

February 2023

**THE COMPANIES ACT 2006**

**COMPANY LIMITED BY SHARES**

**NEW**

**ARTICLES OF ASSOCIATION**

**of**

**[•] LIMITED**

(Adopted by a special resolution passed on [•] 20[•])

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**1. Introduction**

- 1.1. The model articles for private companies limited by shares contained or incorporated in Schedule 1 to the Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended prior to the date of adoption of these Articles (the "**Model Articles**") shall apply to the Company, save insofar as they are varied or excluded by, or are inconsistent with, the following Articles.
- 1.2. [Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 (as amended) ("**Table A**") shall not apply to the Company.]<sup>1</sup>
- 1.3. In these Articles and the Model 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 of or to such statutory provision for the time being in force.
- 1.4. In these Articles:
  - (a) Article headings are used for convenience only and shall not affect the construction or interpretation of these Articles;
  - (b) words denoting the singular include the plural and vice versa and reference to one gender includes the other gender and neuter and vice versa;
  - (c) Articles 8(2), 9(4), 10(3), 11(2), 13, 14, 17(2), 17(3), 19, 21, 26(5), 30(5) to (7) (inclusive), 36, 44(4), 51, 52 and 53 of the Model Articles shall not apply to the Company;
  - (d) Articles 52 to 62 (inclusive) and 73 of the model articles for public companies contained or incorporated in Schedule 3 to the Companies (Model Articles)

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<sup>1</sup> This Article 1.2 is only needed if the Company was incorporated before 1 October 2009.

Regulations 2008 (SI 2008/3229) shall apply *mutatis mutandis* to the Company (notwithstanding that it is not a public limited company);

- (e) with respect to the calculation of any number of Equity Shares:
  - (i) each Ordinary Share shall be counted as one Ordinary Share; and
  - (ii) each Series A Share shall be counted as a number of Ordinary Shares (including fractional entitlements) equal to one multiplied by the then applicable Conversion Ratio [(provided that if the relevant calculation is being made when a doubt or dispute has arisen in relation to the adjustment to the Conversion Ratio and the matter has not yet been determined by the Auditors pursuant to Article 1.4(f), then the applicable Conversion Ratio for the purposes of this Article 1.4(e) shall be the Conversion Ratio as determined by the Board [with Investor Director Consent]. If the Board has not determined the applicable adjusted Conversion Ratio, then it shall be deemed to be the most recent determined applicable Conversion Ratio, or, in the absence of the same, the unadjusted Conversion Ratio)];
- (f) in the event of any Bonus Issue or Reorganisation, the Preference Amount, Starting Price and/or Conversion Ratio, as applicable, shall be adjusted as determined by the Board [with Investor Director Consent] equitably so as to ensure that each Series A Shareholder is in no better or worse position (with respect to each Series A Share held) as a result of such Bonus Issue or Reorganisation provided that if a doubt or dispute arises concerning such adjustment, the Board shall, if requested by the Investor Majority, refer the matter to the Auditors (or such independent firm of accountants as the Board may decide) whose determination shall, in the absence of manifest error, be final and binding on the Company and each of the Shareholders (and the costs of the Auditors (or such independent firm of accountants) shall be borne by the Company);
- (g) reference to "**issued Shares**" of any class shall exclude any Shares of that class held as Treasury Shares from time to time, unless stated otherwise;
- (h) reference to the "**holders**" of Shares or a class of Share shall exclude the Company holding Treasury Shares from time to time, unless stated otherwise;
- (i) reference to the "**transfer**" of a Share includes:
  - (i) the transfer or assignment of a beneficial or other interest in that Share or the creation of a trust or Encumbrance over that Share, or in each case of a beneficial or other interest in a Share; and
  - (ii) the transfer of Shares pursuant to a merger or scheme of arrangement and any provision of such merger or scheme of arrangement by which a Shareholder thereby ceases to be interested in shares in the

Company (or any surviving or successor entity to such Shareholder) (whether by way of cancellation or otherwise),

and the terms "**transferring**", "**transferor**" and other derivatives shall be construed accordingly;

- (j) the words "**include**", "**including**" and "**in particular**" are to be construed as being by way of illustration or emphasis only and are not to be construed so as to limit the generality of any words preceding them;
  - (k) references to "**bankruptcy**", "**liquidation**", and "**administrative receivership**" shall have the meanings given to such terms under English law and shall also be deemed to include any similar or analogous status or concept under any other law (and, in which case, in the event of any dispute or ambiguity, the meaning of any such term shall, for the purposes of interpreting these Articles, be determined by the Board whose determination shall be final and binding);
  - (l) a person shall be deemed not to have ceased to be (or to have given or received notice to terminate their employment or consultancy as) a Service Provider if upon cessation of such employment or consultancy they nevertheless continue as a Service Provider in some other capacity (including if their employment is terminated and they thereafter continue as a non-executive director);
  - (m) with respect to provisions of these Articles concerning Service Provider Shares and Service Providers, the term "**consultancy**" includes services as a non-executive director (other than as an Investor Director) and the term "**consultant**" and other derivatives shall be construed accordingly; and
  - (n) a Service Provider who is a Director and a Leaver shall be excluded from the Board for the purposes any decision or determination under Article 19 and the related definitions.
- 1.5. [In respect of any actions or matters requiring or seeking the acceptance, approval, agreement, consent or words having similar effect of any [Founder] [Service Provider] or Ordinary Shareholder under these Articles, if at any time there are any Restricted Members and/or Restricted Shares, such Restricted Members and/or Restricted Shares shall be disregarded. If no voting [Founder] [Service Provider] or Ordinary Shareholders remain, such acceptance, approval, agreement or consent shall not be required.]<sup>2 3</sup>
- 1.6. In respect of any actions or matters requiring or seeking the acceptance, approval, agreement, consent or words having similar effect of an Investor Director under these Articles, if at any time an Investor Director has not been appointed or an Investor Director declares in writing to the Company and the Investors that they consider that

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<sup>2</sup> Include if Service Providers are subject to disenfranchisement.

<sup>3</sup> This mechanism allows disenfranchised Ordinary Shares to be ignored if the consent of the holders of a majority of Ordinary/Equity Shares is required for particular matters (e.g. drag-along or variation/termination of the SHA), without needing to refer to "voting" Ordinary/Equity Shares or similar.

providing such consent gives rise or may give rise to a conflict of interest to their duties as a Director, such action or matter shall require an Investor Majority Consent.

## 2. Definitions

In these Articles the following words and expressions shall have the following meanings:

**"Accepting Tag Shareholder"** has the meaning given in Article 20.6;

**"Act"** means the Companies Act 2006 (as amended from time to time);

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

**"Allocation Notice"** has the meaning given in Article 16.9;

**"Anti-Dilution Shares"** has the meaning given in Article 10.1;

**"Applicant"** has the meaning given in Article 16.9;

**"Appointor"** has the meaning given in Article 24.1;

**"Arrears"** means in relation to any Share, all arrears of declared and/or accrued but unpaid dividends on that Share;

**"Asset Sale"** means the disposal by the Company of all or substantially all of its undertaking and assets (where disposal may include the grant by the Company of an exclusive licence of intellectual property not entered into in the ordinary course of business);

**"Associate"** in relation to any person means:

- (a) any person who is an associate of that person (and the question of whether a person is an associate of another is to be determined in accordance with section 435 of the Insolvency Act 1986); and (whether or not an associate as so determined);
- (b) any member of the same Group; and
- (c) any member of the same Fund Group;

**"Auditors"** means the auditors of the Company from time to time (or if none are appointed the accountants of the Company from time to time);

**"Available Profits"** means profits available for distribution within the meaning of Part 23 of the Act;

**"Bad Leaver"** means a person who:

- (a) ceases to be [(or gives or is given notice to terminate their employment or consultancy as)] a Service Provider as a consequence of that person's:
  - (i) dismissal or termination as a Service Provider for gross misconduct, fraud, dishonesty or being convicted of any criminal offence (other than a road traffic offence which is not punishable by a custodial sentence) [or any grounds which entitle the Company to summarily dismiss or immediately terminate the Service Provider's employment, office, consultancy or engagement as a Service Provider], or as a consequence of that person's resignation in such circumstances; or
  - (ii) [resignation as a Service Provider [at any time during the Relevant Period], except in circumstances which constitute a constructive dismissal;] or
- (d) after ceasing to be a Service Provider, commits a material breach of any non-compete obligations owed to the Company under the Shareholders' Agreement or under such person's terms of engagement or employment as a Service Provider or otherwise, even if such Service Provider did not cease to be a Service Provider by reason of being a Bad Leaver on their Effective Termination Date;

**"Board"** means the board of Directors (or any committee of the board of Directors constituted for the purpose of taking any relevant action or decision);

**"Bonus Issue"** or **"Reorganisation"** means any return of capital, bonus issue of shares or other securities of the Company by way of capitalisation of profits or reserves (other than a capitalisation issue in substitution for or as an alternative to a cash dividend which is made available to the Series A Shareholders) or any consolidation or sub-division or any variation in the conversion rate applicable to any other outstanding shares of the Company in each case other than shares issued as a result of the events set out in Article 10 or Article 13.5;

**"Business Day"** means a day on which English clearing banks are ordinarily open for the transaction of normal banking business in the City of London (other than a Saturday or Sunday);

**"Called Securities Holder"** has the meaning given in Article 22.5;

**"Called Shareholder"** has the meaning given in Article 22.1;

**"Called Shares"** has the meaning given in Article 22.2;

**"Capitalised Sum"** has the meaning given in Article 32.1;

**"CEO Director"** has the meaning given in Article 25.2;

**"Civil Partner"** means in relation to a Shareholder, a civil partner (as defined in the Civil Partnership Act 2004) of the Shareholder;



**"Co-Sale Notice"** has the meaning given in Article 21.2;

**"Co-Sale Purchaser"** has the meaning given in Article 21.2;

**"Co-Sale Seller"** has the meaning given in Article 21.1;

**"Co-Sale Shareholder"** has the meaning given in Article 21.2;

**"Commencement Date"** means [•]<sup>4</sup>;

**"Common Liabilities"** has the meaning given in Article 22.6;

**"Company"** means [•] Limited (registered number [•]);

**"Conditions"** has the meaning given in Article 9.1;

**"Continuing Shareholders"** has the meaning given in Article 16.8;

**"Contribution Obligations"** has the meaning given in Article 22.6;

**"Controlling Interest"** means interests in shares giving to the holder (or holders) of such interests control of the Company within the meaning of section 1124 of the CTA 2010;

**"Conversion Date"** has the meaning given in Article 9;

**"Conversion Ratio"** means one Ordinary Share per Series A Share (if applicable, adjusted as referred to in Article 1.4(f));

**"CTA 2010"** means the Corporation Tax Act 2010;

**"Date of Adoption"** means the date on which these Articles were adopted;

**"Deferred Shares"** means deferred shares of £[•] each in the capital of the Company from time to time;

**"Director(s)"** means a director or directors of the Company from time to time;

**"Disqualifying Event"** has the meaning given in Article 18.1;

**"Disqualifying Event Notice"** has the meaning given in Article 18.1;

**"Disqualifying Event Transfer"** has the meaning given in Article 18.1;

**"Disqualifying Event Transfer Documents"** has the meaning given in Article 18.1;

**"Drag Along Notice"** has the meaning given in Article 22.2;

**"Drag Along Option"** has the meaning given in Article 22.1;

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<sup>4</sup> Insert the date on which vesting is intended to start. Avoid referencing the "Date of Adoption" or other terms to ensure that vesting is not inadvertently re-set when the Articles are amended.

**"Drag Completion Date"** has the meaning given in Article 22.8;

**"Drag Consideration"** has the meaning given in Article 22.4;

**"Drag Documents"** has the meaning given in Article 22.8;

**"Drag Purchaser"** has the meaning given in Article 22.1;

**"Dragged Share Sale"** has the meaning given in Article 22.1;

**"Effective Termination Date"** means the date on which the Service Provider's employment or consultancy terminates [(or, if earlier [and if so determined by the Board], the date on which the Service Provider gives or is given notice to terminate their employment or consultancy)];

**"electronic address"** has the same meaning as in section 333 of the Act;

**"electronic form"** and **"electronic means"** have the same meaning as in section 1168 of the Act;

**"Eligible Director"** means a Director who would be entitled to vote on a matter had it been proposed as a resolution at a meeting of the Board;

**"Encumbrance"** means any mortgage, charge, security, interest, lien, pledge, assignment by way of security, equity, claim, right of pre-emption, option, covenant, restriction, reservation, lease, trust, order, decree, judgment, title defect (including any retention of title claim), conflicting claim of ownership or any other encumbrance of any nature whatsoever (whether or not perfected other than liens arising by operation of law);

**"Equity Securities"** has the meaning given in sections 560(1) to (3) inclusive of the Act and for the avoidance of doubt an allotment of Equity Securities includes a transfer of shares which immediately before such transfer were held by the Company as Treasury Shares;

**"Equity Shares"** means the Shares other than the Deferred Shares;

**"Excess Sale Shares"** has the meaning given in Article 16.8;

**"Exercise Documents"** has the meaning given in Article 22.2;

**"Exercising Investor"** has the meaning given in Article 10.1;

**"Expert Valuer"** has the meaning given in Article 17.1;

**"Fair Value"** is as determined in accordance with Article 17;

**"Family Group"** means, as regards any individual (whether living or deceased) (a **"Principal"**):

- (a) such Principal;
- (e) the Privileged Relations of such Principal;
- (f) the Trustee(s) of any Family Trust(s) under which no immediate beneficial interest in any of the shares in question is for the time being vested in any person other than the Principal and/or their Privileged Relations; and
- (g) the Qualifying Companies of such Principal,

(and, in each case, with respect to the holding of interests in Shares, any nominee or custodian of such Principal) and the term "**member of the same Family Group**" shall be construed accordingly;

**"Family Trusts"** means as regards any particular individual member or deceased or former individual member, trusts (whether arising under a settlement, declaration of trust or other instrument by whomsoever or wheresoever made or under a testamentary disposition or on an intestacy) under which no immediate beneficial interest in any of the shares in question is for the time being vested in any person other than the individual and/or Privileged Relations of that individual; and so that for this purpose a person shall be considered to be beneficially interested in a share if such share or the income from such share is liable to be transferred or paid or applied or appointed to or for the benefit of such person or any voting or other rights attaching thereto are exercisable by or as directed by such person pursuant to the terms of the relevant trusts or in consequence of an exercise of a power or discretion conferred thereby on any person or persons;

**"Financial Year"** has the meaning given in section 390 of the Act;

**"Founder[s]"** means [•];

**"Founder Director"** has the meaning given in Article 25.3;

**"Fractional Holders"** has the meaning given in Article 9.8;

**"Fund Group"** means, as regards any fund, limited, general or other partnership, company, investment trust, unit trust, investment company or collective investment scheme (as defined by the Financial Services and Markets Act 2000) or other entity (excluding any Qualifying Company or Family Trust) whose principal business is to make investments, including in securities, or whose business is managed by a Fund Manager (an **"Investment Fund"**):

- (a) such Investment Fund;
- (h) any participant or partner in or member of any such Investment Fund or the holders of any unit trust which is a participant or partner in or member of any Investment Fund (but in each case only in connection with the dissolution of the Investment Fund or any distribution of assets of the Investment Fund

pursuant to the operation of the Investment Fund in the ordinary course of business);

- (i) any other Investment Fund whose business is managed or advised by such Fund Manager or by a member of the same Group as such Investment Fund or Fund Manager;
- (j) a member of the same Group as such Investment Fund or Fund Manager; and
- (k) any trustee, nominee or custodian of such Investment Fund and vice versa,

(and, in each case, with respect to the holding of interests in Shares, any nominee or custodian of such interests in Shares) and the term **"member of the same Fund Group"** shall be construed accordingly;

**"Fund Manager"** means a person whose principal business is to make, manage or advise upon investments in securities;

**"Good Leaver"** means a person who ceases to be a Service Provider and who is not a Bad Leaver and shall include when the Board [(including Investor Director Consent)] determines that a person is not a Bad Leaver;

**"Group"** means, as regards any undertaking (as defined in section 1161(1) of the Act) (other than a Qualifying Company) (a **"Principal Undertaking"**):

- (a) such Principal Undertaking;
- (l) each Parent Undertaking of such Principal Undertaking; and
- (m) each Subsidiary Undertaking of (i) such Principal Undertaking or (ii) any Parent Undertaking of such Principal Undertaking,

(and in each case, with respect to the holding of interests in Shares, any nominee or custodian of such interests in Shares) and the term **"member of the same Group"** shall be construed accordingly;

**"hard copy form"** has the same meaning given in section 1168 of the Act;

**"Holding Company Notice"** has the meaning given in Article 34.4;

**"Holding Company Reorganisation"** means any transaction involving the issue of shares in the capital of a New Holding Company to the Shareholders, the object or intent of which is to interpose the New Holding Company as the sole owner of the Company such that immediately subsequent to such transaction:

- (a) the membership, pro rata shareholdings and classes of shares comprised in the New Holding Company is substantially the same as that of the Company (excluding Treasury Shares) immediately prior to such transaction (save for the fact that such shares are issued by a different company);

- (n) the rights attaching to each class of share comprised in the New Holding Company are substantially the same as those rights attaching to the like class of share comprised in the share capital of the Company immediately prior to such transaction (save for the fact that such shares are issued by a different company and/or in a different jurisdiction with attendant differences in company law); and
- (o) the constitutional documents of the New Holding Company are the same in substantive effect as the articles of association of the Company immediately prior to such acquisition (save for the fact that they apply in respect of a different company, and as to matters and modifications to reflect that the New Holding Company may be incorporated in a jurisdiction other than England and Wales);

**"Independent Director"** has the meaning given in Article 25.5;]

**"Initial Sale Share Entitlement"** has the meaning given in Article 16.8;

**"Instrument of Transfer"** means a stock transfer form or any other transfer document in either hard copy form or electronic form, in either case in any usual form or in any other form which the Board may approve;<sup>5</sup>

**"Interested Director"** has the meaning given in Article 28.5;

**"Investor Director"** has the meaning given in Article 25.4;

**"Investor Director Consent"** means the prior written consent of [all OR at least *[insert]* of] [*Note: amend as appropriate*] the Investor Directors;

**"Investor Majority"** means [the holders of at least [•] per cent. of Series A Shares from time to time];<sup>6</sup>

**"Investor Majority Consent"** means the prior written consent of the Investor Majority;

**"Investor Observer"** has the meaning given in Article 25.4;

**"Investors"** means (i) [each holder of Series A Shares (and/or Ordinary Shares resulting from the conversion of any Series A Shares)] and (ii) each Permitted Transferee of a Series A Shareholder holding Series A Shares;

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<sup>5</sup> This definition is intended to remove any uncertainty as to whether the instruments of transfer referred to in these articles can be executed (if relying on these articles, rather than executing in compliance with the Stock Transfer Act 1963) using an electronic signature such as DocuSign. The Model Articles (without amendment) arguably require hard copy instruments of transfer. Whilst it is possible for a company to execute a stock transfer form electronically when executing in compliance with the Stock Transfer Act 1963, that route will require a corporate transferor to execute in accordance with section 44 Companies Act 2006 (e.g. two directors or a director in the presence of a witness), whereas execution under the articles can be effected under hand by one signature. Including this definition, expressly allowing an original transfer form other than in hard copy form, provides more flexibility.

