect of the Shares in accordance with article 18 and article 20.3.
- 17.9 On the death or bankruptcy of a Privileged Relation (other than a joint holder), his personal representatives or trustee in bankruptcy (as the case may be) shall offer the Shares held by the Privileged Relation for transfer to the relevant Excluded Shareholder or, if so directed by the Excluded Shareholder, to a Permitted Transferee of the Excluded Shareholder, within 10 Business Days after the grant of probate or the making of the bankruptcy order (as the case may be), for such consideration as may be agreed between the relevant Excluded Shareholder and the personal representatives or trustee in bankruptcy (as the case may be). If:
- (a) a transfer of the Shares has not been executed and delivered within 10 Business Days of the grant of probate or the making of the bankruptcy order (as the case may be); or

- (b) the Shareholder is himself the subject of a bankruptcy order,

the personal representatives or trustee in bankruptcy (as the case may be) shall be deemed to have given a Transfer Notice in respect of the Shares in accordance with article 18 and article 20.3.

- 17.10 If a Permitted Transfer has been made to the trustees of a Family Trust, the trustees of that Family Trust shall within 10 Business Days of that Family Trust ceasing to be for the benefit of the relevant Excluded Shareholder and/or the relevant Excluded Shareholder's Privileged Relations execute and deliver to the Company a transfer of the Shares held by them or the Family Trust to the Shareholder or, if so directed by the Excluded Shareholder, to a Permitted Transferee of the Excluded Shareholder, for such consideration as may be agreed between them, failing which the trustees shall be deemed to have given a Transfer Notice in respect of the Shares in accordance with article 18 and article 20.3.
- 17.11 If a Permitted Transfer has been made to a member of an Excluded Shareholders' Permitted Group, that member of the Permitted Group shall within 10 Business Days of ceasing to be a member of the Permitted Group of that Excluded Shareholder execute and deliver to the Company a transfer of the Shares held by him to the relevant Excluded Shareholder (or, if so directed by the Excluded Shareholder, to a Permitted Transferee of the Excluded Shareholder) for such consideration as may be agreed between them, failing which he shall be deemed to have given a Transfer Notice in respect of the Shares in accordance with article 18 and article 20.3.

## **18. Pre-emption rights on the transfer of Shares**

- 18.1 In this article, reference to the transfer of a Share includes the transfer, assignment 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.
- 18.2 Except where the provisions of article 17, article 21 or article 22 apply, any transfer of Shares by a Shareholder shall be subject to the pre-emption rights in this article.
- 18.3 A Shareholder (**Seller**) wishing to transfer his Shares (**Sale Shares**) must give notice in writing (a **Transfer Notice**) to the Company giving details of the proposed transfer including:
  - (a) the number of Sale Shares;
  - (b) if the Seller wishes to sell the Sale Shares to a third party, the name of the proposed buyer;

- (c) the price (in cash) at which the Seller wishes to sell the Sale Shares (which will be deemed to be the Open Market Value of the Sale Shares if no cash price is agreed between the Seller and the directors (**Transfer Price**)); and
  - (d) whether the Transfer Notice is conditional on all, or a specific number of, the Sale Shares being sold to Shareholders (**Minimum Transfer Condition**).
- 18.4 Once given (or deemed to have been given) under these Articles, a Transfer Notice may not be withdrawn.
- 18.5 A Transfer Notice (or Deemed Transfer Notice) constitutes the Company the agent of the Seller for the sale of the Sale Shares in accordance with the provisions of these Articles.
- 18.6 If an Excluded Shareholder serves a Transfer Notice under article 18.3, any Permitted Transferee of that Excluded Shareholder to whom Shares have been transferred in accordance with article 17.2 is also deemed to have served a Transfer Notice in respect of all his Shares on the same date as the relevant Excluded Shareholder's Transfer Notice is served. The Transfer Price for each Sale Share of a Permitted Transferee the subject of a deemed Transfer Notice under this article 18.6 shall be the same as the Transfer Price for each Sale Share of the relevant Excluded Shareholder.
- 18.7 As soon as practicable following the Determination Date the directors shall offer the Sale Shares for sale to the following persons in the following order:
  - (a) firstly, to the Excluded Shareholders (other than the Seller);
  - (b) secondly, to any other Shareholders (other than the Excluded Shareholders and the Seller) (**Continuing Shareholders**),
 in the manner set out in article 18.9 et seq at the Transfer Price. Each offer shall be in writing and give particulars of the number, class and Transfer Price of the Sale Shares offered.
- 18.8 If the Sale Shares are subject to a Minimum Transfer Condition, any allocation made under article 18.9 to article 18.12 shall be conditional on the fulfilment of the Minimum Transfer Condition.
- 18.9 Promptly following the Determination Date, the directors shall offer in writing the Sale Shares to all the Excluded Shareholders (other than the Seller), inviting them to apply in writing within 28 Business Days of the Determination Date (the **First Offer Period**) for the maximum number of Sale Shares they wish to buy at the Transfer Price. In their written offer, the directors shall specify the date on which the First Offer Period expires.