<sup>6</sup> Amend as appropriate.

**"IPO"** means the admission of all or any of the Shares or securities representing those shares (including depositary interests, American depositary receipts, American depositary shares and/or other instruments) on the New York Stock Exchange, NASDAQ or on the Official List of the United Kingdom Financial Conduct Authority or the AIM Market operated by the London Stock Exchange Plc or any other recognised investment exchange (as defined in section 285 of the Financial Services and Markets Act 2000) or [overseas investment exchange (as defined in section 313 of the Financial Services and Markets Act 2000)] / [or any regulated market (as defined in the Markets in Financial Instruments Directive (2014/65/EU)) within the European Economic Area];

**"ITEPA"** means Income Tax (Earnings and Pensions) Act 2003;

**"Leaver"** has the meaning given in Article 19.1;

**"Leaver's Percentage"** means, in relation to and for the purposes of determining the number of Service Provider Shares that are required (pursuant to Article 19) to be converted into Deferred Shares as a result of a Good Leaver ceasing to be a Service Provider, the percentage (rounded to the nearest two decimal places) calculated as follows:

$$\text{Leaver's Percentage} = 100 - ((1/[48] \times 100) \times \text{NM}),$$

where NM = the number of full calendar months elapsed from the Commencement Date to the Effective Termination Date, such that the Leaver's Percentage shall be zero on the first day of the [49<sup>th</sup>] calendar month after the Commencement Date and thereafter, and provided that if different Commencement Dates apply for different Service Provider Shares with respect to the same Service Provider, then the Leaver's Percentage shall be applied, and the number of Unvested Shares calculated separately, with respect to each group of Service Provider Shares having the same Commencement Date;

**"Major Investors"** means each Investor holding at least [•] [per cent. of the] Equity Shares from time to time;

**"NASDAQ"** means the NASDAQ Stock Market of the NASDAQ OMX Group Inc.;

**"New Holding Company"** means a holding company of the Company newly incorporated in any jurisdiction which has no previous trading history and has resulted from a Holding Company Reorganisation;

**"New Securities"** means any shares in the capital of the Company or Relevant Securities granted or issued (or to be granted or issued) by the Company after the Date of Adoption (other than those granted or issued as a result of the events set out in Article 13.5) and the term **"New Security"** shall be construed accordingly;

**"New Shareholder"** has the meaning given in Article 22.12;

**"Non-Cash Consideration"** has the meaning given in Article 5.3;

**"Offer Period"** has the meaning given in Article 16.8;

**"Ordinary Shareholders"** means the holders from time to time of the Ordinary Shares (but excludes the Company holding Treasury Shares);

**"Ordinary Shares"** means the ordinary shares of £[•] each in the capital of the Company from time to time;<sup>7</sup>

**"Original Shareholder"** has the meaning given in Article 15.1;

**"Other Seller"** has the meaning given in Article 16.8;

**"Permitted Transfer"** means a transfer of Shares in accordance with Article 15;

**"Permitted Transferee"** means:

- (a) in relation to any member of a Family Group, any other member of that Family Group;
- (p) in relation to an undertaking (as defined in section 1161(1) of the Act) (other than a Qualifying Company) means any member of the same Group;
- (q) in relation to an Investment Fund (other than a Qualifying Company) means any other member of the same Fund Group; and
- (r) in relation to an Investor:
  - (i) any member of the same Group;
  - (ii) any member of the same Fund Group; and
  - (iii) any nominee or custodian of the Investor;

**"Post-Reorganisation Shareholder"** has the meaning given in Article 34.3;

**"Pre-Emption Waiver"** has the meaning given in Article 13.6;

**"Preference Amount"** means, in respect of a Series A Share, £[•] (if applicable, adjusted as referred to in Article 1.4(f) and/or Article 10.5) together with a sum equal to any Arrears;

**"Primary Holder"** has the meaning given in Article 29.8;

**"Prior Permitted Transferee"** has the meaning given in Article 15.6;

**"Privileged Relation"** in relation to a Shareholder who is an individual member or deceased or former member means a spouse, Civil Partner, child or grandchild (including a step or adopted or illegitimate child and their issue);

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<sup>7</sup> Definitions to be added as appropriate for any other existing share classes, e.g. seed shares.

**"Proceeds Of Sale"** means the consideration payable (including any deferred and/or contingent consideration) whether in cash or otherwise to those Shareholders selling (or otherwise transferring) Shares under a Share Sale less any fees, costs and expenses payable in respect of such Share Sale as approved by the Selling Shareholders;

**"Proposed Reorganisation"** has the meaning given in Article 34.1;

**"Proposed Seller"** means any person proposing to transfer any shares in the capital of the Company;

**"Qualifying Company"** means, as regards any individual, a company the entire issued share capital of which is held (legally and beneficially) by such individual (together with their Privileged Relations and Family Trusts) and over which that individual exercises control (within the meaning of section 1124 of the CTA 2010);

**"Qualifying IPO"** means an IPO in which the net aggregate subscription amount in respect of new Ordinary Shares issued at the time of the IPO is not less than £[•] at an issue price per Ordinary Share of at least £[•] / [[•] times the Starting Price];

**"Qualifying Issue"** has the meaning given in Article 10.1;

**"Release"** has the meaning given in Article 33.3;

**"Relevant Interest"** has the meaning given in Article 28.5;

**"Relevant Period"** means [48] months from the Commencement Date;

**"Relevant Security"** means any security, option, warrant, agreement or instrument which confers any right to subscribe for any share(s) in the capital of the Company (and the term **"Relevant Securities"** shall be construed accordingly);

**"Reorganisation Actions"** has the meaning given in Article 34.1;

**"Restricted Member"** has the meaning given in Article 19.3;

**"Restricted Shares"** has the meaning given in Article 19.4;

**"Re-transfer Period"** has the meaning given in Article 15.6;

**"Re-transfer Shares"** has the meaning given in Article 15.6;

**"Rights To Acquire Shares"** has the meaning given in Article 10.4;

**"Sale Agreement"** has the meaning given in Article 22.2;

**"Sale Information"** has the meaning given in Article 22.2;

**"Sale Shares"** has the meaning given in Article 16.2;



**"Seller"** has the meaning given in Article 16.2;

**"Sellers' Shares"** has the meaning given in Article 22.1;

**"Selling Shareholder"** has the meaning given in Article 22.1;

**"Series A Shareholders"** means the holders of the Series A Shares (but excludes the Company holding Treasury Shares);

**"Series A Shares"** means the series A shares of £[•] each in the capital of the Company from time to time;

**"Service Provider"** means an individual who is employed by, or who provides consultancy services to, the Company or any member of the Company's Group;

**"Service Provider Shares"** in relation to a Service Provider (or Leaver) means all Equity Shares held by:

- (a) the Service Provider (or Leaver) in question; and
- (s) any Permitted Transferee of that Service Provider (or Leaver) other than those Equity Shares held by those persons that an Investor Majority declares itself satisfied were not acquired directly or indirectly from the Service Provider (or Leaver) or by reason of that person's relationship with the Service Provider (or Leaver),

[provided that Equity Shares that a Service Provider (or Leaver) holds as result of exercising option(s) under any Share Option Plan(s) [or which have been acquired by a Service Provider (or Leaver) for value] shall not be taken into account for the purpose of calculating the Leaver's Percentage];

**"Share Option Plan"** means (i) the share option plan or plans of the Company from time to time and (ii) any agreement in respect of the award of shares including restricted shares (including restricted unit awards) and growth or hurdle shares, or share option agreements of the Company, in each case as amended from time to time;

**"Share Sale"** means the sale or transfer of any of the existing shares in the capital of the Company (in one transaction or as a series of transactions) which will result in the acquirer of those shares and persons Acting in Concert with them together acquiring a Controlling Interest in the Company, except where following completion of the sale or transfer the shareholders and the proportion of shares held by each of them are the same as the shareholders and their shareholdings in the Company immediately prior to the sale or transfer;

**"Shareholder"** means any holder of any Shares (but excludes the Company holding Treasury Shares);

**"Shareholder Acquirer"** has the meaning given in Article 18.3;

**"Shareholder Change Of Control"** has the meaning given in Article 18.3;

**"Shareholder Change Of Control Notice"** has the meaning given in Article 18.3;

**"Shareholder Change Of Control Transfer"** has the meaning given in Article 18.3;

**"Shareholder Change Of Control Transfer Documents"** has the meaning given in Article 18.3;

**"Shareholders' Agreement"** means the shareholders' agreement dated [•] between, amongst others, the Company and the Investors (as defined in that agreement) (as amended and restated from time to time);

**"Shareholders Entitled"** has the meaning given in Article 32.1;

**"Shares"** means the Ordinary Shares, Deferred Shares and the Series A Shares from time to time;<sup>8</sup>

**"Starting Price"** means £[•] (if applicable, adjusted as referred to in Article 1.4(f) and/or Article 10.5);

**"Subscribed Securities"** has the meaning given in Article 13.6;

**"Subscribers"** has the meaning given in Article 13.2;

**"Subscription Agreement"** means the subscription agreement dated [•] between, amongst others, the Company and [the Investors (as defined in that agreement)];

**"Subscription Period"** has the meaning given in Article 13.2;

**"Subsidiary", "Subsidiary Undertaking" and "Parent Undertaking"** have the respective meanings set out in sections 1159 and 1162 of the Act;

**"Surplus Assets"** has the meaning given in 5.1;

**"Tag Offer"** has the meaning given in Article 20.2;

**"Tag Offer Period"** has the meaning given in Article 20.3;

**"Tag Purchaser"** has the meaning given in Article 20.1;

**"Tag Sale"** has the meaning given in Article 20.1;

**"Tag Sale Notice"** has the meaning given in Article 20.3;

**"Transfer Date"** has the meaning given in Article 16.9;

**"Transfer Notice"** has the meaning given in Article 16.2;

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<sup>8</sup> The share classes will need to be tailored appropriately, e.g. if the Company has already issued a class of series seed shares.

**"Transfer Price"** has the meaning given in Article 16.3;

**"Treasury Shares"** means shares in the capital of the Company held by the Company as treasury shares from time to time within the meaning set out in section 724(5) of the Act;

**"Trustees"** in relation to a Shareholder means the trustees of a Family Trust; and

**"Unvested"** means those Service Provider Shares which may be required to be converted into Deferred Shares under Article 19 if the relevant Service Provider were then a Leaver.

### **3. Share capital**

- 3.1. In these Articles, unless the context requires otherwise, references to shares of a particular class shall include shares allotted and/or issued after the Date of Adoption and ranking pari passu in all respects (or in all respects except only as to (a) the date from which those shares rank for dividend and (b) the amount paid up or credited as paid up on each share) with the shares of the relevant class then in issue.
- 3.2. Except as otherwise provided in these Articles, the Series A Shares and the Ordinary Shares shall rank pari passu in all respects but shall constitute separate classes of shares.
- 3.3. The words "and the directors may determine the terms, conditions and manner of redemption of any such shares" shall be deleted from article 22(2) of the Model Articles.
- 3.4. Subject to Investor Majority Consent and the Act, the Company may purchase its own Shares to the extent permitted by section 692(1ZA) of the Act.
- 3.5. Paragraph (c) of article 24(2) of the Model Articles shall be amended by the replacement of the words "that the shares are fully paid; and" with the words "the amount paid up on them; and".
- 3.6. In article 25(2) of the Model Articles, the words "payment of a reasonable fee as the directors decide" in paragraph (c) shall be deleted and replaced by the words "payment of the expenses reasonably incurred by the Company in investigating evidence as the directors may determine".
- 3.7. The Board may by resolution decide, either generally or in any particular case, that any signatures on any share certificates need not be autographic but may be applied to the certificates by some mechanical, electronic or other means or may be printed on them. article 24(5) of the Model Articles shall be amended accordingly.
- 3.8. For the avoidance of doubt, the Company shall not exercise any right in respect of any Treasury Shares, including any right to:
  - (a) receive notice of or to attend or vote at any general meeting of the Company;

- (b) receive or vote on any proposed written resolution; and
- (c) receive a dividend or other distribution,

save as otherwise permitted by section 726(4) of the Act.

- 3.9. The Company shall be entitled to retain any share certificate(s) relating to Service Provider Shares while any such Shares remain Unvested.
- 3.10. The Company may exercise the powers of paying commissions conferred by section 553 of the Act.

#### **4. Dividends**

- 4.1. In respect of any Financial Year, the Company's Available Profits will be applied as set out in this Article 4.
- 4.2. [Save where Article 4.7 applies,] [Any Available Profits which the Company may determine, [with Investor Majority Consent,] to distribute in respect of any Financial Year will be distributed among the holders of Deferred Shares and the holders of Equity Shares so that the holders of Deferred Shares receive a total of one penny in aggregate (as a class), payment of which may be made to any holder of Deferred Shares on behalf of the class, and the remainder of the Available Profits shall be distributed to the holders of Equity Shares, subject to Article 4.4 (pari passu as if the Equity Shares constituted one class of shares) pro rata to their respective holdings of Equity Shares [provided always that this Article 4.2 is subject to the limits in Article [35]]<sup>9</sup>.
- 4.3. Subject to the Act and these Articles, the Board may, [provided Investor Majority Consent is given, ]pay interim dividends if justified by the Available Profits in respect of the relevant period [provided always that this Article 4.3 is subject to the limits in Article [35]]<sup>10</sup>.
- 4.4. If there are nil paid or partly paid share(s), any holder of such share(s) shall only be entitled, in case of any dividend, to be paid an amount equal to the amount of the dividend multiplied by the percentage of the amount that is paid up (if any) on such share(s) during any portion or portions of the period in respect of which a dividend is paid.
- 4.5. In addition to the authority set out in Article 32, a capitalised sum which was appropriated from profits available for distribution [(which are not required for the Preference Dividend [or the Special Dividend])] may be applied in or towards paying up any sums unpaid on existing Shares held by the persons entitled to such capitalised sum.
- 4.6. Article 31(1) of the Model Articles shall be amended by:

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<sup>9</sup> Insert if including EIS/VCT cap on corporate shareholders from Appendix B.

<sup>10</sup> Insert if including EIS/VCT cap on corporate shareholders from Appendix B.

- (a) the replacement of the words "either in writing or as the directors may otherwise decide" at the end of paragraphs (a), (b) and (c) of that article 31(1) with the words "in writing"; and
- (b) the replacement of the words "either in writing or by such other means as the directors decide" from the end of paragraph (d) of that article 31(1) with the words "in writing".

4.7. ***[INSERT PREFERENCE/SPECIAL DIVIDEND RIDER IF REQUIRED, SEE APPENDIX A]***

**5. Liquidation Preference**

5.1. On a distribution of assets on a liquidation or a return of capital (other than a conversion, redemption or purchase of Shares) the surplus assets of the Company remaining after payment of or provisioning for its liabilities ("**Surplus Assets**") shall be applied (to the extent that the Company is lawfully permitted to do so):

- (a) first, in distributing to the holders of the Deferred Shares, if any, a total of one penny in aggregate for the entire class of Deferred Shares (which payment shall be deemed satisfied by distribution to any one holder of Deferred Shares);
- (b) thereafter, in distributing to each of the Series A Shareholders, in priority to the Ordinary Shares, an amount per Series A Share held equal to the greater of (i) the Preference Amount and (ii) the amount that would be received if the Series A Shares were converted into Ordinary Shares immediately prior to such distribution (provided that if there are insufficient Surplus Assets to distribute the amounts per Series A Share equal to the Preference Amount for each Series A Share, the remaining Surplus Assets shall be distributed to the Series A Shareholders pro rata to their respective aggregate Preference Amount);
- (c) thereafter, the balance of the Surplus Assets (if any) shall be distributed among the holders of Ordinary Shares pro rata to the number of Ordinary Shares held.

***[INSERT ALTERNATIVE EIS/VCT DISTRIBUTION WATERFALL AND CONTROL CAPS IF REQUIRED, SEE APPENDIX B]***

1.2. In the event that any distributions under Article 5.1 are made on more than one occasion:

- (a) each distribution shall be made in accordance with Article 5.1 as if it were the only amount to be distributed and without regard to the expected amount of any distributions expected to be made on any further occasions; and
- (b) a distribution on any further occasion shall be made in accordance with Article 5.1 after taking into account any previous distributions made under Article 5.1.

1.3. If any distribution under Article 5.1 includes any non-cash assets, proceeds or other amounts ("**Non-Cash Consideration**") the cash equivalent value of any such

Non-Cash Consideration shall be determined in such manner as the Board (acting reasonably and in good faith and with Investor Majority Consent) may determine.

## **2. Exit Provisions**

2.3. On a Share Sale, the Proceeds Of Sale shall be distributed to those Shareholders selling (or otherwise transferring) Shares pursuant to such Share Sale in the order of priority set out in Article 5.1 and subject to Articles 5.2 and 5.3 [(but will not be subject to the limits in Article [35])]<sup>11</sup>. No Shareholder shall sell (or otherwise transfer) any Shares as part of a Share Sale unless (and the Board shall not register any transfer of Shares pursuant to a Share Sale unless the Board is reasonably satisfied that) the terms of such Share Sale provide that the Proceeds Of Sale are distributed in accordance with Article 5.1 to those Shareholders selling or otherwise transferring Shares pursuant to such Share Sale, provided always that if the Proceeds Of Sale are not settled in their entirety upon completion of the Share Sale:

- (a) the Board shall not be prohibited from registering the transfer of the relevant Shares so long as the Proceeds Of Sale that are settled have been (or will, under the terms of the Share Sale, be) distributed in the order of priority set out in Article 5; and
- (b) the Shareholders shall take any action required by the Board to ensure that the Proceeds Of Sale in their entirety are distributed in the order of priority set out in Article 5.

2.4. On an Asset Sale the Surplus Assets shall be distributed (to the extent that the Company is lawfully permitted to do so) in the order of priority set out in Article 5.1 and subject to the provisions of Articles 5.2 and 5.3, provided always that [(i)] if it is not lawful for the Company to distribute the Surplus Assets in accordance with the provisions of these Articles, the Shareholders shall take any necessary action reasonably requested by the Board (including actions that may be necessary to put the Company into voluntary liquidation) so that Article 5 applies and is given effect [and (ii) this Article 6.2 is subject to the limits in Article [35]]<sup>12</sup>.

2.5. ***[INSERT REDEMPTION RIDER IF REQUIRED, SEE APPENDIX C]***

## **3. Votes in general meeting and written resolutions**

3.3. Subject to the further provisions of these Articles, the Equity Shares shall confer on each holder of Equity Shares (in that capacity) the right to receive notice of and to attend, speak and vote at all general meetings of the Company and to receive, vote on and constitute an eligible member for the purposes of proposed written resolutions of the Company.

3.4. The Deferred Shares (if any) shall not entitle the holders of them to receive notice of, to attend, to speak or to vote at any general meeting of the Company nor to receive or

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<sup>11</sup> Insert if including EIS/VCT cap on corporate shareholders from Appendix B.

<sup>12</sup> Insert if including EIS/VCT cap on corporate shareholders from Appendix B.

vote on, or otherwise constitute an eligible member for the purposes of, proposed written resolutions of the Company.

- 3.5. On a show of hands each holder of Equity Shares who (being an individual) is present in person or by proxy or (being a corporation) is present by a duly authorised representative or by proxy shall have one vote and on a poll each such holder so present shall have one vote for each Equity Share held by them, provided always that this Article 7.3 is subject to Article 7.4, Article 19.3 [and the limits in Article [35]].<sup>13</sup>
- 3.6. No voting rights attached to an Equity Share which is nil paid or partly paid may be exercised:
- (a) at any general meeting, at any adjournment of it or on any poll called at or in relation to it; or
  - (b) on any proposed written resolution,

unless all of the amounts payable to the Company in respect of that Equity Share have been paid.

#### **4. Consolidation of Shares**

Whenever as a result of a consolidation of Shares any Shareholders would become entitled to residual fractions of a Share, the Board may (in its absolute discretion) deal with those residual fractions as they think fit on behalf of those Shareholders. In particular, the Board may aggregate and sell the Shares representing the fractions for the best price reasonably obtainable to any person (including, subject to the provisions of the Act, the Company) and distribute the net proceeds of sale in due proportion among those Shareholders, and the Board may authorise any person to execute an Instrument of Transfer for the Shares to, or in accordance with the directions of, the purchaser. The transferee shall not be bound to see to the application of the purchase money nor shall their title to the Shares be affected by any irregularity in or invalidity of the proceedings in reference to the sale.

#### **9. Conversion of Series A Shares**

- 9.1. Any Series A Shareholder shall be entitled, by notice in writing to the Company, to require conversion into Ordinary Shares of all (or such number as stated in such notice) of the fully paid Series A Shares held by them at any time and those Series A Shares shall convert automatically on the date of (or such other date as may be specified as the date of conversion in) such notice (the "**Conversion Date**"), provided that the holder may in such notice, state that conversion of its Series A Shares into Ordinary Shares is conditional upon the occurrence of one or more events (the "**Conditions**").
- 9.2. All of the fully paid Series A Shares shall automatically convert into Ordinary Shares:

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<sup>13</sup> Insert if including EIS/VCT cap on corporate shareholders from Appendix B.

- (a) [on the date of (or such other date as may be specified as the date of conversion in), and subject to the satisfaction of such Conditions (if any) as set out in, a notice given to the Company by the Investor Majority (and the term "**Conversion Date**" shall be construed accordingly) so requiring the conversion of all Series A Shares into Ordinary Shares;] or
  - (b) immediately prior to and conditional upon the occurrence of a Qualifying IPO.
- 9.3. In the case of (i) Articles 9.1 and 9.2(a), not more than five Business Days after the Conversion Date or (ii) in the case of Article 9.2(b), at least five Business Days prior to the occurrence of the Qualifying IPO, each holder of the relevant Series A Shares shall deliver the certificate (or an indemnity for lost certificate in a form acceptable to the Board) in respect of the Series A Shares being converted into Ordinary Shares to the Company at its registered office for the time being.
- 9.4. Where conversion is mandatory with effect immediately prior to and conditional upon the occurrence of a Qualifying IPO, the term "**Conversion Date**" shall be construed accordingly and, for the avoidance of doubt, if such Qualifying IPO does not become effective or does not take place, such conversion shall not have occurred. In the event of a conversion under Article 9.1 [or 9.2(a)], if the Conditions (if any) have not been satisfied or waived by the relevant holder by the Conversion Date such conversion shall be deemed not to have occurred.
- 9.5. On the Conversion Date, the relevant Series A Shares shall without further authority than is contained in these Articles stand converted into Ordinary Shares at the then applicable Conversion Ratio and the Ordinary Shares resulting from that conversion shall in all other respects rank *pari passu* with the existing issued Ordinary Shares.
- 9.6. The Company shall on the Conversion Date enter the holder of the converted Series A Shares on the register of members of the Company as the holder of the appropriate number of Ordinary Shares and, subject to the relevant holder delivering its certificate(s) (or an indemnity for lost certificate in a form acceptable to the Board) in respect of the Series A Shares in accordance with this Article, the Company shall within 10 Business Days of the Conversion Date forward to such holder of converted Series A Shares by post to their address shown in the register of members, free of charge, a definitive certificate for the appropriate number of fully paid Ordinary Shares.
- 9.7. On the Conversion Date (or as soon afterwards as it is possible to calculate the amount payable), the Company will, if it has sufficient Available Profits, pay to the holders of the Series A Shares falling to be converted a dividend equal to all Arrears (if any) in relation to those Series A Shares, which payment may be waived by an Investor Majority.
- 9.8. If any Series A Shareholder becomes entitled to fractions of an Ordinary Share as a result of a conversion ("**Fractional Holders**"), the Board may (in its absolute discretion) deal with these fractions as they think fit on behalf of the Fractional Holders. In particular, the Board may aggregate and sell the fractions to a person for the best price reasonably obtainable and distribute the net proceeds of sale in due proportions



among the Fractional Holders or may ignore fractions or accrue the benefit of such fractions to the Company rather than the Fractional Holder. For the purposes of completing any such sale of fractions, the chairperson of the Company or, failing them, the secretary will be deemed to have been appointed the Fractional Holder's agent for the purpose of the sale.

## 10. Anti-Dilution protection

- 10.1. Subject to Article 10.4, if New Securities are granted or issued after the Date of Adoption by the Company at a price per New Security which equates to less than the Starting Price per Series A Share (a "**Qualifying Issue**") which in the event that the New Security is not granted or issued for cash shall be a price agreed by the Board and the Investor Majority (and failing such agreement a price certified by the Auditors acting as experts and not as arbitrators as being in their opinion the current cash value of the new consideration for the New Securities) then the Company shall, unless the Investor Majority shall have specifically waived the rights of all of the holders of Series A Shares, issue to each Shareholder holding Series A Shares at the time of such Qualifying Issue [(excluding the EIS Investors)]<sup>14</sup> (the "**Exercising Investor**") a number of new Series A Shares determined by applying the following formula (and rounding the product, N, down to the nearest whole share), subject to adjustment in accordance with Article 10.5 (the "**Anti-Dilution Shares**"):

$$N = \left( \left( \frac{SIP}{WA} \right) x Z \right) - Z$$

Where:

N = the number of Anti-Dilution Shares to be issued to the Exercising Investor

$$WA = \frac{(SIP \times ESC) + (QISP \times NS)}{(ESC + NS)}$$

SIP = Starting Price

ESC = (i) the number of Equity Shares in issue, plus (ii) the number of allocated options to subscribe for Ordinary Shares which have been granted under the Share Option Plans, plus (iii) an equivalent number of Equity Shares (to be determined in accordance with Article 10.3) in respect of any other outstanding Relevant Securities (excluding any Relevant Securities in respect of which Equity Shares are being issued pursuant to such Qualifying Issue), in each case immediately prior to the Qualifying Issue

<sup>14</sup> If Investors seeking EIS reliefs are subscribing for Series A Shares, they must be expressly carved out from the anti-dilution rights. A separate share class is not required. See Appendix B.

QISP = the weighted<sup>15</sup> average equivalent price per Equity Share in respect of the New Securities granted or issued pursuant to the Qualifying Issue (and for which purpose any non-cash consideration shall be valued at a cash equivalent sum agreed by the Board and the Investor Majority and failing such agreement a sum certified by the Auditors acting as experts and not as arbitrators as being in their opinion the cash equivalent value of such non-cash consideration)

NS = the number of Equity Shares issued or granted pursuant to the Qualifying Issue (or in the case of Relevant Securities issued or granted pursuant to the Qualifying Issue, an equivalent number of Equity Shares to be determined in accordance with Article 10.3)

Z = the number of Series A Shares held by the Exercising Investor immediately prior to the Qualifying Issue.

In the event of multiple Qualifying Issues on the same date, whether at a single issue price or at different issue prices, whether for new money or as a consequence of outstanding convertible securities or similar instruments, the calculations set out in this Article 10.1 will be made with respect to each Qualifying Issue independently and simultaneously such that none of such Qualifying Issues are deemed to be outstanding for purposes of the calculations in this Article 10.1 for any of the other Qualifying Issues.

***[INSERT ALTERNATIVE FULL RATCHET OR NARROW BASED ANTI-DILUTION FORMULA IF REQUIRED, SEE APPENDIX D]***

1.2. The Anti-Dilution Shares shall:

- (a) be paid up by the automatic capitalisation of available reserves of the Company, unless and to the extent that the same shall be impossible or unlawful or the Investor Majority shall agree otherwise, in which event the Exercising Investors shall be entitled to subscribe for the Anti-Dilution Shares in cash at nominal value. In the event of any dispute between the Company and any Exercising Investor as to the effect of Article 10.1 or this Article 10.2, the matter shall be determined between the Board and the Investor Majority and the Board may (and at the request of the Investor Majority will) refer (at the cost of the Company) to the Auditors for certification of the number of Anti-Dilution Shares to be issued. The Auditor's certification of the matter shall in the absence of manifest error be final and binding on the Company and each Exercising Investor; and
- (b) subject to the payment of any cash payable pursuant to Article 10.2(a) (if applicable), be issued, credited fully paid up in cash and shall rank *pari passu* in all respects (save as to (i) the date from which those Shares rank for

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<sup>15</sup> If 75 shares are issued for £1.00 each and 25 shares are issued for £0.50 each, the average price would be weighted depending on the number of shares issued at each price, i.e.  $(75 \times £1.00 + 25 \times £0.50) / (75 + 25) = £0.875$ , rather than a simple average of the two prices, i.e.  $(£1.00 + £0.50)/2 = £0.75$

dividend and (ii) the amount paid up or credited as paid up on each Share) with the existing Series A Shares, within five Business Days of the expiry of the offer being made by the Company to the Exercising Investor and pursuant to Article 10.2(a).

- 1.3. If the number of Equity Shares issuable in respect of any Relevant Securities is not then ascertainable (because, for example but without limitation, the exercise or conversion price is variable according to a formula) then, for the purpose of any calculation under this Article 10, the equivalent number of Equity Shares the subject of such Relevant Securities shall be deemed to be such number of Equity Shares as the Board (acting reasonably and in good faith) shall estimate to be the number of Equity Shares reasonably likely be issued thereunder.
- 1.4. In the event of any grant or issue of New Securities other than Equity Shares ("**Rights To Acquire Shares**"), then unless the Board determines otherwise with Investor Director Consent the grant or issue of such Rights To Acquire Shares shall constitute a Qualifying Issue.
- 1.5. The Preference Amount and Starting Price of each Series A Share held by each Exercising Investor following the issue of Anti-Dilution Shares under this Article 10 shall be adjusted to equal to the quotient of (i) the aggregate Preference Amount or Starting Price (as the case may be) of the Series A Shares held by such Exercising Investor immediately prior to the issuance of the Anti-Dilution Shares and (ii) the number of Series A Shares held by such Exercising Investor immediately afterwards (including the Anti-Dilution Shares) provided that such aggregate adjusted Preference Amount or Starting Price (as the case may be) shall be no less than, and no greater than, the aggregate (as the case may be) for all Series A Shares held by such Exercising Investor prior to the issue of the Anti-Dilution Shares.
- 1.6. For the purposes of this Article 10 any Shares held as Treasury Shares by the Company shall not be included when calculating the number of Equity Shares in issue (but may, for the avoidance of doubt, be included if and to the extent such Treasury Shares are the subject of any Rights To Acquire Shares granted or issued by the Company).

## **2. Deferred Shares**

- 2.2. Subject to the Act, all Deferred Shares in issue may be purchased by the Company at any time at its option for a total of one penny in aggregate for all such Deferred Shares (which amount shall be apportioned between the holders of Deferred Shares pro rata as to the number of Deferred Shares held and may be paid to any one or more holders of Deferred Shares on behalf of all holders of Deferred Shares) without obtaining the sanction of the holder(s).
- 2.3. The allotment or issue of Deferred Shares or the conversion or re-designation of Shares into Deferred Shares shall be deemed to confer irrevocable authority on the Company at any time after their allotment, issue, conversion or re-designation, without obtaining the sanction of such holder(s), to:

- (a) appoint any person to execute any transfer (or any agreement to transfer) of such Deferred Shares to such person(s) as the Company may determine (as nominee or custodian or otherwise), including (subject to the Act) to the Company itself, in any such case for a price being not more than an aggregate sum of one penny for all the Deferred Shares registered in the name of such holder(s);
- (b) receive the consideration for such a transfer or purchase (and give a good discharge for it) and hold the same on trust for the transferor(s);
- (c) give, on behalf of such holder(s), consent to the cancellation of such Deferred Shares; and/or
- (d) retain the certificate(s) (if any) in respect of such Deferred Shares pending their transfer, cancellation and/or purchase.

2.4. No Deferred Share may be transferred without the prior consent of the Board.

### **3. Variation of rights**

- 3.2. Whenever the share capital of the Company is divided into different classes of Shares, the special rights attached to any such class may only be varied or abrogated (either whilst the Company is a going concern or during or in contemplation of a winding-up) with the consent in writing of the holders of a majority of the issued Shares of that class [(provided that, if such variation or abrogation treats two or more classes in the same manner, the written consent of the holders of a majority of the issued Shares of such classes (as if such classes constituted one and the same class) shall only be required)].
- 3.3. The creation of a new class of Shares which has preferential rights to one or more existing classes of Shares shall not constitute a variation of the rights of those existing classes of Shares.

### **4. Pre-emption rights in respect of new shares and other securities**

- 4.2. Sections 561(1) and 562(1) to (5) (inclusive) of the Act do not apply to an allotment of Equity Securities made by the Company.
- 4.3. Unless otherwise agreed by Investor Majority Consent<sup>16</sup> [(subject to Article 13.6)], if the Company proposes to allot any New Securities those New Securities shall not be allotted to any person unless the Company has in the first instance offered each [Major] Investor<sup>17</sup> its pro rata share of the New Securities (the "**Subscribers**") on the

<sup>16</sup> In practice, pre-emption rights need to be disapplied in virtually every financing, so companies should be cautious about setting the disapplication threshold too high (e.g. by requiring a special resolution), which could effectively give smaller investors a veto right on a future financing in a manner that's not consistent with the consent thresholds agreed in the Shareholders' Agreement.

<sup>17</sup> Limiting pre-emption rights to "Investors" or even "Major Investors" makes it easier for companies to raise financing from outside investors, who often provide further value/expertise beyond simply providing fresh capital, as it means a smaller percentage of a future round needs to be offered pre-emptively. It is also more reflective of the commercial reality that allocations in future rounds are decided by the Board and the Investor Majority.

same terms and at the same price as those New Securities are being offered to other persons on a pari passu and pro rata basis to the number of Equity Shares held by such [Major] Investor divided by the number of Equity Shares then in issue (together with any outstanding Relevant Securities then exercisable or convertible into Equity Shares (to which the provisions of Article 10.3 shall apply if applicable))<sup>18</sup> (as nearly as may be without involving fractions). The offer:

- (a) shall be in writing, be open for acceptance from the date of the offer to the date [10] Business Days after the date of the offer (inclusive) (the "**Subscription Period**") and give details of the number and subscription price of the New Securities and material terms of such offer; and
  - (b) may stipulate that any Subscriber who wishes to subscribe for a number of New Securities in excess of the proportion to which each is entitled shall in their acceptance state the number of excess New Securities for which they wish to subscribe.
- 4.4. If, at the end of the Subscription Period, the number of New Securities applied for is equal to or exceeds the number of New Securities being offered to the Subscribers, such New Securities shall be allotted to the Subscribers who have applied for New Securities on a pro rata basis to the number of Equity Shares held by such Subscribers which procedure shall be repeated until all of the New Securities being offered to the Subscribers have been allotted (as nearly as may be without involving fractions or increasing the number allotted to any Subscriber beyond that applied for by them).
- 4.5. If, at the end of the Subscription Period, the number of New Securities applied for is less than the number of New Securities being offered to the Subscribers, the New Securities shall be allotted to the Subscribers in accordance with their applications and any remaining New Securities may be offered to any other person as the Board may determine at the same price and on the same terms as the offer to the Subscribers for a period of up to 60 Business Days.
- 4.6. The provisions of Articles 13.2 to 13.4 (inclusive) shall not apply to:
- (a) options to subscribe for Ordinary Shares under any Share Option Plan and Ordinary Shares issued pursuant to the exercise of such options in accordance with the terms of the Shareholders' Agreement;
  - (b) Shares or Relevant Securities issued or granted by the Company in order for it to comply with its obligations under these Articles including, but not limited to the Anti-Dilution Shares;
  - (c) Shares or Relevant Securities issued by the Company in consideration of the acquisition by the Company of any company or business [which has been approved in writing by an Investor Majority];

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<sup>18</sup> If including in the calculation review terms of instruments (for example, where there are commercial hurdles to conversion) to decide if they should be included.