18.10 If:

- (a) at the end of the First Offer Period the total number of Sale Shares applied for is equal to or exceeds the number of Sale Shares, the directors shall allocate the Sale Shares to each Excluded Shareholder who has applied for Sale Shares in the proportion which the Excluded Shareholder's existing holding of Shares bears to the total number of Shares held by those Excluded Shareholders who have applied for Sale Shares. Fractional entitlements shall be rounded down to the nearest whole number (save where such rounding would result in not all Sale Shares being allocated, in which case the allocation of any such fractional entitlements among the Excluded Shareholders who have applied for Sale Shares shall be determined by the directors). No allocation shall be made to an Excluded Shareholder of more than the maximum number of Sale Shares which he has stated he is willing to buy;
- (b) not all Sale Shares are allocated following allocations in accordance with article 18.10(a), but there are applications for Sale Shares that have not been satisfied, the directors shall allocate the remaining Sale Shares to such applicant(s) in accordance with the procedure set out in article 18.10(a). The procedure set out in this article 18.10(b) shall apply on any number of consecutive occasions until either all Sale Shares have been allocated or all applications for Sale Shares have been satisfied; and
- (c) at the end of the First Offer Period the total number of Sale Shares applied for is less than the number of Sale Shares, the directors shall allocate the relevant number of Sale Shares to the Excluded Shareholders in accordance with their applications. The balance (the **First Surplus Shares**) shall be dealt with in accordance with article 18.11.

18.11 At the end of the First Offer Period, the directors shall offer in writing the First Surplus Shares (if any) to all the Continuing Shareholders, inviting them to apply in writing within 28 Business Days of the end of the First Offer Period (the **Second Offer Period**) for the maximum number of First Surplus Shares they wish to buy at the Transfer Price. In their written offer, the directors shall specify the date on which the Second Offer Period expires.

18.12 If

- (a) at the end of the Second Offer Period the number of First Surplus Shares applied for is equal to or exceeds the number of First Surplus Shares, the directors shall allocate the First Surplus Shares to each Continuing Shareholder who has applied for First Surplus Shares in the proportion which the Continuing Shareholder's existing holding of Shares bears to the total number of Shares held by those Continuing Shareholders who have applied for First Surplus Shares during the Second Offer Period. Fractional entitlements shall be rounded down to the nearest whole number (save where such rounding would result in not all First Surplus Shares being

allocated, in which case, the allocation of any such fractional entitlements among the Continuing Shareholders shall be determined by the directors). No allocation shall be made to a Continuing Shareholder of more than the maximum number of First Surplus Shares which he has stated he is willing to buy;

- (b) not all First Surplus Shares are allocated following allocations in accordance with article 18.12(a), but there are applications for First Surplus Shares that have not been satisfied, the directors shall allocate the remaining First Surplus Shares to such applicant(s) in accordance with the procedure set out in article 18.12(a). The procedure set out in this article 18.12(b) shall apply on any number of consecutive occasions until either all First Surplus Shares have been allocated or all applications for First Surplus Shares have been satisfied; and
- (c) at the end of the Second Offer Period the number of First Surplus Shares applied for is less than the number of First Surplus Shares, the directors shall allocate the First Surplus Shares to the Continuing Shareholders in accordance with their applications. The balance (the **Second Surplus Shares**) shall be dealt with in accordance with article 18.17.

18.13 If the Transfer Notice includes a Minimum Transfer Condition and the total number of Sale Shares applied for is less than the number of Sale Shares specified in the Minimum Transfer Condition, the directors shall notify the Seller and all those to whom Sale Shares have been conditionally allocated under article 18.9 to article 18.12, stating that the Minimum Transfer Condition has not been met and that the relevant Transfer Notice has lapsed with immediate effect.

18.14 If:

- (a) the Transfer Notice includes a Minimum Transfer Condition and such Minimum Transfer Condition has been satisfied, or the Transfer Notice does not include a Minimum Transfer Condition; and
- (b) allocations under article 18.9 to article 18.12 have been made in respect of some or all of the Sale Shares,

the directors shall give written notice of allocation (an **Allocation Notice**) to the Seller and each person to whom Sale Shares have been allocated (each an **Applicant**). The Allocation Notice shall specify the number of Sale Shares allocated to each Applicant, the amount payable by each Applicant for the number of Sale Shares allocated to them (**Consideration**) and the place and time for completion of the transfer of the Sale Shares (which shall be at least 10 Business Days, but not more than 60 Business Days, after the date of the Allocation Notice).