- (d) Shares or Relevant Securities issued or granted by the Company as a result of a Bonus Issue or Reorganisation [which has been approved in writing by an Investor Majority];
  - (e) Shares issued pursuant to any Relevant Securities issued or granted prior to the Date of Adoption or which were issued or granted in accordance with the provisions of Articles 13.2 to 13.4 (inclusive) or issued or granted pursuant to this Article 13.5; and
  - (f) [Shares or options for Shares issued or granted to the Investors in accordance with the terms of the Subscription Agreement.]<sup>19</sup>
- 4.7. [In the event the Company proposes to allot any New Securities and the pre-emption procedure set out in Articles 13.2 to 13.4 (inclusive) is disapplied with Investor Majority Consent (the "**Pre-Emption Waiver**") in respect of such allotment, if [an Investor][a Major Investor] or any of its Permitted Transferees who participated in granting such Pre-Emption Waiver is proposed to be allotted with any or all of such New Securities (the "**Subscribed Securities**") (each a "**Waiving Investor**") then each [Major] Investor will be entitled to participate in such allotment of Subscribed Securities on the same terms and at the same price on a pari passu and pro rata basis, where each [Major] Investor's pro rata share of the Subscribed Securities is equal to the number of Equity Shares held by such [Major] Investor divided by the number of Equity Shares then [held by the Investors/held by the Waiving Investors and the Major Investors] (together with any outstanding Relevant Securities then exercisable or convertible into Equity Shares held by them (to which the provisions of Article 10.3 shall apply if applicable)) (without double counting and as nearly as may be without involving fractions), in accordance with such procedure as the Board may determine, provided that no offer to a [Major] Investor under this Article 13.6 is required to exceed the entitlement they would have had if the pre-emption procedure set out in Articles 13.2 to 13.4 (inclusive) had not been disapplied.]
- 4.8. Any New Securities offered under this Article 13 to an [Major] Investor may be accepted in full or part only by a member of the same Fund Group as that [Major] Investor or a member of the same Group as that [Major] Investor in accordance with the terms of this Article 13.
- 4.9. Save with the express approval of the Board, no Shares shall be allotted (nor any Treasury Shares be transferred) to any Service Provider, Director, prospective Service Provider or prospective director of the Company or any member of the Company's Group, who in the opinion of the Board is subject to taxation in the United Kingdom (and/or, if so determined by the Board, any other jurisdiction), unless such person has entered into a joint section 431 ITEPA election with the Company or any member of the Company's Group (as applicable) (and/or, if so determined by the Board in respect of any other jurisdiction, any comparable foreign tax election concerning the foreign tax treatment of such Shares).

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<sup>19</sup> This should be included unless pre-emption rights relating to the allotment of the new Series A Shares will be disapplied by special resolution, or as otherwise provided under the Company's existing articles and/or shareholders' agreement.

## **5. Transfers of Shares – general**

- 5.2. In Articles 14 to 22 inclusive, reference to the transfer of a Share includes the transfer or assignment 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.
- 5.3. No Share may be transferred unless the transfer is made in accordance with these Articles. If a Shareholder transfers or purports to transfer a Share otherwise than in accordance with these Articles such transfer shall be null and void and either (i) if so required by the Board, such Share will be returned to the transferor with or without conditions or (ii) the Board may resolve that the transferor shall be deemed on such date as the Board shall determine to have served a Transfer Notice in respect of all Shares held by them.
- 5.4. Any transfer of a Share by way of sale which is required to be made under Articles 14 to 22 (inclusive) will be deemed to include a warranty that the transferor sells with full title guarantee free from all Encumbrances.
- 5.5. Save where the provisions of any of Articles 18, 19 or 22 apply, no Equity Shares [held by any [Founder] [Service Provider]] or any of their Permitted Transferees shall be transferred without [the prior approval of the Board] [Investor Majority Consent].
- 5.6. The Board may refuse to register a transfer if:
- (a) it is a transfer of a Share to a bankrupt, a minor or a person of unsound mind;
  - (b) the transfer is to a Service Provider, Director or prospective Service Provider or prospective director of the Company or any member of the Company's Group, who in the opinion of the Board is subject to taxation in the United Kingdom (and/or, if so determined by the Board, any other jurisdiction), and such person has not, unless otherwise expressly approved by the Board, entered into a joint section 431 ITEPA election with the Company or any member of the Company's Group (as applicable) (and/or, if so determined by the Board in respect of any other jurisdiction, any comparable foreign tax election concerning the foreign tax treatment of such Shares);
  - (c) it is a transfer of a Share which is not fully paid:
    - (i) to a person of whom the Board does not approve; or
    - (ii) on which Share the Company has a lien;
  - (d) the Instrument of Transfer is not lodged at the registered office or at such other place as the Board may appoint;
  - (e) the Instrument of Transfer is not accompanied by the certificate for the Shares to which it relates (or an indemnity for any lost certificate in a form acceptable

to the Board) and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer;

- (f) the transfer is in respect of more than one class of Shares per Instrument of Transfer (or the Board is otherwise unable to ascertain from the Instrument of Transfer which Shares are transferred if those Shares held by the transferor are not fungible);
- (g) the transfer is in favour of more than four transferees; or
- (h) these Articles otherwise provide that such transfer shall not be registered.

If the Board refuses to register a transfer, the Instrument of Transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

1.6. The Board shall refuse to register the transfer of any Share:

- (a) which is "subject to restrictions" (within the meaning given in paragraph 5 of Schedule 1B to the Act), unless permitted to so register by the court, or
- (b) if the Company or Board are otherwise prevented by law from registering the transfer.

1.7. The Board may, as a condition to the registration of any transfer of shares in the Company (whether pursuant to a Permitted Transfer or otherwise), require the transferee (if they are not already a party to the Shareholders' Agreement) to execute and deliver to the Company a deed agreeing to be bound by the terms of the Shareholders' Agreement or similar document in force between some or all of the Shareholders and the Company in any form as the Board 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) and if any condition is imposed in accordance with this Article 14.7 the transfer may not be registered unless that deed has been executed and delivered to the Company's registered office by the transferee.

1.8. To enable the Board to determine whether or not there has been any disposal of shares in the capital of the Company (or any interest in shares in the capital of the Company) in breach of these Articles the Company may, if so determined by the Board, require any holder or the legal personal representatives of any deceased holder or any person named as transferee in any Instrument of Transfer lodged for registration or any other person who the Board reasonably believe to have information relevant to that purpose, to furnish to the Company that information and evidence the Board may request regarding any matter which they deem relevant to that purpose, including (but not limited to) the names, addresses and interests of all persons respectively having interests in the shares in the capital of the Company from time to time registered in the holder's name. If the information or evidence is not provided to enable the Board to determine to their reasonable satisfaction that no breach has occurred, or where as a



result of the information and evidence the Board is reasonably satisfied that a breach has occurred, the Board shall immediately notify the holder of such shares in the capital of the Company in writing of that fact and the following shall occur:

- (a) the relevant shares shall cease to confer upon the holder of them (including any proxy appointed by the holder) any rights to vote (whether on a show of hands or on a poll and whether exercisable at a general meeting or on a written resolution of the Company or at any separate meeting or written resolution of the class in question) provided that, at the election of any Investor, such rights shall not cease if as a result of such cessation the Company shall become a Subsidiary of that Investor; or
- (b) the withholding of payment of all dividends or other distributions [(other than the amount they may be entitled to pursuant to the application of Article 4.7 [or Article 4.10])] otherwise attaching to the relevant shares or to any further shares issued in respect of those shares; and
- (c) the holder may be required at any time following receipt of the notice to transfer some or all of its Shares to any person(s) at the price that the Board may require by notice in writing to that holder. In the event that such holder fails to so transfer such Shares as so required within [5] Business Days of receipt of such notice, such holder shall be deemed to have appointed the Company as the agent of such holder for the sale of such Shares, who may authorise any Director to sign any document necessary for such transfer.

The rights referred to in (a) and (b) above may be reinstated by the Board [with Investor Director Consent] and shall in any event be reinstated upon the completion of any transfer referred to in (c) above.

1.9. In any case where the Board requires a Transfer Notice to be given in respect of any Shares, if a Transfer Notice is not duly given within a period of 10 Business Days of demand being made, a Transfer Notice shall be deemed to have been given at the expiration of that period.

1.10. If the Board requires a Transfer Notice to be given, or a Transfer Notice is deemed to have been given under these Articles, the Transfer Notice, unless otherwise specified in the Articles, will be treated as having specified that:

- (a) the Transfer Price for the Sale Shares will be:
  - (i) such price as may be agreed by the Seller and the Company [with Investor Director Consent] (and any Director who is a Seller or with whom the Seller is connected (within the meaning of section 252 of the Act) shall abstain from voting on any resolution of the Board approving any such price); or
  - (ii) if the Seller and the Company fail to so agree the price within five Business Days (or such longer period as the Board may approve)

of the Transfer Notice having been given (or after the date on which the Board becomes aware that a Transfer Notice has been deemed to have been given), will be the Fair Value of the Sale Shares;

- (b) the Seller wishes to transfer all of the Shares held by it;
- (c) where these Articles specify that some but not all of the Shares held by the Seller are to be the subject of a Transfer Notice but do not specify which particular Shares are the subject of the Transfer Notice and the Shares held by the transferor are not fungible, then the Board [with Investor Director Consent] shall in good faith determine which Shares are the subject of the Transfer Notice; and
- (d) the Seller offers such Shares for sale with full title guarantee free from all Encumbrances.

1.11. Shares may be transferred by means of an Instrument of Transfer, which is executed by or on behalf of:

- (a) the transferor; and
- (b) (if any of the Shares are partly or nil paid) the transferee.

## **2. Permitted Transfers**

2.9. A Shareholder (who is not a Permitted Transferee) (the "**Original Shareholder**") may transfer all or any of their Shares (or an interest in Shares) to any of their Permitted Transferees without serving a Transfer Notice pursuant to Article 16 (save that no Restricted Shares shall be transferred to a Permitted Transferee without Investor Majority Consent).

2.10. Shares previously transferred as permitted by Article 15.1 may be transferred by the transferee to the Original Shareholder or to any other Permitted Transferee of the Original Shareholder without restriction as to price or otherwise.

2.11. Where under the provision of a deceased Shareholder's will or laws as to intestacy, the persons legally or beneficially entitled to any Shares, whether immediately or contingently, are Permitted Transferees of the deceased Shareholder, the legal representative of the deceased Shareholder may transfer any Share to those Permitted Transferees, in each case without serving a Transfer Notice pursuant to Article 16.

2.12. No transfer of Shares may be made to Trustees pursuant to Article 15.1 or Article 15.2 unless the Board is satisfied:

- (a) with the terms of the trust instrument and in particular with the powers of the trustees;
- (b) with the identity of the proposed trustees and beneficiaries;

- (c) the proposed transfer will not result in 50 per cent. or more of the aggregate of the Company's equity share capital being held by trustees of that and any other trusts; and
  - (d) that no costs incurred in connection with the setting up or administration of the Family Trust in question are to be paid by the Company.
- 2.13. No transfer of Shares may be made to a Qualifying Company pursuant to Article 15.1 or Article 15.2 unless the Board is satisfied:
- (a) with the identity of the Qualifying Company and of its legal and beneficial owners and persons with significant control; and
  - (b) the proposed transfer will not result in the Company and such Qualifying Company becoming members of the same Group.
- 2.14. If a transferee of Shares under Article 15.1 or Article 15.2 who:
- (a) was a member of the same Group as the Original Shareholder at the time of such transfer thereafter ceases (other than on dissolution of the Original Shareholder) to be a member of the same Group as the Original Shareholder; or
  - (b) was a member of the same Fund Group as the Original Shareholder at the time of such transfer thereafter ceases (other than on dissolution of the Original Shareholder) to be a member of the same Fund Group as the Original Shareholder; or
  - (c) was a member of the same Family Group as the Original Shareholder at the time of such transfer thereafter ceases (other than upon the death of the Original Shareholder) to be a member of the same Family Group as the Original Shareholder (whether by reason of divorce or otherwise),

such transferee (a "**Prior Permitted Transferee**") must not later than five Business Days thereafter give written notice to the Company stating that they are no longer a Permitted Transferee of the Original Shareholder. If so required by written notice served by the Company (acting with Investor [Majority]/[Director] Consent) on the Prior Permitted Transferee at any time prior to the date [20] Business Days after the date on which such notice was so served on the Company, such Prior Permitted Transferee shall transfer all Shares held by it (other than those Shares which the Company may determine (in its sole discretion) to have been independently acquired by the Prior Permitted Transferee other than by reason of any connection to, or prior transfer or exercise of rights or securities by, the Original Shareholder) (the "**Re-transfer Shares**") to the Original Shareholder (or a Permitted Transferee of the Original Shareholder) (provided such transferee is not dead, bankrupt, in liquidation, in administration nor the subject of (nor are any of the transferee's material assets the subject of) administrative receivership), which transfer shall be made without requiring that a Transfer Notice be served pursuant to Article 16. In the event that the Prior Permitted Transferee fails to

so transfer all such Re-transfer Shares within [10] Business Days (or such longer period as the Board may determine (in its sole discretion)) (a "**Re-transfer Period**") of being first so required in writing to do so by the Company, the Prior Permitted Transferee will on the expiry of such Re-transfer Period be deemed to have given a Transfer Notice in respect of all Re-transfer Shares held by it.

- 1.7. A transfer of any Shares approved by the Board (with Investor [Majority/Director] Consent) may be designated a Permitted Transfer and made without restriction as to price or otherwise and with any such conditions as may be imposed and each such transfer shall be registered by the Board. [In the event the Board proposes to designate any transfer as a Permitted Transfer in accordance with this Article 15.7 with [Investor [Majority/Director] Consent (for the purposes of this Article 15.7 the "**Pre-Emption Waiver**") in respect of such transfer, if [an Investor][a Major Investor] or any of its Permitted Transferees who (or whose Investor Director) participated in granting such Pre-Emption Waiver is proposed to be the transferee in relation to all or any Shares being the subject of such Permitted Transfer (the "**Transferred Securities**") (for the purposes of this Article 15.7 each a "**Waiving Investor**") then each [Major] Investor will be entitled to participate in the transfer of such Transferred Securities on the same terms and at the same price on a pari passu and pro rata basis, where each [Major] Investor's pro rata share of the Transferred Securities is equal to the number of Equity Shares held by such [Major] Investor divided by the number of Equity Shares then [held by the Investors/held by the Waiving Investors and the Major Investors] (together with any outstanding Relevant Securities then exercisable or convertible into Equity Shares held by them (to which the provisions of Article 10.3 shall apply if applicable)) (without double counting and as nearly as may be without involving fractions), in accordance with such procedure as the Board may determine, provided that no offer to a [Major] Investor under this Article 15.7 is required to exceed the entitlement they would have had if the pre-emption procedure set out in Articles 16.2 13.2 to 16.9 (inclusive) had not been disapplied.]
- 1.8. Any Shares may at any time be transferred (without serving a Transfer Notice pursuant to Article 16) as part of a sale of the entire issued share capital of the Company to a company which, upon completion of all such transfers will then be a New Holding Company and which sale has been approved in accordance with Article 34.
- 1.9. The Company shall only be permitted to sell or transfer any Shares held as Treasury Shares to any person(s) approved by the Board (with Investor [Majority/Director] Consent).

## **2. Transfers of Shares subject to pre-emption rights**

- 2.7. Save where the provisions of any of Articles 3.4, 15, 20, 21 and 22 apply, any transfer of Equity Shares by a Shareholder shall be subject to the pre-emption rights contained in this Article 16.
- 2.8. A Shareholder who wishes to transfer Equity Shares (a "**Seller**") shall, except as otherwise permitted by these Articles, before transferring or agreeing to transfer any Shares give notice in writing (a "**Transfer Notice**") to the Company specifying:

- (a) the Equity Shares (including number and class of Equity Shares (and in the case of Series A Shares, the Preference Amount[ and date of issue]) and other particulars if the Equity Shares held by the transferor are not fungible) which they wish to transfer (the "**Sale Shares**");
  - (b) if they wish to sell the Sale Shares to a third party, the name of the proposed transferee and the terms and conditions of the proposed sale;
  - (c) subject to Article 14.10, the price per share at which they wish to transfer the Sale Shares (and for which purpose a different price may be stated with respect to different classes of Share and/or, in the case of Series A Shares, a different Preference Amount[ and/or issue dates with respect to the accrual of Preference Dividends]); and
  - (d) that the Sale Shares are offered for sale with full title guarantee free from all Encumbrances.
- 2.9. The price at which a Sale Share is to be offered for sale (the "**Transfer Price**") shall, subject to Article 14.10, be the price at which the Seller wishes to transfer the Sale Shares as stated in the Transfer Notice provided that (i) if no price is so stated by the Seller, the Transfer Price shall be an amount agreed between the Seller and the Company [with Investor Director Consent], (ii) if the price is not stated in cash, the Transfer Price shall be an equivalent cash value agreed between the Seller and the Company and (iii) if the Transfer Price is not determined in accordance with the foregoing provisions of this Article within 5 Business Days (or such longer period as the Board may approve) of the Transfer Notice having been given (or deemed given) in respect of such Sale Shares, the Transfer Price will be the Fair Value of the Sale Shares (as shall be determined in accordance with Article 17). For the avoidance of doubt, a different Transfer Price may apply in respect of Shares which are not fungible, including, if the Shares are of different classes and/or, in the case of Series A Shares, have a different Preference Amount [and/or issue dates with respect to the accrual of Preference Dividends].
- 2.10. Except with the approval of the Board or as otherwise specified in these Articles (including Article 17.9), no Transfer Notice once given or deemed to have been given under these Articles may be withdrawn.
- 2.11. A Transfer Notice constitutes the Company the agent of the Seller for the sale of the Sale Shares at the Transfer Price.
- 2.12. Where a Transfer Notice has been given (or deemed given) to the Company, as soon as practicable following the determination of the Transfer Price the Company (as agent of the Seller) shall offer the Sale Shares for sale in accordance with Articles 16.7 and 16.8.
- 2.13. *Priority for offer of Sale Shares*

- (a) If the Sale Shares are Series A Shares, the Company (as agent of the Seller) shall offer them to the Series A Shareholders on the basis set out in Article 16.8.
- (b) If the Sale Shares are Ordinary Shares, the Company (as agent of the Seller) shall offer them to the [Series A Shareholders] / [holders of Equity Shares] on the basis set out in Article 16.8.
- (c) Where Sale Shares comprise different classes of share or otherwise have a different Transfer Price, multiple offers shall be made by the Company (as agent of the Seller) mutatis mutandis in accordance with this Article 16, such that in respect of each offer the Sale Shares the subject of that offer are of the same class and offered at the same Transfer Price per share.

#### 2.14. *Transfers: Offer*

- (a) If Sale Shares are to be offered to Shareholders pursuant to Article 16.7, the Company (as agent of the Seller) shall offer the Sale Shares to such Shareholders (but excluding the Seller, and, if and to the extent so determined by the Board (i) any other Shareholder whose Shares are then the subject of any Transfer Notice (an "**Other Seller**") and (ii) any Permitted Transferees of the Seller and/or any Other Seller) (the "**Continuing Shareholders**") inviting them to apply in writing within the period of [10] Business Days commencing on (and including) the date of the offer (the "**Offer Period**") for the relevant number of Sale Shares.
- (b) An offer of Sale Shares made by the Company (as agent of the Seller) to Continuing Shareholders under this Article 16.8 shall be in writing and:
  - (i) shall stipulate:
    - (A) the total number and class of Sale Shares so offered to all Continuing Shareholders (together with the amount of any accrued unpaid dividend thereon and, in the case of Series A Shares, the Preference Amount in respect of such Series A Shares);
    - (B) the number of Sale Shares offered to the Continuing Shareholder (an "**Initial Sale Share Entitlement**"), calculated on a pro rata basis to the number of Series A Shares [(or in the case of Sale Shares which are Ordinary Shares, the number of Equity Shares)] held by the Continuing Shareholders in each case at the time the offer is made;
    - (C) the terms of the offer and the Offer Period;
  - (ii) shall be open for acceptance during the Offer Period; and

- (iii) shall stipulate that any Continuing Shareholder who wishes to acquire Sale Shares in excess of their Initial Sale Share Entitlement may, in their acceptance of the offer, state the maximum number of additional Sale Shares in excess of their Initial Sale Share Entitlement which the Continuing Shareholder wishes to purchase ("**Excess Sale Shares**") (provided that the number of Excess Sale Shares together with their Initial Sale Share Entitlement which a Continuing Shareholder wishes to acquire shall not, in aggregate, exceed the total number of Sale Shares so offered to all Continuing Shareholders).
- (a) If, at the end of the Offer Period, the number of Sale Shares applied for is equal to or exceeds the total number of Sale Shares so offered to Continuing Shareholders, the Sale Shares so offered to Continuing Shareholders shall be allocated to the Continuing Shareholders who have applied for Sale Shares as follows:
  - (i) first, each such Continuing Shareholder shall be allocated their Initial Sale Share Entitlement (or, if lower, the number of Sale Shares applied for by the Continuing Shareholder); and
  - (ii) thereafter, the remaining balance of the Sale Shares so offered to Continuing Shareholders shall be allocated as between those Continuing Shareholders who have applied for Excess Sale Shares on a pro rata basis to the number of number of Series A Shares [(or, in the case of Sale Shares which are Ordinary Shares, the number of Equity Shares)] held by each such Continuing Shareholder (provided always that no Continuing Shareholder shall be allocated a number of Sale Shares in excess of the aggregate number which they have applied for). No Continuing Shareholder shall be allocated any fraction of any Sale Share and all fractional entitlements shall be aggregated and may be allocated in such manner as the Board may determine.
- (b) If, at the end of the Offer Period, the number of Sale Shares applied for by all Continuing Shareholders is less than the total number of Sale Shares so offered to Continuing Shareholders, each Continuing Shareholder shall be allocated the number of Sale Shares which they applied for and the remaining balance of the Sale Shares may, if so permitted, be transferred in accordance with Article 16.10.
- (c) Any Sale Shares offered under this Article 16 to an Investor may be accepted in full or part only by a member of the same Fund Group as that Investor or a member of the same Group as that Investor in accordance with the terms of this Article 16 (in which event, reference in Article 16.9 to the Continuing Shareholders (including as used in the term "Applicant") shall be construed so as to include such an acceptee).

## 1.2. *Completion of transfer of Sale Shares*

- (a) Promptly following the allocation of Sale Shares to Continuing Shareholders in accordance with Article 16.8 the Company shall give written notice (an "**Allocation Notice**") to the Seller and each Continuing Shareholder stating the number of Sale Shares allocated to each Continuing Shareholder who applied therefor (each an "**Applicant**") and the place and time (being not less than [5] Business Days nor more than [15] Business Days after the date of the Allocation Notice) for completion of the transfer of the Sale Shares (the "**Transfer Date**").
- (b) On the Transfer Date:
  - (i) the Seller shall:
    - (A) transfer, with full title guarantee free from all Encumbrances, to each Applicant the Sale Shares allocated to that Applicant as set out in the Allocation Notice; and
    - (B) duly complete, execute and deliver to each Applicant (which may be delivered to, and received by, the Company on behalf of such Applicant) such Instrument of Transfer(s) and other documents as necessary to give effect to such transfer of the relevant Sale Shares to such Applicant, together with the Seller's certificate(s) for such Sale Shares (or an indemnity for any lost certificate in a form acceptable to the Board); and
  - (ii) each Applicant shall pay to the Seller (which payment may be paid in accordance with Article 16.9(d)) the Transfer Price payable in respect of the Sale Shares allocated to that Applicant as set out in the Allocation Notice.
- (c) If the Seller fails to comply with the provisions of Article 16.9(b):
  - (i) the chairperson of the Company or, failing them, one of the Directors, or some other person nominated by a resolution of the Board, may as agent for and on behalf of, and in the name of, the Seller complete, execute and deliver to each Applicant (which may be delivered to, and received by, the Company on behalf of such Applicant) any Instrument of Transfer and other documents as are necessary to give effect to such transfer of the relevant Sale Shares to each such Applicant, together with the Seller's certificate(s) for such Sale Shares (or an indemnity for any lost certificate in a form acceptable to the Board);
  - (ii) the Company may receive, and give good discharge, as agent of the Seller, the Transfer Price payable in respect of the Sale Shares so transferable to the Applicants; and
  - (iii) the Company shall (subject to the Instrument of Transfer being duly stamped (or, if applicable, duly certified as exempt from the payment of



stamp duty)) register such transfer and enter each Applicant in the register of members of the Company as the holders of the Sale Shares so transferred.

- (d) The Transfer Price payable to the Seller in accordance with Article 16.9(b) by an Applicant may be paid to, and received by, the Company (which may give good discharge therefor as agent on behalf of the Seller). Subject to completion of the transfer of relevant Sale Shares to such Applicant, any such monies so held by the Company shall be then paid into a separate bank account in the Company's name on trust (or otherwise held on trust) for the Seller pending the Seller's compliance with their obligations under Article 16.9(b). Upon the Seller's compliance with their obligations under Article 16.9(b) (and, where applicable, affirmation by the Seller of the actions taken by the agent(s) of the Seller under these Articles) such monies shall be remitted by the Company to the Seller in accordance with the Seller's reasonable instructions.

### **1.3. *Unallocated Sale Shares***

- (a) If an Allocation Notice does not relate to all the Sale Shares then, subject to Article 16.10(b), the Seller may, within eight weeks after service of the Allocation Notice, transfer the unallocated Sale Shares to any person at a price at least equal to the Transfer Price (subject always to Articles 14.4, 14.5, 14.7 and 14.11).
- (b) The right of the Seller to transfer Shares under Article 16.10(a) does not apply [if the Board is of the opinion on reasonable grounds that such transfer would not promote the success of the company for the benefit of members as a whole, including without limitation] where the Board is of the opinion on reasonable grounds that:
  - (i) [the transferee is a person (or a nominee for a person) who the Board [(with Investor Director Consent)] determine in their absolute discretion is a competitor with (or an Associate of a competitor with) the business of the Company or with a Subsidiary Undertaking of the Company;]
  - (ii) the sale of the Sale Shares is not bona fide or the price is subject to a deduction, rebate or allowance to the transferee;
  - (iii) the Seller has failed or refused to provide promptly information available to them and reasonably requested by the Board for the purpose of enabling it to form the opinion mentioned above; or
  - (iv) the Sale Shares were the subject of a Transfer Notice required or deemed to have been given pursuant to any provision of these Articles (including any of Articles 14.2, 14.9, 15.6, 18 or 19).

## 17. Valuation of Shares

- 17.1. If no Transfer Price can be agreed or determined in accordance with the provisions of Articles 14.10 or 16.3 then (unless the Fair Value is otherwise determined by agreement in writing between the Seller and the Company) the Company shall either:
- (a) appoint an expert valuer in accordance with Article 17.2 (the "**Expert Valuer**") to certify the Fair Value of the Sale Shares; or
  - (b) if the Fair Value of Shares of the same class (and, in the case of Series A Shares, having the same Preference Amount per share [and issue date]) as the Sale Shares, has been certified by an Expert Valuer within the preceding [12 weeks], specify that the Fair Value per share of the Sale Shares will be same as the Fair Value per share as was so previously certified by the Expert Valuer.
- 17.2. The Expert Valuer shall be the Auditors (or, if otherwise agreed by the Company and the Seller, an independent firm of Chartered Accountants to be agreed between the Company and the Seller), provided that if no Auditors then hold office (or the Auditors do not agree to act as Expert Valuer) and absent any such agreement between the Company and the Seller, then the Expert Valuer shall be such firm of Chartered Accountants as may be nominated by the then President of the Institute of Chartered Accountants in England and Wales on the joint application of the Company and the Seller. If the Seller fails to enter into the documentation necessary to make such application (within 10 Business Days of a request by the Company to do so), the Company's proposed appointee shall be the Expert Valuer.
- 17.3. The "**Fair Value**" per share of the Sale Shares shall (unless otherwise determined by agreement in writing between the Seller and the Company [with Investor Director Consent]) be determined by the Expert Valuer on the following assumptions and bases:
- (a) valuing the Sale Shares as on an arm's-length sale between a willing seller and a willing buyer;
  - (b) if the Company is then carrying on business as a going concern, on the assumption that it will continue to do so;
  - (c) that the Sale Shares are capable of being transferred without restriction;
  - (d) valuing the Sale Shares without any premium or discount being attributable to the existence (or absence) of any power or control conferred by the Sale Shares by reason of voting or other rights attaching to the Sale Shares; and
  - (e) reflect any other factors which the Expert Valuer reasonably believes should be taken into account (and may include the rights of the Sale Shares under Articles 4, 5 and 6).

- 17.4. If any difficulty arises in applying any of these assumptions or bases then the Expert Valuer shall resolve that difficulty (as may include disregarding or modifying any such assumptions or bases) in whatever manner the Expert Valuer shall in its absolute discretion think fit.
- 17.5. The Expert Valuer shall be requested to determine the Fair Value within [20] Business Days of its appointment and to notify the Company and the Seller of its determination. For the avoidance of doubt, different Fair Values may apply in respect of Sale Shares of different classes and/or, in the case of Series A Shares, with a different Preference Amount [and/or issue dates in respect of accrued Preference Dividends].
- 17.6. The Expert Valuer shall act as expert and not as arbitrator and its determination shall be final and binding (in the absence of fraud or manifest error).
- 17.7. The Company will give the Expert Valuer access to such accounting records or other relevant documents of the Company as the Expert Valuer may reasonably require subject to the Expert Valuer agreeing to such confidentiality provisions as the Company may reasonably require.
- 17.8. The Expert Valuer shall deliver to the Company and the Seller its certificate stating the Fair Value per share of each Sale Share.
- 17.9. Save where the Transfer Price is to be determined pursuant to Article 14.10, the Seller may by notice in writing to the Company within [five] Business Days of the service on them of the Expert Valuer's certificate pursuant to Article 17.8, withdraw the Transfer Notice in respect of the Sale Shares.
- 17.10. The fees and expenses (and sales taxes, if applicable) of the Expert Valuer charged in connection with the determination of Fair Value, and the delivery of the Expert Valuer's certificate, in respect of any Sale Shares shall be paid by the Company provided that if:
- (a) the Seller withdraws the Transfer Notice in respect of such Sale Shares pursuant to Article 17.9 (or otherwise with the consent of the Board [with Investor Director Consent]); or
  - (b) the Fair Value certified by the Expert Valuer in respect of such Sale Shares is less than the price (if any) proposed by the Company to the Seller in any communication made (in writing) for the purpose of seeking to reach agreement as to the Transfer Price of such Sale Shares under Articles 14.10 or 16.3 or otherwise,

then the Seller shall reimburse and pay to the Company on demand the amount of such fees and expenses (and sales taxes, if applicable) (and the Company shall be entitled to deduct, and retain for its own account, the amount thereof from any Transfer Price in respect of the Sale Shares which is paid to, or held by, the Company as agent for, or on trust for, the Seller).

## 18. Compulsory transfers – general

18.1. Subject to Article 18.2, on the death, bankruptcy, liquidation or administration of, or if an administrative receivership arises in respect of (or any material assets of), a Shareholder (a **"Disqualifying Event"**), they or their personal representatives or trustee in bankruptcy, or liquidator, administrator or administrative receiver, as the case may be, must (i) promptly after (and in any event within [10] Business Days of) the date of the grant of probate, the making of the bankruptcy order or the appointment of the liquidator, administrator or the administrative receiver, notify the Company of the occurrence of such Disqualifying Event (a **"Disqualifying Event Notice"**) and (ii) within [10] Business Days (or such longer period as the Company may determine (in its sole discretion)) of being so required in writing to do so by the Company, transfer all the Shares held by them to a person who is a Permitted Transferee of such Shareholder (a **"Disqualifying Event Transfer"**) and deliver to the Company a valid Instrument of Transfer (duly executed and stamped, if applicable, or certified as exempt, if applicable) in favour of such Permitted Transferee, together with the certificate(s) (or duly executed indemnity in favour of the Company in respect of any lost, destroyed or missing certificate, in a form acceptable to the Board), in respect of all of the Shares held by the Shareholder (together with such other documents as may be required under Articles 14.6 and 14.7) (the **"Disqualifying Event Transfer Documents"**). If, when required:

- (a) a Disqualifying Event Notice is not given;
- (b) a Disqualifying Event Transfer is not made; or
- (c) the Disqualifying Event Transfer Documents are not delivered to the Company,

(in each case within the relevant periods for doing so), a Transfer Notice will, unless otherwise determined by the Board [with Investor Director Consent], then be deemed to be given in respect of all Shares held by such Shareholder. Such Transfer Notice will be deemed to be given on the date on which the relevant period expired for giving a Disqualifying Event Notice, making a Disqualifying Event Transfer or delivering the Disqualifying Event Transfer Documents (as the case may be), or such other date as the Company may determine.

1.2. Article 18.1 shall not apply to a solvent liquidation undertaken for the purposes of a solvent reconstruction, reorganisation or scheme of arrangement, or the solvent administration, of an Investor.

1.3. Save where Article 15.6 applies, and subject to Article 18.4, if any person (not being a Permitted Transferee of the Shareholder immediately prior to the acquisition), together with other persons Acting in Concert with them (the **"Shareholder Acquirer"**), acquires control (as control is defined in section 1124 of the CTA 2010) of any Shareholder (a **"Shareholder Change Of Control"**), such Shareholder must not later than five Business Days thereafter give written notice (a **"Shareholder Change Of Control Notice"**) to the Company stating that it has been subject to a Shareholder Change Of Control and identifying the Shareholder Acquirer. If so required by written notice served

by the Company (acting with Investor Majority Consent) on the Shareholder at any time prior to the date [20] Business Days after the date on which the Company receives such Shareholder Change Of Control Notice, then such Shareholder shall within [10] Business Days of written notice from the Company transfer all the Shares held by them to a person who was a Permitted Transferee of such Shareholder immediately prior to such Shareholder Change Of Control (and who ceased to be a Permitted Transferee of the Shareholder by reason of such Shareholder Change Of Control) (a "**Shareholder Change Of Control Transfer**") and deliver to the Company a valid Instrument of Transfer (duly executed and stamped, if applicable, or certified as exempt, if applicable) in favour of such transferee, together with the certificate(s) (or duly executed indemnity in favour of the Directors of the Company in respect of any lost, destroyed or missing certificate, in a form acceptable to the Board), in respect of all of the Shares held by the Shareholder (together with such other documents as may be required under Articles 14.5 and 14.7) (the "**Shareholder Change Of Control Transfer Documents**"). If, when required:

- (a) a Shareholder Change Of Control Notice is not given;
- (b) a Shareholder Change Of Control Transfer is not made; or
- (c) the Shareholder Change Of Control Transfer Documents are not delivered to the Company,

(in each case within the relevant periods for doing so), a Transfer Notice will, unless otherwise determined by the Board [with Investor Director Consent], then be deemed to be given in respect of all Shares held by such Shareholder. Such Transfer Notice will be deemed to be given on the date on which the relevant period expired for giving a Shareholder Change Of Control Notice, making a Shareholder Change Of Control Transfer or delivering the Shareholder Change Of Control Transfer Documents (as the case may be), or such other date as the Company may determine.

- 1.4. Article 18.3 shall not apply (a) to a trustee, nominee or custodian unless the Shareholder Acquirer also acquires control (as control is defined in section 1124 of the CTA 2010) of the beneficial owner of the Shares held by such trustee, nominee or custodian, (b) to an Investor<sup>20</sup> or its Permitted Transferees or (c) in respect of the acquisition of control (as control is defined in section 1124 of the CTA 2010) of any Parent Undertaking of a Shareholder by reason of any dealing in the shares or securities of such Parent Undertaking which are admitted to trading on NASDAQ or the Official List of the United Kingdom Listing Authority or the AIM Market operated by the London Stock Exchange Plc or any other recognised investment exchange (as defined in section 285 of the Financial Services and Markets Act 2000) or other overseas investment exchange (as defined in section 313 of the Financial Services and Markets Act 2000).

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<sup>20</sup> Consider in context of definition of "Investors"

## 2. Departing [Founder][Service Provider]

### *Deferred Shares*

2.4. [Unless and to the extent that the Board [and the Investor Majority] determine that this Article 19.1 shall not apply] [[I]f at any time during the Relevant Period] [[I]f a [Founder][Service Provider] ceases to be [(or gives or is given notice to terminate their employment or consultancy as)] a Service Provider (such person being a "**Leaver**"), the following proportion of the Leaver's Service Provider Shares shall automatically convert into Deferred Shares (on the basis of one Deferred Share for each Service Provider Share held) on the Effective Termination Date (or, if later, any other date on which the Board [with Investor Director Consent] determines that this Article 19.1 shall apply) and, in the event of any fraction, the number of Service Provider Shares so converted shall be rounded down to the nearest whole share:

- (a) if the Leaver is a Good Leaver, the Leaver's Percentage of such Service Provider Shares; and
- (b) if the Leaver is a Bad Leaver, all of such Service Provider Shares,

[save that if such [Founder][Service Provider] ceases to be a Service Provider within 12 months from the Commencement Date all of such Service Provider Shares shall so convert].

2.5. Upon such conversion into Deferred Shares:

- (a) the Company shall record in the register of members of the Company each holder of Service Provider Shares so converted as the holder of the appropriate number of Deferred Shares; and
- (b) the Leaver (and their Permitted Transferee(s)) shall deliver to the Company at its registered office the shares certificate(s) (to the extent not already in the possession of the Company) (or an indemnity for any lost certificate in a form acceptable to the Board) for the Service Provider Shares so converted; and
- (c) subject to such delivery, there shall be issued to the Shareholder (subject to Article 11.2(d)) new share certificate(s) for the number of Deferred Shares resulting from the relevant conversion and any remaining Service Provider Shares, held by such Shareholder.