18.15 On the date specified for completion in the Allocation Notice, the Seller shall, against payment of the Consideration, execute and deliver a transfer of the Sale Shares

allocated to such Applicant, in accordance with the requirements specified in the Allocation Notice.

18.16 If the Seller fails to comply with article 18.15:

- (a) the Chairman (or, failing the Chairman, one of the other directors, or some other person nominated by a resolution of the directors) may, as agent and attorney on behalf of the Seller:
  - (i) complete, execute and deliver in the Seller's name all documents necessary to give effect to the transfer of the relevant Sale Shares to the Applicants;
  - (ii) receive the Consideration and give a good discharge for it (and no Applicant shall be obliged to see to the distribution of the Consideration); and
  - (iii) (subject to the transfers being duly stamped) enter the Applicants in the register of members as the holders of the Sale Shares purchased by them; and
- (b) the Company shall pay the Consideration into a separate bank account in the Company's name on trust (but without interest) for the Seller until the Seller has delivered its certificate(s) for the relevant Sale Shares or an indemnity, in a form reasonably satisfactory to the directors, in respect of any lost certificate, together, in either case, with such other evidence (if any) as the directors may reasonably require to prove good title to those Sale Shares, to the Company.

18.17 If an Allocation Notice does not relate to all of the Sale Shares or the Transfer Notice lapses pursuant to article 18.13 then, subject to article 18.18, subject to obtaining Majority Shareholder Consent and within 60 Business Days following service of the Allocation Notice or the date of the lapse of the Transfer Notice (as the case may be), the Seller may transfer the Second Surplus Shares or the Sale Shares (in the case of a lapsed offer) (as the case may be) to any person at a price at least equal to the Transfer Price. The sale of the Sale Shares (following the lapse of a Transfer Notice) in accordance with this article 18.17 shall continue to be subject to any Minimum Transfer Condition.

18.18 The Seller's right to transfer Sale Shares under article 18.17 does not apply if the directors reasonably consider that:

- (a) the transferee is a person (or a nominee for a person) who is a competitor with (or an associate of a competitor with) the business of the Company (and for these purposes, companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate); or
- (b) the sale of the Sale Shares is not bona fide or the price is subject to a deduction, rebate or allowance to the transferee; or

- (c) the Seller has failed or refused to provide promptly information available to the Seller and reasonably requested by the directors to enable them to form the opinion referred to in this article above.

18.19 The time periods referred to in this article 18 shall be extended if and to the extent that the Board (acting reasonably) directs in writing.

## **19. Valuation of Shares**

19.1 In any case where the Open Market Value is required to be determined, the Board shall instruct the Valuers to certify the Open Market Value of the Shares.

19.2 The Valuers shall be requested to determine the Open Market Value within 20 Business Days of their appointment and to notify the Company and the Seller in writing of their determination.

19.3 The **Open Market Value** for any Sale Share shall be the price per Share determined in writing by the Valuers on the following bases and assumptions:

- (a) valuing each of the Sale Shares by reference to the total open market value of the Company (and applying a premium (in the case of the Sale Shares being a majority shareholding in the Company) or a discount (in the case of the Sale Shares being a minority shareholding in the Company)) subject to the rights that attach to the Shares under article 13;
- (b) if the Company is then carrying on business as a going concern, on the assumption that it will continue to do so;
- (c) the sale is to be on arms' length terms between a willing seller and a willing buyer;
- (d) the Sale Shares are sold free of all encumbrances;
- (e) the Open Market Value shall be determined as at such date as may be notified to the Valuers by the Company and in the absence of such notification as at the date the Valuers were asked to determine the Open Market Value; and
- (f) taking account of any other factors that the Valuers reasonably believe should be taken into account.

19.4 The Shareholders are entitled to make submissions to the Valuers and will provide (or procure that the Company provides) the Valuers with such assistance and documents as the Valuers reasonably require for the purpose of reaching a decision, subject to the Valuers agreeing to give such confidentiality undertakings as the Shareholders may reasonably require.

- 19.5 To the extent not provided for by this article 19, the Valuers may, in their reasonable discretion, determine such other procedures to assist with the valuation as they consider just or appropriate, including (to the extent they consider necessary), instructing professional advisers to assist them in reaching their valuation.
- 19.6 The Valuers shall act as expert and not as arbitrator and their written determination shall be final and binding on the parties (in the absence of manifest error or fraud).
- 19.7 The cost of obtaining the Valuers' valuation shall be borne by the Company.
- 19.8 If an Employee holding Shares transfers any such Shares under or pursuant to these Articles for Open Market Value (whether pursuant to a Transfer Notice or a Deemed Transfer Notice or otherwise) such Employee shall be taken to indemnify the Company against any and all tax and/or National Insurance contributions (and any applicable interest and/or penalties) suffered or incurred by the Company in connection therewith and the Employee shall promptly reimburse the Company with any such amount so suffered or incurred by the Company and further the Company may by way of set-off withhold any such amount from any payment due to be made by the Company to the Employee (howsoever arising) and refuse to register a transfer of any such Shares unless and until that reimbursement has been made in full by or on behalf of the Employee to the Company.

## **20. Deemed Transfers**

- 20.1 Unless otherwise determined by Majority Shareholder Consent, a Shareholder (other than an Excluded Shareholder) is deemed to have served a Transfer Notice in respect of all of the Shares of whatever class held by him under article 18.3 (**Deemed Transfer Notice**) immediately before any of the following events:
- (a) the Shareholder (being an Employee) becoming a Departing Employee;
  - (b) a bankruptcy petition being presented for the Shareholder's bankruptcy, or an arrangement or composition being proposed or made with any of 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;
  - (c) the Shareholder has a disqualification order made against him under the Company Directors Disqualification Act 1986;
  - (d) the Shareholder is convicted of a criminal offence and which particular conviction is determined by the Board to be a serious criminal offence;
  - (e) the Shareholder committing a material or persistent breach of any agreement between the Company and all of the Shareholders from time to time regulating the affairs and management of the Company which, if capable of remedy, has not been so remedied within 10 Business Days of notice to remedy the breach being served by the Company.



- 20.2 A Deemed Transfer Notice shall immediately and automatically revoke a Transfer Notice (and any related Transfer Notice deemed to have been served by a Permitted Transferee under article 18.6) served by the relevant Shareholder before the occurrence of the relevant event giving rise to the Deemed Transfer Notice.
- 20.3 A Deemed Transfer Notice has the same effect as a Transfer Notice and the provisions of article 18 shall apply, except that:
- (a) the Deemed Transfer Notice shall be treated as having specified that the Seller wishes to transfer all (and not some only of) the Shares of whatever class held by him;
  - (b) the Deemed Transfer Notice takes effect on the basis that it does not identify a proposed buyer or state a price for those Shares;
  - (c) if the Seller is deemed to have given a Transfer Notice as a result of article 20.1(a), the Transfer Price shall, where the Departing Employee is:
    - (i) a Bad Leaver, be the subscription price paid for those Shares by the relevant Shareholder or, if no subscription price was so paid, the nominal value of those Shares; or
    - (ii) a Good Leaver, be the Open Market Value of those Shares.
  - (d) if the Seller is deemed to have given a Transfer Notice as a result of article 20.1(b), 20.1(c), 20.1(d) or 20.1(e) the Transfer Price shall be the subscription price paid for those Shares by the relevant Shareholder or, if no subscription price was so paid, the nominal value of those Shares; and
  - (e) the Seller does not have a right to withdraw the Deemed Transfer Notice following a valuation of those Shares under article 19.
- 20.4 If the Allocation Notice(s) in respect of the Sale Shares comprised within a Deemed Transfer Notice does not relate to all the Sale Shares, the Seller does not have the right to sell the balance of the Sale Shares to a third party without the prior written consent of the directors.
- 20.5 For the avoidance of doubt, nothing in this clause 20 applies to any Excluded Shareholder.

## **21. Drag Along**

- 21.1 If at any time the Majority Shareholder (**Selling Shareholder**) wishes to transfer all (but not some only) of their Shares (**Sellers' Shares**) to a bona fide purchaser on arm's length terms pursuant to a Qualifying Offer (**Proposed Buyer**), the Selling Shareholder may require all other Shareholders (**Called Shareholders**) to sell and transfer all of their Shares (**Called Shares**) to the Proposed Buyer (or as the Proposed Buyer directs) in accordance with the provisions of this article (**Drag Along Option**).