If any Shareholder fails to so deliver to the Company any such share certificate (or such an indemnity for any lost certificate), the chairperson of the Company or, failing them, one of the Directors, or some other person nominated by a resolution of the Board, may as agent for and on behalf of, and in the name of, such Shareholder execute and deliver to the Company such an indemnity for any lost or absent certificate in a form acceptable to the Board.

### *Suspension of voting rights*

- 1.3. All voting rights attached to Service Provider Shares held by a Leaver (and, if and to the extent determined by the Board, Service Provider Shares held by any Permitted Transferee of that Leaver) (a "**Restricted Member**") shall be suspended, [unless the Board [(acting with Investor [Majority/Director] Consent)] notify them otherwise,] as from the Effective Termination Date.
- 1.4. Any Service Provider Shares whose voting rights are suspended pursuant to Article 19.3 ("**Restricted Shares**") shall [not<sup>21</sup>] confer on the holders of Restricted Shares the right to receive a notice of and attend all general meetings (and receive copies of proposed written resolutions) of the Company [but/and] shall have no right to vote either in person or by proxy or to vote on any proposed written resolution. Voting rights suspended pursuant to Article 19.3 shall be automatically restored immediately prior to an IPO. If a Restricted Member transfers any Restricted Shares in accordance with these Articles (other than a transfer to any of their Permitted Transferees) all voting rights attached to the Restricted Shares so transferred shall (with the consent of the Board [with Investor Director Consent], not to be unreasonably withheld) upon completion of the transfer (as evidenced by the transferee's name being entered in the Company's register of members) automatically be restored.

*Service Provider Shares held by multiple persons*

- 1.5. Where Service Provider Shares are held by more than one person, the allocation of the number of Service Provider Shares to be categorised as Unvested Shares as amongst such persons shall be determined by the Board to be, as near as practicable, pro-rata as between such persons (or such other allocation as the Company and such persons may agree in writing).

**2. Tag-along**

- 2.3. Except in the case of transfers pursuant to Articles 15 [other than Article 15.8], 18 and 19 or in respect of which Article 22 applies, after going through the pre-emption procedure in Article 16, the provisions of Article 20.2 will apply if one or more Proposed Sellers proposes to transfer in one or a series of related transactions any Equity Shares (the "**Tag Sale**") which would, if put into effect, result in any proposed purchaser (together with their Associates or persons Acting in Concert with them) acquiring a Controlling Interest in the Company (the "**Tag Purchaser**").
- 2.4. [After the Proposed Seller has gone through the pre-emption process set out in Article 16,] [The] Proposed Seller must, before making a Tag Sale procure the making by the Tag Purchaser of an offer (the "**Tag Offer**") to [the other Shareholders]/[any Shareholders who have not taken up their pre-emptive rights under Article 16] to acquire the Equity Shares held by such Shareholders. The terms of the Tag Offer shall be no less favourable than the terms of the Tag Sale.
- 2.5. The Tag Offer must be given by written notice (a "**Tag Sale Notice**") at least 10 Business Days prior to the proposed sale date and be open for acceptance by any

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<sup>21</sup> If this right is excluded the notice/proposed resolutions should not be sent to any holder of Restricted Shares to avoid the risk that the resolutions themselves are not effective.

such Shareholder within 5 Business Days of deemed service of the Tag Sale Notice (the "**Tag Offer Period**"). The Tag Sale Notice shall specify:

- (a) the identity of the Tag Purchaser;
- (b) the purchase price (or means by which the purchase price will be calculated) to be paid by the Tag Purchaser, which shall be distributed in accordance with Article 20.4;
- (c) the manner in which the consideration is to be paid;
- (d) the number and class of Equity Shares proposed to be purchased by the Tag Purchaser;
- (e) the address to which an acceptance of the Tag Offer should be sent; and
- (f) the other terms and conditions of the Tag Offer.

2.6. The Proceeds Of Sale in respect of all Shares transferred pursuant to the Tag Sale and acceptances of the Tag Offer shall, in aggregate, be distributed in accordance with Article 6 (and the terms (including as to price) of the Tag Offer and the Tag Sale shall provide for, and be consistent with, such distribution).

2.7. If any other holder of Equity Shares is not given the rights accorded to them by this Article, the Proposed Sellers will not be entitled to complete their sale and the Company will not register any transfer intended to carry that sale into effect.

2.8. If the Tag Offer is accepted by any Shareholder (an "**Accepting Tag Shareholder**") within the Tag Offer Period, the completion of the Tag Sale will be conditional upon the completion of the purchase of all the Shares held by Accepting Tag Shareholders.

2.9. [The Tag Sale is subject to the pre-emption provisions of Article 16 but the] [The] purchase of the Accepting Tag Shareholders' shares shall not be subject to Article 16.

2.10. [Where a Tag Offer is to be made pursuant to this Article 20, such Tag Offer shall, if so required by the Board [with Investor Director Consent] by written notice to the Proposed Sellers, be extended on mutatis mutandis the same terms to all persons holding Relevant Securities, if and to the extent exercisable (or which would become exercisable in connection with the Tag Sale).]

### **3. Co-Sale right in respect of [Founder] [Service Provider] transfers**

3.3. Except in the case of transfers pursuant to any of Articles 15, 18 and 19 or in respect of which Article 20 or 22 apply, after going through the pre-emption procedure in Article 16, no transfer of any of the [Service Provider Shares relating to a Founder [or a Service Provider]] may be made or validly registered [if it is in respect of more than [•] per cent of the Equity Shares (excluding Treasury Shares)] unless the relevant Founder [or Service Provider] and any Permitted Transferee of that Founder [or Service Provider] (each a "**Co-Sale Seller**") shall have observed the following



procedures of this Article unless the Board (with Investor [Majority/Director] Consent) has determined that this Article 21 shall not apply to such transfer.

3.4. [After the Co-Sale Seller has gone through the pre-emption process set out in Article 16, the] [The] Co-Sale Seller shall give to each [Major] Investor [who has not taken up their pre-emptive rights under Article 16] (a "**Co-Sale Shareholder**") not less than 10 Business Days' notice in advance of the proposed sale (a "**Co-Sale Notice**"). The Co-Sale Notice shall specify:

- (a) the identity of the proposed purchaser (the "**Co-Sale Purchaser**");
- (b) subject (if applicable) to the application of Article 6, the price per Share which the Co-Sale Purchaser is proposing to pay;
- (c) the manner in which the consideration is to be paid;
- (d) the number and class of Equity Shares which the Co-Sale Seller proposes to sell;
- (e) the address to which the counter-notice should be sent; and
- (f) the other terms and conditions on which the Co-Sale Shareholders may, if the sale proceeds, sell Shares to the Co-Sale Purchaser under Article 21.4.

3.5. Each Co-Sale Shareholder shall be entitled within five Business Days after receipt of the Co-Sale Notice, to notify the Co-Sale Seller that they wish to sell a certain number of Equity Shares held by them at the proposed sale price, by sending a counter-notice which shall specify the number (and class) of Equity Shares which such Co-Sale Shareholder wishes to sell. The maximum number of Equity Shares which a Co-Sale Shareholder can sell under this procedure shall be:

$$\left( \frac{X}{Y} \right) \times Z$$

where:

X is the number of Equity Shares held by the Co-Sale Shareholder;

Y is the total number of Equity Shares (excluding Treasury Shares);

Z is the number of Equity Shares the Co-Sale Seller proposes to sell.

Any Co-Sale Shareholder who does not send a counter-notice within such five Business Day period shall be deemed to have specified that they wish to sell no shares.

1.4. Following the expiry of five Business Days from the date the Co-Sale Shareholders receive the Co-Sale Notice, the Co-Sale Seller shall be entitled to sell to the Co-Sale Purchaser a number of Equity Shares not exceeding the number specified in the

Co-Sale Notice less any Equity Shares which Co-Sale Shareholders have indicated they wish to sell, provided that at the same time the Co-Sale Purchaser (or another person) purchases (save to the extent a purchase does not occur due to any default of a Co-Sale Shareholder under the terms and conditions of the proposed sale) from the Co-Sale Shareholders the number of Equity Shares they have respectively indicated they wish to sell on the terms and conditions set out in the Co-Sale Notice (which terms and conditions applicable to the Co-Sale Shareholders shall be no less favourable to the Co-Sale Shareholders (including as to price payable per Equity Share (subject, if applicable, to the allocation of Proceeds Of Sale in accordance with Article 6)) than the terms and conditions obtained by the Co-Sale Seller from the Co-Sale Purchaser).

- 1.5. No sale by the Co-Sale Seller shall be made pursuant to any Co-Sale Notice more than three months after service of that Co-Sale Notice.
- 1.6. Sales made in accordance with this Article 21 by Co-Sale Shareholders who serve a counter notice under Article 21.3 shall not be subject to Article 16.

## **2. Drag-along**

- 2.4. If [with the approval of the Board] the holders of a majority of the Equity Shares (excluding Treasury Shares and any Equity Shares held by a Shareholder who is, or is an Associate of, a Drag Purchaser, as defined below) (including an Investor Majority) (the "**Selling Shareholders**") agree to transfer all their interest in Shares (the "**Sellers' Shares**") to a proposed purchaser (the "**Drag Purchaser**") (or, if so directed by the Drag Purchaser, a nominee of such Drag Purchaser), the Selling Shareholders shall have the option (the "**Drag Along Option**") to compel each other holder of Shares (each a "**Called Shareholder**") to sell and transfer all their Shares to such Drag Purchaser (or, if so directed by the Drag Purchaser, a nominee of such Drag Purchaser) in accordance with the provisions of this Article 22 (such transfers of Shares by the Selling Shareholders and the Called Shareholders being the "**Dragged Share Sale**").
- 2.5. The Selling Shareholders may exercise the Drag Along Option by giving a written notice to that effect (a "**Drag Along Notice**") to the Company at any time before the transfer of the Sellers' Shares to the Drag Purchaser and the Company shall forthwith send a copy of the Drag Along Notice to the Called Shareholders. A Drag Along Notice shall specify:
  - (a) that the Called Shareholders are required to transfer all their Shares (the "**Called Shares**") under this Article;
  - (b) the person to whom they are to be transferred;
  - (c) the consideration (whether in cash or otherwise) for which the Called Shares are to be transferred (calculated in accordance with Article 22.4);
  - (d) the proposed date of transfer;

- (e) the form of any sale agreement or form of acceptance or any other document of similar effect that the Called Shareholders are required to sign in connection with such Dragged Share Sale (the "**Sale Agreement**");
- (f) in respect of any Called Securities Holder (as defined below) only, any exercise notice or other documents (including any tax elections) which the Called Securities Holder may be required to sign in connection with the exercise of any options or other rights to subscribe, convert into or otherwise acquire (including but not limited to warrants) Shares ("**Exercise Documents**"); and
- (g) that information concerning the Called Shareholder which the Drag Purchaser reasonably requires in connection with the transfer of Called Shares (and may include information concerning (i) details of any account in the name of the Called Shareholder to which cash consideration may be paid (ii) the tax treatment of payments to be made to, or tax status of, the Called Shareholder (iii) the status of the Called Shareholder for the purposes of ascertaining the applicability of relevant securities laws and (iv) verification of the identity, ownership and control of the Called Shareholder and other information as may be required for anti-money laundering or other compliance purposes) ("**Sale Information**"),

(and, in the case of paragraphs (b) to (d) above, whether actually specified or to be determined in accordance with a mechanism described in the Drag Along Notice).

- 1.3. Drag Along Notices shall be irrevocable but will lapse if the date for completion of the sale of the Sellers' Shares by the Selling Shareholders to the Drag Purchaser does not occur within 60 Business Days [(or such longer time period as may be proposed by the Selling Shareholders and approved by the Board [with Investor Director Consent])] after the date of service of the Drag Along Notice. The Selling Shareholders shall be entitled to serve further Drag Along Notices following the lapse of any particular Drag Along Notice.
- 1.4. The consideration (in cash or otherwise) for which each Selling Shareholder and each Called Shareholder shall transfer Shares pursuant to the Dragged Share Sale shall be the consideration per Share, determined in accordance with Article 6 in reference to the total consideration payable in respect of all Shares to be transferred to the Drag Purchaser pursuant to the Dragged Share Sale (the "**Drag Consideration**").
- 1.5. A Drag Along Notice may be served on any person(s) (each a "**Called Securities Holder**") holding Relevant Securities, if and to the extent exercisable (or which would become exercisable) in connection with the Dragged Share Sale and, if so served such Called Securities Holder shall, upon their acquisition of Shares, thereupon become a Called Shareholder subject mutatis mutandis to the provisions of this Article 22 (notwithstanding that they may not have been a Called Shareholder at the date of the Drag Along Notice).
- 1.6. The liabilities and obligations of a Called Shareholder under the terms of any Sale Agreement shall be limited to those matters as concern the Called Shareholder in their

capacity as a holder of Called Shares, the transfer of Called Shares pursuant to the Dragged Share Sale and the payment of the consideration. Accordingly, the terms of the Sale Agreement may, inter alia, provide that:

- (a) a Called Shareholder warrants and undertakes to transfer their Called Shares to the Drag Purchaser (or, if so directed by the Drag Purchaser, a nominee of such Drag Purchaser) on the Drag Completion Date with full title guarantee free from all Encumbrances and that the Called Shareholder has power, capacity and authority to enter into the Sale Agreement and so transfer such Called Shares. A Called Shareholder shall not, however, be obliged to agree to (i) give any representation, warranty or undertaking concerning, or any indemnity in respect of any liability of, the business and affairs of the Company's Group, nor (ii) [unless such Called Shareholder is or has been a Service Provider,] any restrictive covenant including, without limitation, any covenant not to compete or covenant not to solicit customers, employees or suppliers of any Group Company;
- (b) consideration paid (and/or payable) be subject to obligation(s) and arrangements (whether by means of escrow, holdback, reduction of consideration, contribution to the costs of any relevant insurance or contribution to transaction costs and expenses (including costs and expenses of any sellers' representative and/or Shareholders' Representative (as defined below)) ("**Contribution Obligations**") with respect to:
  - (i) liabilities of (and tax withholdings and deductions (including, if applicable, amounts to be withheld in respect of employee income tax and social security contributions) arising in respect of consideration payable to) the Called Shareholder ("**Several Liabilities**"); and
  - (ii) any:
    - (A) price adjustment mechanisms (including any earn-out, locked box or completion accounts adjustment); and/or
    - (B) liabilities (actual or potential, including any settlement) in respect of any representations, warranties, undertakings and/or indemnities given by any person(s),

in connection with the Dragged Share Sale (any or all of the foregoing being "**Common Liabilities**"), provided that the Sale Agreement provides for the following principles (howsoever expressed or effected):

- (x) the Contribution Obligations of a Called Shareholder with respect to Common Liabilities shall be satisfied only by way of reduction to the amount of any unpaid consideration (and not, for the avoidance of doubt, any repayment of consideration previously paid out). For the purpose of this provision, consideration held in escrow (or subject to any security interest

of the Drag Purchaser or its nominee) shall not be treated as having been paid to the Called Shareholder even if the Called Shareholder is beneficially interested in such consideration; and

- (y) Contribution Obligations of a Called Shareholder in respect of Common Liabilities shall be [on terms consistent with Article 6 and] no more onerous than the terms of the Contribution Obligations of other Selling Shareholders in respect of Common Liabilities; and
- (y) the liability of a Called Shareholder shall not exceed the amount of Drag Consideration received by such Called Shareholder in connection with the Dragged Share Sale, except with respect to claims related to fraud by such Called Shareholder, the liability for which need not be limited as to such Called Shareholder.

1.7. The Sale Agreement may include such provisions as may be necessary or desirable to accommodate the inclusion of Called Securities Holders (if any) in the Dragged Share Sale (and may include provisions with respect to (i) the exercise of options or other rights to subscribe, convert into or otherwise acquire (including but not limited to warrants) Shares (including the delivery of Exercise Documents), (ii) the satisfaction by the Called Securities Holder of their Several Liabilities in respect of the payment of any exercise price and any employee income tax and social security contributions arising in connection with their acquisition and/or sale of Shares and (iii) the making of tax elections by the Called Securities Holder).

1.8. Within three Business Days of the Company copying the Drag Along Notice to the Called Shareholders (or such later date as may be specified in the Drag Along Notice), each Called Shareholder shall deliver to the Company (which shall receive the same as agent on behalf of the Called Shareholder with authority to deliver the same to the Drag Purchaser on completion of the sale of Called Shares to the Drag Purchaser in accordance with the terms of the Sale Agreement (the "**Drag Completion Date**")):

- (a) duly executed Instrument of Transfer for its Shares in favour of the Drag Purchaser;
- (b) the relevant share certificate(s) (or a duly executed indemnity in favour of the Directors of the Company in respect of any lost, destroyed or missing certificate, in a form acceptable to the Board) in respect of its Shares;
- (c) a duly executed Sale Agreement, if applicable, in the form specified in the Drag Along Notice or as otherwise specified by the Company;
- (d) in the case of a Called Securities Holder, duly executed Exercise Documents required to be provided by them; and
- (e) the Sale Information, in the form specified in the Drag Along Notice or as otherwise specified by the Company,

(together the "**Drag Documents**").

- 1.9. The Company (or its nominee) may receive, and give good receipt for, any consideration payable to any Called Shareholder in respect of the transfer of their Called Shares, which consideration shall be held by the Company (or its nominee) on trust for the benefit of such Called Shareholder. The Company shall be entitled to be paid from such consideration any amount otherwise due and payable by the Called Shareholder to any member of the Company's Group (including any payments due in connection with the exercise of any option to acquire Shares). The payment of the remaining balance of such consideration due to the relevant Called Shareholder may, in the sole discretion of the Board, be withheld pending the delivery of any Drag Document(s) and the ratification by the Called Shareholder of the transfer of their Called Shares and/or any act undertaken on behalf of (or deemed to be undertaken by) such Called Shareholder in accordance with this Article 22.9.
- 1.10. If a Called Shareholder fails to deliver the Drag Documents for their Shares to the Company by the Drag Completion Date, the Company (acting by any Director of the Company) shall be constituted the agent of such defaulting Called Shareholder with power and authority to take such actions and execute, enter into, and give effect to, any Drag Document(s), for and on behalf of and in the name of such defaulting Called Shareholder, in each case as the Board may determine to be necessary or desirable to effect (or otherwise in connection with) the transfer of the Called Shareholder's Shares pursuant to this Article 22 and the Board shall, if requested by the Drag Purchaser, so authorise any Director to effect the transfer of the Called Shareholder's Shares on the Called Shareholder's behalf to the Drag Purchaser (or, if so directed by the Drag Purchaser, a nominee of such Drag Purchaser) on the Drag Completion Date. The Board shall authorise registration of the transfer once appropriate stamp duty (if any is required) has been paid and the Instrument of Transfer and certificate (or indemnity in a form acceptable to the Board) in respect of the Shares so transferred is delivered to the Company.
- 1.11. Any transfer of Shares to a Drag Purchaser pursuant to a sale in respect of which a Drag Along Notice has been duly served shall not be subject to the provisions of Article 16.
- 1.12. On any person, following the issue of a Drag Along Notice, becoming a Shareholder pursuant to the exercise of a pre-existing option or warrant to acquire shares in the Company or pursuant to the conversion of any convertible security of the Company (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 who shall then be bound to sell and transfer all Shares (save to the extent the relevant Shares were sold as part of the Dragged Share Sale on the Drag Completion Date by the New Shareholder, whether as a Called Securities Holder or otherwise) so acquired to the Drag Purchaser and the provisions of this Article shall apply with the necessary changes to the New Shareholder except that completion of the sale of the Shares shall take place on the later of: (a) the Drag Along Notice being deemed served on the New

Shareholder; and (b) completion of the Dragged Share Sale on the Drag Completion Date.