- 21.2 The Selling Shareholder may exercise the Drag Along Option by giving written notice to that effect to the Called Shareholders (**Drag Along Notice**) at any time before the transfer of the Sellers' Shares to the Proposed Buyer. The Drag Along Notice shall specify:
- (a) that the Called Shareholders are required to transfer all their Called Shares pursuant to this article 21;
  - (b) the person to whom the Called Shares are to be transferred;
  - (c) the purchase price payable for the Called Shares which shall (subject to the application of article 13) for each Called Share, be an amount at least equal to the price per Share offered by the Proposed Buyer for the Sellers' Shares; and
  - (d) the proposed date of the transfer.
- 21.3 Once issued, a Drag Along Notice shall be irrevocable. However, a Drag Along Notice shall lapse if, for any reason, the Selling Shareholder has not sold the Sellers' Shares to the Proposed Buyer within 30 Business Days of serving the Drag Along Notice. The Selling Shareholder may serve further Drag Along Notices following the lapse of any particular Drag Along Notice.
- 21.4 No Drag Along Notice shall require a Called Shareholder to agree to any terms except those specifically set out in this article 21.
- 21.5 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 Sellers' Shares unless:
- (a) all of the Called Shareholders and the Selling Shareholder agree otherwise in which case the Completion Date shall be the date agreed in writing by all of the Called Shareholders and the Selling Shareholder; or
  - (b) that date is less than 10 Business Days after the date on which the Drag Along Notice is served, in which case the Completion Date shall be the 60<sup>th</sup> Business Day after service of the Drag Along Notice.
- 21.6 The proposed sale of the Sellers' Shares by the Selling Shareholder to the Proposed Buyer and the sale of the Called Shares by the Called Shareholders pursuant to this article 21 shall not be subject to the rights of pre-emption set out in article 18.
- 21.7 On or before the Completion Date, the Called Shareholders shall execute and deliver stock transfer forms for the Called Shares, together with the relevant share certificates (or a suitable indemnity for any lost share certificates) to the Company. On the Completion Date, the Company shall pay the Called Shareholders, on behalf of the Proposed Buyer, the amounts due pursuant to article 21.2(c) 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 Shareholders in trust for the Called Shareholders without any obligation to pay interest.

21.8 To the extent that the Proposed Buyer has not, on the Completion Date, put the Company in funds to pay the purchase price due in respect of the Called Shares, the Called Shareholders shall be entitled to the return of the stock transfer forms and share certificates (or suitable indemnity) for the relevant Called Shares and the Called Shareholders shall have no further rights or obligations under this article 21 in respect of their Shares.

21.9 If any Called Shareholder does not, on or before the Completion Date, execute and deliver (in accordance with article 21.7) transfer(s) in respect of all of the Called Shares held by them, each defaulting Called Shareholder shall be deemed to have irrevocably appointed any person nominated for the purpose by the Selling Shareholder 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 it may direct) as the holder thereof. After the Proposed Buyer (or its nominee) has been registered as the holder of the Called Shares, the validity of such proceedings shall not be questioned by any person. Failure to produce a share certificate shall not impede the registration of Shares under this article 21.

21.10 Upon any person, following the issue of a Drag Along Notice, becoming a Shareholder (or increasing an existing shareholding) including, without limitation, pursuant to the exercise of any option or other right to acquire or subscribe for, or to convert any security into, Shares (a **New Shareholder**), a Drag Along Notice shall be deemed to have been served on the New Shareholder on the same terms as the previous Drag Along Notice. The New Shareholder shall then be bound to sell and transfer all Shares acquired by them to the Proposed Buyer (or as the Proposed Buyer may direct) and the provisions of this article 21 shall apply with the necessary changes to the New Shareholder, except that completion of the sale of the Shares shall take place on the Completion Date or immediately upon the New Shareholder becoming a Shareholder of the Company, if later.

## **22. Tag Along**

22.1 The provisions of article 22.2 to article 22.6 shall apply if the Majority Shareholder wishes to transfer all (but not only some) of their Shares to a bona fide purchaser (**Buyer**) on arm's length terms pursuant to a Qualifying Offer (**Proposed Transfer**).

22.2 Before making a Proposed Transfer, the Majority Shareholder shall procure that the Buyer makes an offer (**Offer**) to:

- (a) the other Shareholders to purchase all of the Shares held by them;

- (b) the holders of any existing options to acquire Shares (granted by the Company or under any share option arrangements established by the Company) that are already capable of exercise or that are expected to become capable of exercise before the Proposed Transfer, to purchase any Shares acquired on the exercise of options at any time before the Proposed Transfer;
- (c) the holders of any securities of the Company that are convertible into Shares (**Convertible Securities**), to purchase any Shares arising from the conversion of such Convertible Securities at any time before the Proposed Transfer,

for a consideration in cash per Share (subject to the application of article 13) that is at least equal to the price per Share offered by the Buyer in the Proposed Transfer (**Specified Price**).