- 1.13. Whether or not a transfer of Called Shares is validly made in accordance with this Article 22 (including any determination as to whether a Sale Agreement satisfies the requirements of Articles 22.6 and 22.7 (including any determination as to what constitutes a Contribution Obligation and/or the Common Liabilities and/or whether the principles set out in Article 22.6(b) are satisfied)) shall be determined by the Board and, save in the event of fraud, such determination shall be final and binding on all persons.
- 1.14. In the event that the Selling Shareholders, in connection with the Dragged Share Sale, appoint a third party independent shareholder representative (a "**Shareholder Representative**") with respect to the establishment and management of any escrow or holdback fund in connection with any indemnification or breach of warranty under the Sale Agreement (the "**Escrow**"), each Called Shareholder shall be deemed to consent to (i) the appointment of such Shareholder Representative, (ii) the establishment of the Escrow and (iii) the payment of such Called Shareholder's applicable portion (from the Escrow) of any reasonable and properly incurred fees and expenses of such Shareholder Representative, in each case in connection with such Shareholder Representative's services and duties in connection with the establishment and management of such Escrow.

## **2. Directors' borrowing powers**

The Board may[, with Investor Director Consent or Investor Majority Consent where required under the Shareholders' Agreement,] exercise all the powers of the Company to borrow or raise money and to mortgage or charge its undertaking, property and uncalled capital and to issue debentures, debenture stock and other securities as security for any debt, liability of obligation of the Company or of any third party and to give any guarantees or indemnities.

## **24. Alternate Directors**

- 24.1. Notwithstanding any provision of these Articles to the contrary, any person appointed as a Director (the "**Appointor**") may appoint any director or any other person as they think fit to be their alternate Director to:
  - (a) exercise that Director's powers; and
  - (b) carry out that Director's responsibilities in relation to the taking of decisions by the Board in the absence of the alternate's Appointor.

The appointment of an alternate Director shall not require approval by a resolution of the Board.

- 24.2. Any appointment or removal of an alternate must be effected by notice in writing to the Company signed by the Appointor, or in any other manner approved by the Board.

24.3. 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 the proposed alternate is willing to act as the alternate of the Director giving the notice.

24.4. An alternate Director may act as an alternate to more than one Director and has the same rights, in relation to any Directors' meeting (including as to notice) or Directors' written resolution, as the alternate's Appointor.

24.5. Except as these 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, each alternate Director shall be entitled to receive notice of all meetings of Directors and of all meetings of committees of Directors of which their Appointor is a member.

1.6. A person who is an alternate Director but not a Director:

- (a) 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
- (b) may sign a Directors' written resolution (but only if their Appointor is an Eligible Director in relation to that decision, but does not participate).

No alternate Director may be counted as more than one Director for such purposes.

1.7. A Director who is also an alternate Director is entitled, in the absence of their Appointor, to a separate vote on behalf of each Appointor, in addition to their own vote on any decision of the Directors (provided that their Appointor is an Eligible Director in relation to that decision).

1.8. An alternate Director is not entitled to receive any remuneration from the Company for serving as an alternate Director, except such part of the alternate's Appointor's remuneration as the Appointor may direct by notice in writing made to the Company.

1.9. An alternate Director's appointment as an alternate Director shall terminate:

- (a) when the Appointor revokes the appointment by notice to the Company in writing specifying when it is to terminate;



- (b) on the occurrence in relation to the alternate Director of any event which, if it occurred in relation to their Appointor, would result in the termination of the Appointor's appointment as a Director;
- (c) on the death of their Appointor; or
- (d) when their Appointor's appointment as a Director terminates.

## 2. Appointment of Directors

- 2.6. Unless and until the Company shall otherwise determine by ordinary resolution, the number of Directors shall not be more than [•] [(or [•] if the CEO Director (as defined below) is not a Founder)].
- 2.7. [The chief executive officer of the Company appointed by the Board from time to time shall be a Director (the "**CEO Director**")].]
- 2.8. [[Each] [The] Founder, for so long as they are a Service Provider [and together with their Permitted Transferees holds not less than [10] per cent of the Equity Shares in issue], shall have the right to appoint themselves to serve as a Director ([each a] [the] "**Founder Director**") and the other holders of Shares shall not vote their Equity Shares so as to remove that Director from office. In the event that a Founder is the chief executive officer of the Company, they shall be appointed as the CEO Director pursuant to Article 25.2 and shall not have any additional appointment right under this Article 25.3.]
- 2.9. [[Each of [•],[•] and] [•], for so long as it together with its Permitted Transferees holds] [The holders of a majority of the Series A Shares, for so long as the Series A Shares represent] not less than [[10] per cent of the Equity Shares in issue] [[•] Equity Shares], shall have the right:
  - (a) to appoint and maintain in office one natural person as a Director ([each an] [the] "**Investor Director**") and the other holders of Shares shall not vote their Equity Shares so as to remove that Director from office; and
  - (b) to appoint one natural person as an observer at each and any meeting of the Board who will be entitled to speak at any such meetings and receive copies of all board papers as if they were a Director but will not be entitled to vote ([each an] [the] "**Investor Observer**")].]
- 2.10. [The Board [with Investor Director Consent] shall have the right to appoint and maintain in office [one] natural person as they may nominate as a Director ([each an] [the] "**Independent Director**") and to remove any Director so appointed and, upon their removal, whether by such majority or otherwise, to appoint another Director in their place.]
- 2.11. The appointment or removal of a Director [or Investor Observer] in accordance with this Article 25 shall be by written notice from their appointer(s) to the Company, which

shall take effect on delivery of such notice at the Company's registered office or at any meeting of the Board or committee of the Board.

- 2.12. Each Director [and Investor Observer] shall be entitled at their request to be appointed as a member [or observer (as appropriate)] to any committee of the Board established from time to time, to the board of directors of any Subsidiary Undertaking of the Company and to any committee of the board of directors of any Subsidiary Undertaking established from time to time.
- 2.13. [If a Founder ceases to be a Service Provider, then: (a) such Founder shall have no right to be appointed as a Director; (b) such Founder who is appointed as a Director shall be deemed to have resigned as a Director with immediate effect on the Effective Termination Date. ]

### **3. Disqualification of Directors**

In addition to that provided in article 18 of the Model Articles, the office of a Director shall also be vacated if:

- (t) they are convicted of a criminal offence (other than a road traffic offence which is not punishable by a custodial sentence) and the Directors resolve that their office be vacated;
- (u) in the case of a Director (other than a Director entitled to be appointed pursuant to Article 25.3 or 25.4):
  - (i) a resolution removing them from office is passed by the Board; or
  - (ii) an ordinary resolution removing them from office is passed by the members of the Company; or
- (a) in the case of a Director appointed pursuant to Article 25.3 or 25.4, if the person then having the right to nominate such Director to hold office either:
  - (i) serves notice on them in writing removing them from office; or
  - (iii) effects such steps for the removal of such Director from office as may be provided for in Article 25.3 or 25.4 or the Shareholders' Agreement.

### **2. Proceedings of Directors' meetings**

- 2.1. The quorum for Directors' meetings shall be [two] Directors [and which must include at least [one] Investor Director[s] (if so appointed)] [(unless, in respect of any specified meeting, such Investor Director expressly confirms in writing that their attendance is not required for such meeting to be quorate)], save that where a Relevant Interest of a Director is being authorised by other Director(s) in accordance with section 175(5)(a) of the Act, such Director and any other interested Director shall not be included in the quorum required for the purpose of such authorisation but shall otherwise be included for the purpose of forming the quorum at the meeting. If such a quorum is not present

within half an hour from the time appointed for the meeting, or if during a meeting such quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or at such time and place as determined by [the Directors present at such meeting]. If a quorum is not present at any such adjourned meeting within half an hour from the time appointed, then the meeting shall proceed.

- 2.2. In the event that a meeting of the Directors is attended by a Director who is acting as alternate for one or more other Directors, the Director or Directors for whom they are the alternate shall be counted in the quorum despite their absence, and if on that basis there is a quorum the meeting may be held despite the fact (if it is the case) that only one Director is physically present.
- 2.3. Notice of a Directors' meeting need not be given to Directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the Company at any time before or after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.
- 2.4. Provided (if these Articles so require) that they have declared to the Directors, in accordance with the provisions of these Articles, the nature and extent of their interest (and subject to any restrictions on voting or counting in a quorum imposed by the Directors in authorising a Relevant Interest), a Director may vote at a meeting of the Directors or of a committee of the Directors on any resolution concerning a matter in which they have an interest, whether a direct or an indirect interest, or in relation to which they have a duty and shall also be counted in reckoning whether a quorum is present at such a meeting.

### **3. Directors' interests<sup>22</sup>**

#### *Specific interests of a Director*

- 3.1. Subject to the provisions of the Act and provided (if these Articles so require) that they have declared to the Directors in accordance with the provisions of these Articles, the nature and extent of their interest, a Director may (save as to the extent not permitted by law from time to time), notwithstanding their office, have an interest of the following kind:
  - (a) where a Director (or a person connected with them) is party to or in any way directly or indirectly interested in, or has any duty in respect of, any existing or proposed contract, arrangement or transaction with the Company or any other undertaking in which the Company is in any way interested;

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<sup>22</sup> By ordinary resolution on [insert date] the members of the Company resolved for the purpose of paragraph 47(3)(b) of schedule 4 to the Companies Act 2006 (Commencement No. 5, Transitional Provisions and Savings) Order 2007, that authorisation of conflicts of interests may be given by Directors in accordance with section 175(5)(a) of the 2006 Act at any time following the date of that resolution. [Note: it is necessary for private companies incorporated before 1 October 2008 to pass this resolution and file it at Companies House in order for directors to be able to authorise conflicts of interest of directors.]

- (b) where a Director (or a person connected with them) is a director, employee or other officer of, or a party to any contract, arrangement or transaction with, or in any way interested in, any body corporate promoted by the Company or in which the Company is in any way interested;
- (c) where a Director (or a person connected with them) is a Shareholder or a shareholder in, employee, director, member or other officer of, or consultant to, a Parent Undertaking of, or a Subsidiary Undertaking of a Parent Undertaking of, the Company;
- (d) where a Director (or a person connected with them) holds and is remunerated in respect of any office or place of profit (other than the office of auditor) in respect of the Company or body corporate in which the Company is in any way interested;
- (e) where a Director is given a guarantee, or is to be given a guarantee, in respect of an obligation incurred by or on behalf of the Company or any body corporate in which the Company is in any way interested;
- (f) where a Director (or a person connected with them or of which they are a member or employee) acts (or any body corporate promoted by the Company or in which the Company is in any way interested of which they are a director, employee or other officer may act) in a professional capacity for the Company or any body corporate promoted by the Company or in which the Company is in any way interested (other than as auditor) whether or not they are or it is remunerated for this;
- (g) an interest which cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- (h) any other interest authorised by ordinary resolution.

*Investor interests of Directors*

3.2. In addition to the provisions of Article 28.1, subject to the provisions of the Act and provided (if these Articles so require) that they have declared to the Directors in accordance with the provisions of these Articles, the nature and extent of their interest, they may (save as to the extent not permitted by law from time to time), notwithstanding their office, have an interest arising from any duty they may owe to, or interest they may have as an employee, director, trustee, member, partner, officer or representative of, or a consultant to, or direct or indirect investor (including by virtue of a carried interest, remuneration or incentive arrangements or the holding of securities) in:

- (a) an Investor;
- (b) a Fund Manager which advises or manages an Investor;

- (c) any of the funds advised or managed by a Fund Manager who advises or manages an Investor from time to time; or
- (d) another body corporate or firm in which a Fund Manager who advises or manages an Investor or any fund advised or managed by such Fund Manager has directly or indirectly invested, including any portfolio companies.

*Interests of which a Director is not aware*

- 3.3. For the purposes of this Article 28, an interest of which a Director is not aware and of which it is unreasonable to expect them to be aware shall not be treated as an interest of theirs.

*Accountability of any benefit and validity of a contract*

- 3.4. In any situation permitted by this Article 28 (save as otherwise agreed by them) a Director shall not by reason of their office be accountable to the Company for any benefit which they derive from that situation and no such contract, arrangement or transaction shall be avoided on the grounds of any such interest or benefit.

*Terms and conditions of Board authorisation*

- 3.5. Subject to Article 28.6, any authority given in accordance with section 175(5)(a) of the Act in respect of a Director ("**Interested Director**") who has proposed that the Directors authorise their interest ("**Relevant Interest**") pursuant to that section may, for the avoidance of doubt:

- (a) be given on such terms and subject to such conditions or limitations as may be imposed by the authorising Directors as they see fit from time to time, including:
  - (i) restricting the Interested Director from voting on any resolution put to a meeting of the Directors or of a committee of the Directors in relation to the Relevant Interest;
  - (ii) restricting the Interested Director from being counted in the quorum at a meeting of the Directors or of a committee of the Directors where such Relevant Interest is to be discussed; or
  - (iii) restricting the application of the provisions in Articles 28.7 and 28.8, so far as is permitted by law, in respect of such Interested Director;
- (b) be withdrawn, or varied at any time by the Directors entitled to authorise the Relevant Interest as they see fit from time to time,

and subject to Article 28.6, an Interested Director must act in accordance with any such terms, conditions or limitations imposed by the authorising Directors pursuant to section 175(5)(a) of the Act and this Article 28.

*Terms and conditions of Board authorisation for an Investor Director*

- 3.6. Notwithstanding the other provisions of this Article 28, it shall not (save with the consent in writing of an Investor Director) be made a condition of any authorisation of a matter in relation to that Investor Director in accordance with section 175(5)(a) of the Act, that they shall be restricted from voting or counting in the quorum at any meeting of, or of any committee of the Directors or that they shall be required to disclose, use or apply confidential information as contemplated in Article 28.8.

*Director's duty of confidentiality to a person other than the Company*

- 3.7. Subject to Article 28.8 (and without prejudice to any equitable principle or rule of law which may excuse or release the Director from disclosing information, in circumstances where disclosure may otherwise be required under this Article 28), if a Director, otherwise than by virtue of their position as Director, receives information in respect of which they owe a duty of confidentiality to a person other than the Company, they shall not be required:

- (a) to disclose such information to the Company or to any Director, or to any officer or employee of the Company; or
- (b) otherwise to use or apply such confidential information for the purpose of or in connection with the performance of their duties as a Director.

- 3.8. Where such duty of confidentiality arises out of 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, Article 28.7 shall apply only if the conflict arises out of a matter which falls within Article 28.1 or Article 28.2 or has been authorised under section 175(5)(a) of the Act.

*Additional steps to be taken by a Director to manage a conflict of interest*

- 3.9. Where a Director has an interest which can reasonably be regarded as likely to give rise to a conflict of interest, the Director shall take such additional steps as may be necessary or desirable for the purpose of managing such conflict of interest, including compliance with any procedures laid down from time to time by the Directors for the purpose of managing conflicts of interest generally and/or any specific procedures approved by the Directors for the purpose of or in connection with the situation or matter in question, including:

- (a) absenting themselves from any discussions, whether in meetings of the Directors or otherwise, at which the relevant situation or matter falls to be considered; and
- (b) excluding themselves from documents or information made available to the Directors generally in relation to such situation or matter and/or arranging for such documents or information to be reviewed by a professional adviser to ascertain the extent to which it might be appropriate for them to have access to such documents or information.

*Requirement of a Director to declare an interest*

- 3.10. Subject to section 182 of the Act, a Director shall declare the nature and extent of any interest permitted by Article 28.1 or Article 28.2 at a meeting of the Directors, or by general notice in accordance with section 184 (notice in writing) or section 185 (general notice) of the Act or in such other manner as the Directors may determine, except that no declaration of interest shall be required by a Director in relation to an interest:
- (a) falling under Article 28.1(g);
  - (b) if, or to the extent that, the other Directors are already aware of such interest (and for this purpose the other Directors are treated as aware of anything of which they ought reasonably to be aware); or
  - (c) if, or to the extent that, it concerns the terms of their service contract (as defined by section 227 of the Act) that have been or are to be considered by a meeting of the Directors, or by a committee of Directors appointed for the purpose under these Articles.

*Shareholder approval*

- 3.11. Subject to section 239 of the Act, the Company may by ordinary resolution ratify any contract, transaction or arrangement, or other proposal, not properly authorised by reason of a contravention of any provisions of this Article 28.
- 3.12. For the purposes of this Article 28:
- (a) a conflict of interest includes a conflict of interest and duty and a conflict of duties;
  - (b) the provisions of section 252 of the Act shall determine whether a person is connected with a Director; and
  - (c) a general notice to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such transaction of the nature and extent so specified.

**4. Notices**

- 4.1. Subject to the requirements set out in the Act, any notice given or document sent or supplied to or by any person under these Articles, or otherwise sent by the Company under the Act, may be given, sent or supplied:
- (a) in hard copy form; or
  - (b) in electronic form;

or partly by one of these means and partly by another of these means.

Notices shall be given and documents supplied in accordance with the procedures set out in the Act, except to the extent that a contrary provision is set out in this Article 29.

*Notices in hard copy form*

**4.2.** Any notice or other document in hard copy form given or supplied under these Articles may be delivered or sent by first class post (airmail if overseas):

- (a) to the Company or any other company at its registered office; or
- (b) to the address notified to or by the Company for that purpose; or
- (c) in the case of an intended recipient who is a member or their legal personal representative or trustee in bankruptcy, to such member's address as shown in the Company's register of members; or
- (d) in the case of an intended recipient who is a Director or alternate, to their address as shown in the register of Directors; or
- (e) to any other address to which any provision of the Companies Acts (as defined in the Act) authorises the document or information to be sent or supplied; or
- (f) where the Company is the sender, if the Company is unable to obtain an address falling within one of the addresses referred to in (a) to (e) above, to the intended recipient's last address known to the Company.