22.3 The Offer shall be made by written notice (**Offer Notice**), at least 10 Business Days before the proposed sale date (**Sale Date**). To the extent not described in any accompanying documents, the Offer Notice shall set out:

- (a) the identity of the Buyer;
- (b) the Specified Price and other terms and conditions of payment;
- (c) the Sale Date; and
- (d) the number of Shares proposed to be purchased by the Buyer (**Offer Shares**).

22.4 If the Buyer fails to make the Offer to all of the persons listed in article 22.2 in accordance with article 22.2 and article 22.3, the Majority Shareholder 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.

22.5 If the Offer is accepted by any person listed in article 22.2 (**Accepting Shareholder**) in writing within 10 Business Days of receipt of the Offer Notice, the completion of the Proposed Transfer shall be conditional on completion of the purchase of all the Offer Shares held by Accepting Shareholders.

22.6 The Proposed Transfer and the purchase of Offer Shares from Accepting Shareholders shall not be subject to the rights of pre-emption set out in article 18.

#### **Decision making by Shareholders**

**23. Quorum for general meetings**

- 23.1 The quorum at any general meeting of the Company, or adjourned general meeting, shall be two Shareholders present in person or by proxy, including the Majority Shareholder or a duly authorised representative or proxy of the Majority Shareholder.
- 23.2 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.

**24. Chairing general meetings**

The Chairman shall chair general meetings. If the Chairman is unable to attend any general meeting, the Chairman may nominate and appoint another director to chair such general meeting.

**25. Voting**

- 25.1 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 who is 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 who is entitled to vote has one vote for each Share of which he is the holder.
- 25.2 A poll may be demanded at any general meeting by any qualifying person (as defined in section 318 of the Act) present and entitled to vote at the meeting.
- 25.3 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.

**26. Proxies**

- 26.1 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 the general meeting (or adjourned meeting) to which they relate".
- 26.2 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.

## **27. Company's Lien over Shares**

- 27.1 The Company has a lien (the **Company's Lien**) over every Share, whether or not fully paid, which is registered in the name of any person indebted or under any liability to the Company, whether he is the sole registered holder of the Share or one of several joint holders, for all monies payable by him (either alone or jointly with any other person) to the Company, whether payable immediately or at some time in the future.
- 27.2 The Company's Lien over a Share:
- (a) takes priority over any third party's interest in that Share; and
  - (b) extends to any dividend or other money payable by the Company in respect of that Share and (if the lien is enforced and the Share is sold by the Company) the proceeds of sale of that Share.
- 27.3 The directors may with Majority Shareholder Consent at any time decide that a Share which is or would otherwise be subject to the Company's Lien shall not be subject to it, either wholly or in part.

## **28. Enforcement of the Company's Lien**

- 28.1 Subject to the provisions of this article 28, if:
- (a) a Lien Enforcement Notice has been given in respect of a Share; and
  - (b) the person to whom the notice was given has failed to comply with it,
- the Company may sell that Share in such manner as the directors with Majority Shareholder Consent decide.
- 28.2 A notice issued by the Company to a person to enforce the Company's Lien over any Share(s) held by that person (**Lien Enforcement Notice**):
- (a) may only be given in respect of a Share which is subject to the Company's Lien and in respect of a sum payable to the Company for which the due date for payment has passed;
  - (b) must specify the Share concerned;
  - (c) must require payment of the sum within 14 clear days of the notice (that is, excluding the date on which the notice is given and the date on which that 14 day period expires);
  - (d) must be addressed either to the holder of the Share or to a transmittee of that holder; and
  - (e) must state the Company's intention to sell the Share if the notice is not complied with.

28.3 Where Shares are sold under this article 28:

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

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

- (a) first, in payment of so much of the sum for which the lien exists as was payable at the date of the Lien Enforcement Notice; and
- (b) second, to the person entitled to the Shares at the date of the sale, but only after the certificate for the Shares sold has been surrendered to the Company for cancellation, or an indemnity in a form reasonably satisfactory to the directors has been given for any lost certificates, and subject to a lien equivalent to the Company's Lien over the Shares before the sale for any money payable by that person (or his estate or any joint holder of the Shares) after the date of the Lien Enforcement Notice.

28.5 A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a Share has been sold to satisfy the Company's Lien on a specified date:

- (a) is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the Share; and
- (b) subject to compliance with any other formalities of transfer required by the Articles or by law, constitutes a good title to the Share.

## 29. Call Notices

29.1 Subject to the Articles and to the terms on which Shares are allotted, the directors may send a notice (a **Call Notice**) to a Shareholder requiring the Shareholder to pay the Company a specified sum of money (a **Call**) which is payable in respect of Shares in the Company held by that Shareholder at the date when the directors decide to send the Call Notice.

29.2 A Call Notice:

- (a) may not require a Shareholder to pay a Call which exceeds the total sum unpaid on that Shareholder's Shares (whether in respect of nominal value or premium);
- (b) must state when and how any Call to which it relates is to be paid; and

(c) may permit or require the Call to be made in instalments.

29.3 A Shareholder must comply with the requirements of a Call Notice, but no Shareholder is obliged to pay any Call before 14 clear days (that is, excluding the date on which the notice is given and the date on which that 14 day period expires) have passed since the notice was sent.

29.4 Before the Company has received any Call due under a Call Notice the directors may:

- (a) revoke it wholly or in part; or
- (b) specify a later time for payment than is specified in the notice,

by a further notice in writing to the Shareholder in respect of whose Shares the Call is made.

### **30. Liability to pay Calls**

30.1 Liability to pay a Call is not extinguished or transferred by transferring the Shares in respect of which it is required to be paid.

30.2 Joint holders of a Share are jointly and severally liable to pay all Calls in respect of that Share.

30.3 Subject to the terms on which Shares are allotted, the directors may, when issuing Shares, provide that Call Notices sent to the holders of those Shares may require them:

- (a) to pay Calls which are not the same; or
- (b) to pay Calls at different times.

### **31. When Call Notice need not be issued**

31.1 A Call Notice need not be issued in respect of sums which are specified, in the terms on which a Share is issued, as being payable to the Company in respect of that Share (whether in respect of nominal value or premium):

- (a) on allotment;
- (b) on the occurrence of a particular event; or
- (c) on a date fixed by or in accordance with the terms of issue.

31.2 But if the due date for payment of such a sum has passed and it has not been paid, the holder of the Share concerned is treated in all respects as having failed to comply with a Call Notice in respect of that sum, and is liable to the same consequences as regards the payment of interest and forfeiture.



### **32. Failure to comply with Call Notice: automatic consequences**

32.1 If a person is liable to pay a Call and fails to do so by the call payment date:

- (a) the directors may issue a notice of intended forfeiture to that person; and
- (b) until the Call is paid, that person must pay the Company interest on the Call from the call payment date at the relevant rate.

32.2 For the purposes of this article 32:

- (a) the "call payment date" is, subject to article 29.3, the time when the Call Notice states that a Call is payable, unless the directors give a notice specifying a later date, in which case the "call payment date" is that later date; and
- (b) the "relevant rate" is
  - (i) the rate fixed by the terms on which the Share in respect of which the Call is due was allotted;
  - (ii) such other rate as was fixed in the Call Notice which required payment of the Call, or has otherwise been determined by the directors; or
  - (iii) if no rate is fixed in either of these ways, 5% per annum.

32.3 The relevant rate must not exceed by more than 5 percentage points the base lending rate most recently set by the Monetary Policy Committee of the Bank of England in connection with its responsibilities under Part 2 of the Bank of England Act 1998.

32.4 The directors may waive any obligation to pay interest on a Call wholly or in part.

### **33. Notice of intended forfeiture**

A notice of intended forfeiture:

- (a) may be sent in respect of any Share in respect of which a Call has not been paid as required by a Call Notice;
- (b) must be sent to the holder of that Share (or all the joint holders of that Share) or to a transmittee of that holder;
- (c) must require payment of the Call and any accrued interest by a date which is not less than 14 clear days after the date of the notice (that is, excluding the date on which the notice is given and the date on which that 14 day period expires);
- (d) must state how the payment is to be made; and
- (e) must state that if the notice is not complied with, the Shares in respect of which the Call is payable will be liable to be forfeited.

#### **34. Directors' power to forfeit shares**

If a notice of intended forfeiture is not complied with before the date by which payment of the Call is required in the notice of intended forfeiture, the directors may decide that any Share in respect of which it was given is forfeited, and the forfeiture is to include all dividends or other moneys payable in respect of the forfeited Shares and not paid before the forfeiture.

#### **35. Effect of forfeiture**

35.1 Subject to the Articles, the forfeiture of a Share extinguishes:

- (a) all interests in that Share, and all claims and demands against the Company in respect of it; and
- (b) all other rights and liabilities incidental to the Share as between the person whose Share it was prior to the forfeiture and the Company.

35.2 Any Share which is forfeited in accordance with the Articles:

- (a) is deemed to have been forfeited when the directors decide that it is forfeited;
- (b) is deemed to be the property of the Company; and
- (c) may be sold, re-allotted or otherwise disposed of as the directors think fit.

35.3 If a person's Shares have been forfeited:

- (a) the Company must send that person notice that forfeiture has occurred and record it in the register of Shareholders;
- (b) that person ceases to be a Shareholder in respect of those Shares;
- (c) that person must surrender the certificate for the Shares forfeited to the Company for cancellation;
- (d) that person remains liable to the Company for all sums payable by that person under the Articles at the date of forfeiture in respect of those Shares, including any interest (whether accrued before or after the date of forfeiture); and
- (e) the directors may waive payment of such sums wholly or in part or enforce payment without any allowance for the value of the Shares at the time of forfeiture or for any consideration received on their disposal.

35.4 At any time before the Company disposes of a forfeited Share, the directors may decide to cancel the forfeiture on payment of all Calls and interest due in respect of it and on such other terms as they think fit.

### **36. Procedure following forfeiture**

- 36.1 If a forfeited Share is to be disposed of by being transferred, the Company may receive the consideration for the transfer and the directors may authorise any person to execute the instrument of transfer.
- 36.2 A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a Share has been forfeited on a specified date:
- (a) is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the Share; and
  - (b) subject to compliance with any other formalities of transfer required by the Articles or by law, constitutes a good title to the Share.
- 36.3 A person to whom a forfeited Share is transferred is not bound to see to the application of the consideration (if any) nor is that person's title to the Share affected by any irregularity in or invalidity of the process leading to the forfeiture or transfer of the Share.
- 36.4 If the Company sells a forfeited Share, the person who held it prior to its forfeiture is entitled to receive from the Company the proceeds of such sale, net of any commission, and excluding any amount which:
- (a) was, or would have become, payable; and
  - (b) had not, when that Share was forfeited, been paid by that person in respect of that Share,

but no interest is payable to such a person in respect of such proceeds and the Company is not required to account for any money earned on them.

### **37. Surrender of Shares**

- 37.1 A Shareholder may surrender any Share:
- (a) in respect of which the directors may issue a notice of intended forfeiture;
  - (b) which the directors may forfeit; or
  - (c) which has been forfeited.
- 37.2 The directors may accept the surrender of any such Share.
- 37.3 The effect of surrender on a Share is the same as the effect of forfeiture on that Share.

- 37.4 A Share which has been surrendered may be dealt with in the same way as a Share which has been forfeited.

### **Administrative arrangements**

#### **38. Means of communication to be used**

- 38.1 Subject to article 38.2, any notice, document or other information shall be deemed served on, or delivered to, the intended recipient:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice, document or other information is left at the address; or
- (b) if sent by pre-paid United Kingdom first class post, recorded delivery or special delivery to an address in the United Kingdom, at 9.00 am on the second Business Day after posting; or
- (c) if sent by pre-paid airmail to an address outside the country from which it is sent, at 9.00 am on the fifth Business Day after posting; or
- (d) if sent by reputable international overnight courier to an address outside the country from which it is sent, on signature of a delivery receipt; or
- (e) if sent or supplied by e-mail, one hour after the notice, document or information was sent or supplied; or
- (f) 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; and
- (g) if deemed receipt under the previous paragraphs of this article 38.1 would occur outside business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of deemed receipt), at 9.00 am on the day when business next starts in the place of deemed receipt. For the purposes of this article, all references to time are to local time in the place of deemed receipt.

- 38.2 To prove service, it is sufficient to prove that:

- (a) if delivered by hand the notice was delivered to the correct address; or
- (b) if sent by post or by airmail, the envelope containing the notice was properly addressed, paid for and posted; or
- (c) if sent by e-mail, the notice was properly addressed and sent to the e-mail address of the recipient.

### **39. Indemnity**

39.1 Subject to article 39.2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled:

(a) each relevant officer shall be indemnified out of the Company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer:

(i) in the actual or purported execution and/or discharge of his duties, or in relation to them; and

(ii) in relation to the Company's (or any associated company's) activities as trustee of an occupational pension scheme (as defined in section 235(6) of the Act),

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 (or any associated company's) affairs; and

(b) 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 39.1(a) and otherwise may take any action to enable any such relevant officer to avoid incurring such expenditure.

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

39.3 In this article:

(a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and

(b) a "relevant officer" means any director or other officer or former director or other officer of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Act), but excluding in each case any person engaged by the Company (or associated company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor).

**40. Insurance**

40.1 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.

40.2 In this article:

- (a) a "relevant officer" means any director or other officer or former director or other officer of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Act), but excluding in each case any person engaged by the Company (or associated company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor);
- (b) 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, any associated company or any pension fund or employees' share scheme of the Company or associated company; and
- (c) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.