**4.3.** Any notice or other document in hard copy form given or supplied under these Articles shall be deemed to have been served and be effective:

- (a) if delivered, at the time of delivery; or
- (b) if posted, on receipt or 48 hours after the time it was posted, whichever occurs first.

*Notices in electronic form*

**4.4.** Subject to the provisions of the Act, any notice or other document in electronic form given or supplied under these Articles may:

- (a) if sent by email (provided that an address for email has been notified to or by the Company), be sent by the relevant form of communication to that address;
- (b) if delivered or sent by first class post (airmail if overseas) in an electronic form (such as sending a disk by post), be so delivered or sent as if in hard copy form under Article 29.2; or
- (c) be sent by such other electronic means (as defined in section 1168 of the Act) and to such address(es) as the Company may specify:



- (i) on its website from time to time; or
- (ii) by notice (in hard copy or electronic form) to all members of the Company from time to time.

4.5. Any notice or other document in electronic form given or supplied under these Articles shall be deemed to have been served and be effective:

- (a) if sent by email (where an address for email has been notified to or by the Company), on receipt or 48 hours after the time it was sent, whichever occurs first;
- (b) if posted in an electronic form, on receipt or 48 hours after the time it was posted, whichever occurs first;
- (c) if delivered in an electronic form, at the time of delivery; and
- (d) if sent by any other electronic means as referred to in Article 29.4(c), at the time such delivery is deemed to occur under the Act.

4.6. Where the Company is able to show that any notice or other document given or sent under these Articles by electronic means was properly addressed with the electronic address supplied by the intended recipient, the giving or sending of that notice or other document shall be effective notwithstanding any receipt by the Company at any time of notice either that such method of communication has failed or of the intended recipient's non-receipt.

*Notice by means of a website*

4.7. Subject to the provisions of the Act, any notice or other document or information to be given, sent or supplied by the Company to Shareholders under these Articles may with Investor Majority Consent be given, sent or supplied by the Company by making it available on the Company's website.

*General*

4.8. In the case of joint holders of a Share all notices shall be given to the joint holder whose name stands first in the register of members of the Company in respect of the joint holding (the "**Primary Holder**"). Notice so given shall constitute notice to all the joint holders.

4.9. Anything agreed or specified by the Primary Holder in relation to the service, sending or supply of notices, documents or other information shall be treated as the agreement or specification of all the joint holders in their capacity as such (whether for the purposes of the Act or otherwise).

## **5. Indemnities and insurance**

5.1. Subject to the provisions of, and so far as may be permitted by, the Act:

(a) every Director or other officer of the Company (excluding the Auditors) shall be entitled to be indemnified by the Company (and the Company shall also be able to indemnify directors of any associated company (as defined in section 256 of the Act)) out of the Company's assets against all liabilities incurred by them in the actual or purported execution or discharge of their duties or the exercise or purported exercise of their powers or otherwise in relation to or in connection with their duties, powers or office, provided that no current or former Director or current or former director of any associated company is indemnified by the Company against:

- (i) any liability incurred by the director to the Company or any associated company;
- (ii) any liability incurred by the director to pay a fine imposed in criminal proceedings or a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirements of a regulatory nature; or
- (iii) any liability incurred by the director:
  - (A) in defending any criminal proceedings in which they are convicted;
  - (B) in defending civil proceedings brought by the Company or any associated company in which final judgment (within the meaning set out in section 234 of the Act) is given against the director; or
  - (C) in connection with any application under sections 661(3) or 661(4) or 1157 of the Act (as the case may be) for which the court refuses to grant them relief,

save that, in respect of a provision indemnifying a director of a company (whether or not the Company) that is a trustee of an occupational pension scheme (as that term is used in section 235 of the Act) against liability incurred in connection with that company's activities as trustee of the scheme, the Company shall also be able to indemnify any such director without the restrictions in Articles 30.1(a)(i), 30.1(a)(iii)(B) and 30.1(a)(iii)(C) applying; and

(b) the Directors may exercise all the powers of the Company to purchase and maintain insurance for any such current or former Director or other officer against any liability which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default, breach of duty or breach of trust of which they may be guilty in relation to the Company, or any associated company including (if they are a director of a company which is a trustee of an occupational pension scheme) in connection with that company's activities as trustee of an occupational pension scheme.

- 1.2. The Company shall (at the cost of the Company) effect and maintain for each current or former Director or current or former director of any associated company policies of insurance insuring each such director against risks in relation to their office as each director may reasonably specify, including any liability which by virtue of any rule of law may attach to them in respect of any negligence, default of duty or breach of trust of which they may be guilty in relation to the Company.

## **2. Secretary**

Subject to the provisions of the Act, the Board may appoint a secretary for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

## **32. Authority to capitalise and appropriation of capitalised sums**

- 32.1. The Board may, in order to give effect to any provision of these Articles (or otherwise if authorised to do so by an ordinary resolution):
- (a) decide to capitalise any profits of the Company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the Company's share premium account or capital redemption reserve; and
  - (b) appropriate any sum which they so decide to capitalise (a "**Capitalised Sum**") to such Shareholders and in such proportions as the Board may in their absolute discretion deem appropriate (the "**Shareholders Entitled**").
- 32.2. Capitalised Sums may be applied on behalf of such Shareholders and in such proportions as the Board may (with Investor Majority Consent) deem appropriate.
- 32.3. Any Capitalised Sum may be applied in paying up new Shares up to the nominal amount (or such amount as is unpaid) equal to the Capitalised Sum, which are then allotted credited as fully paid to the Shareholders Entitled or as they may direct.
- 32.4. A Capitalised Sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the Company which are allotted credited as fully paid to the Shareholders Entitled or as they may direct.
- 32.5. Subject to these Articles the Board may:
- (a) apply Capitalised Sums in accordance with Articles 32.3 and 32.4 partly in one way and partly another;
  - (b) make such arrangements as they think fit to deal with Shares or debentures becoming distributable in fractions under this Article 32; and
  - (c) authorise any person to enter into an agreement with the Company on behalf of all of the Shareholders Entitled which is binding on them in respect of the allotment of Shares or debentures under this Article 32.

### 33. Lock-Up

33.1. Other than the sale of any Shares to an underwriter pursuant to an underwriting agreement, no Shareholder shall, without the prior written consent of the Company's underwriters, during the period commencing on the date of the final offering document relating to an IPO and ending on the date specified by the Board (not to exceed 180 days):

- (a) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any Shares held immediately prior to the effectiveness of the registration statement for the IPO (if applicable) or the admission of the Company's shares to trading on the relevant market taking effect; or
- (b) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Shares,

whether or not any such transaction is to be settled by delivery of Shares or other securities, in cash or otherwise.

33.2. In order to enforce the covenant in Article 33.1, the Company may impose stop-transfer instructions with respect to the Shares (and transferees and assignees of the Shares) until the end of such restricted period.

33.3. Each Shareholder shall enter into a separate lock-up agreement in respect of the IPO if and to the extent required by the Company's underwriters in order to facilitate the IPO, on terms consistent with the foregoing[, provided that (i) each Director that is a Shareholder and each holder of more than 1% of the issued share capital of the Company enters into a lock-up agreement (ii) the lock-up agreements to be entered into by the other Shareholders are on no more onerous terms in all material respects to those which are entered into by each Director that is a Shareholder and each other holder of at least 1% or more of the issued share capital of the Company [and (iii) any such lock-up agreement shall provide that if any provision of any similar agreement entered into by any other person for any discretionary release, waiver or termination of the restrictions contained in it is exercised by the Company or the underwriters (a "**Release**"), to the extent that the Company or the underwriters provide such a Release to any other person in respect of all or a proportion of the securities held by such other person, the Company and the underwriters must Release the obligations of each other person who is a party to a lock-up agreement in respect of the same proportion of the securities held by them]].

33.4. If any Shareholder fails to comply with the provisions of this Article, the Company shall be constituted the agent of each defaulting Shareholder for taking such actions as are necessary to effect the lock-up and the Board may authorise a Director, officer or member to execute and deliver on behalf of such defaulting Shareholder the necessary documents to effect the lock-up, including a lock-up agreement, in a form approved by the Board.

#### **34. New Holding Company**

- 34.1. In the event of a Holding Company Reorganisation approved by the Board with Investor Majority Consent (a "**Proposed Reorganisation**"), each of the Shareholders shall (i) consent to, vote for, raise no objections to and waive any applicable rights in connection with the Proposed Reorganisation and (ii) take all such actions to tender their Shares as required pursuant to the Proposed Reorganisation (the "**Reorganisation Actions**"). The Shareholders shall be required to take all Reorganisation Actions with respect to the Proposed Reorganisation as are required by the Board to facilitate the Proposed Reorganisation. If any Shareholder fails to comply with the provisions of this Article 34, the Company shall be constituted the agent of each defaulting Shareholder for taking the Reorganisation Actions as are necessary to effect the Proposed Reorganisation and the Board may authorise any Director, officer or member to execute and deliver on behalf of such defaulting Shareholder the necessary documents to effect the Proposed Reorganisation, including any share exchange agreement and/or Instrument of Transfer.
- 34.2. The Company shall procure that the shares issued by the New Holding Company to the Shareholders (or any subsequent holder, as the case may be) pursuant to the Holding Company Reorganisation will be credited as fully paid as to the amount determined in accordance with this Article 34. Such New Holding Company shares shall be subject to the constitutional documents of the New Holding Company and otherwise (subject to the express provisions of such constitutional documents) shall have the same rights and obligations as all other New Holding Company shares of the same class in issue at the time (other than as regards any dividend or other distribution payable by reference to a record date preceding the date of issue of such New Holding Company shares).
- 34.3. On any person, following the date of completion of a Holding Company Reorganisation, becoming a Shareholder pursuant to any Relevant Securities or otherwise (a "**Post-Reorganisation Shareholder**"), the Post-Reorganisation Shareholder shall then be bound to do all such acts and things necessary in order to transfer to the New Holding Company all such resulting shares held by the Post-Reorganisation Shareholder, and the provisions of this Article 34 shall apply with the necessary changes to the Post-Reorganisation Shareholder.
- 34.4. The Company shall procure that, in respect of each Major Investor (except as otherwise agreed in writing by such Major Investor, acting reasonably):
- (a) it provides not less than [20] Business Days' prior written notice to the Major Investors of any Proposed Reorganisation (the "**Holding Company Notice**"); and
  - (b) following the date of the Holding Company Notice, it consults with such Major Investors in good faith and provides such information reasonably requested by such Major Investors in respect of such Proposed Reorganisation.

- 34.5. Any New Holding Company that is to be created for the purposes of a Proposed Reorganisation shall be:
- (a) [an entity that is classified as a corporation for U.S federal income tax purposes; and]
  - (b) incorporated in a jurisdiction where the courts of such jurisdiction respect the limited liability of the underlying partners, members, shareholders and/or any other beneficial owners of each shareholder of that New Holding Company to substantially the same extent as the jurisdiction of a Major Investor's formation.
- 34.6. Article 34.1 shall not apply in respect of any of the Major Investors (except as otherwise agreed in writing by all Major Investors, acting reasonably) if it is determined pursuant to Articles 34.7 to 34.9 that any taxes will be payable and/or any tax filings will be required to be submitted by any one or more Major Investors or any one or more of their respective underlying partners, members, shareholders and/or other beneficial owners as a direct result of the transfer of its respective Shares to the New Holding Company and in such event, the Company and the Major Investors will discuss in good faith to find alternative ways to assess how to structure such Proposed Reorganisation in a manner acceptable to each of them in writing.
- 34.7. If, in a Major Investor's reasonable opinion following written advice from its legal adviser, accountant or tax adviser (as the case may be), such Major Investor determines that any taxes will be payable and/or any tax filings will be required to be submitted by such Major Investor or its underlying partners, members, shareholders and/or other beneficial owners as a direct result of the transfer of its Shares to the New Holding Company:
- (a) such Major Investor shall as soon as reasonably practicable notify the Company in writing and provide a copy of such written advice from its legal adviser, accountant or tax adviser (as the case may be) to the Company on a non-reliance basis;
  - (b) the Company and each relevant Major Investor will discuss in good faith for a period of up to 15 Business Days (as may be extended between the Company and such Major Investor) following receipt of such written notice in Article 34.7(a) to find alternative ways to assess how to structure such Proposed Reorganisation in a manner acceptable to each of them in writing.
- 34.8. In the event that any Major Investor(s) and the Company cannot agree as to whether any taxes will be payable and/or whether any tax filings will be required to be submitted by any such Major Investor or its underlying partners, members, shareholders and/or other beneficial owners as a direct result of the transfer of its Shares to the New Holding Company and/or how to structure the relevant Proposed Reorganisation upon the expiry of the time limit set out in Article 34.7, the Company and the relevant Major Investor(s) shall appoint an expert to determine such tax treatment and opine on how to structure the relevant Proposed Reorganisation in accordance with Article 34.9 (the "**Expert**").

- 34.9. The Expert will be [a big 4 firm of/an independent firm of internationally recognized] Chartered Accountants in England and Wales to be agreed in writing between the Company and the relevant Major Investor(s) or, failing agreement in writing of such firm not later than the date 5 Business Days after the expiry of the time limit set out in Article 34.7, an independent firm of Chartered Accountants to be nominated by the then President of the Institute of Chartered Accountants in England and Wales following a joint application by both the Company and one or more of the relevant Major Investors. Such Expert shall be requested to (a) determine the tax treatment of the Proposed Reorganisation in respect of the relevant Major Investor's Shares and opine on how to structure the relevant Proposed Reorganisation within 20 Business Days of its appointment based on any factors which such Expert reasonably believes should be taken into account and (b) notify the Board and relevant Major Investors of their determination. The Expert shall act as expert and not as arbitrator and its determination shall be final and binding on the parties (in the absence of fraud or manifest error). The Board will give the Expert access to all accounting records or other relevant documents of the Company subject to the Expert agreeing such confidentiality provisions as the Board may reasonably impose. The Expert shall deliver its certificate to the Company and the relevant Major Investor(s). The cost of obtaining the certificate shall be paid by the Company.

## Appendix A – Preference/Special Dividend

**"Arrears"** means in relation to any Share, all arrears of any dividend or other sums payable in respect of that Share, whether or not earned or declared and irrespective of whether or not the Company has had at any time sufficient Available Profits to pay such dividend or sums, together with all interest and other amounts payable on that Share;

**["Capitalisation Price"** means, with respect to a conversion of Series A Shares into Ordinary Shares pursuant to Article 9, [£[•] per share] / [the then fair market value (taking into account the act of so converting Series A Shares into Ordinary Shares) of an Ordinary Share as shall be determined in good faith by the Board (with the approval of an Investor Majority)]/[the average Preference Amount of the Series A Shares held by the relevant Shareholder which are then converted into Ordinary Shares];]

**"Exit"** means a Share Sale, an Asset Sale or an IPO;

**"Preference Amount"** means, in respect of a Series A Share, £[•], together with an unpaid Arrears in respect of the Preference Dividend accrued on such Series A Share (if applicable, adjusted as referred to in Article 1.4(f) and/or Article 10.5);

**"Preference Dividend"** has the meaning given in Article [4.7];

**"Significant Profits"** has the meaning given in Article [4.10];

**["Significant Transaction"** means any transaction or series of transactions involving a transfer or licensing of some or all of the rights in relation to some or all of the assets of the Company, including licensing agreements and business and asset sale and purchase agreements pursuant to which the net payment(s) to the Company is at least £[insert];]

**"Special Dividend"** has the meaning given in Article [4.10];

...

### *Preference Dividend*

- 4.7 The Company will[, without any need for a resolution of the Board][without any need for a resolution of the Company but with the approval of the Board in its sole discretion] and before application of any profits to reserve or for any other purpose, pay in respect of each Series A Share a fixed cumulative cash preferential dividend (the **"Preference Dividend"**) at the annual rate of [•] per cent. [(•)%] of the Preference Amount] per Series A Share and to be paid [on an Exit or Conversion Date] [in [four] equal instalments on [•], [•], [•], and [•] in each year] [on [•] in every year] [on the winding up of the Company] or [upon redemption (in respect of those Series A Shares redeemed)] to the person registered as its holder on the relevant date [(the first such payment to be made on [•] for the period from and including the date of issue of such Series A Shares up to [•])].<sup>23</sup>

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<sup>23</sup> Board discretion included to address accounting issues of a dividend e.g. that the dividend must be discretionary for it not to be treated as a debt.



[If and to the extent that the Board does not approve the Preference Dividend (save if it is due to the Company having insufficient Available Profits), interest will accrue on the amount that would otherwise be payable if the Preference Dividend had been approved by the Board at an annual rate of *[insert rate which is twice that set out in Article 4.7]* per cent. above the base rate from time to time of [•] Bank plc, calculated on a daily basis over a 365 day year from and including the date the Board does not approve the Preference Dividend to the actual date of payment, compounded to the end of each calendar month in respect of the period from that date up to (and including) the date of actual payment. Such interest will automatically become a debt due from and immediately payable by the Company on the payment date specified in Article 4.7 as if the Preference Dividend had been so approved by the Board.]<sup>24</sup>

- 4.8 If the Company is unable to pay in full on the due date any Preference Dividend by reason of having insufficient Available Profits then it will on that date pay such amount of the Preference Dividend that it is then lawfully able to do so. Any Preference Dividend which is not paid on the due date as aforesaid shall be paid as soon as the Company has sufficient Available Profits and shall be paid in one or more instalments.
- 4.9 Unless the Company has insufficient Available Profits, the Preference Dividend will, notwithstanding that it is expressed to be cumulative, automatically become a debt due from and immediately payable by the Company on the payment date specified in Article 4.7. If and to the extent that the debt so constituted is not paid in full on that date, the unpaid amount will carry interest at an annual rate of [•] per cent. above the base rate from time to time of [•] Bank plc, calculated on a daily basis over a 365 day year from and including the date any sum becomes due to the actual date of payment, compounded to the end of each calendar month in respect of the period from that date up to (and including) the date of actual payment.

#### *Special Dividend*

- 4.10 [In the event that the Company has Available Profits as a result of a Significant Transaction (the "**Significant Profits**"), the Company will, with Investor Majority Consent [but without the need for a resolution of the Board] [and the approval of the Board in its sole discretion but without any need for a resolution of the Company] and before the application of any profits to reserve or for any other purpose [other than the Preference Dividend], pay in respect of the Equity Shares a dividend (the "**Special Dividend**") for which the aggregate amount is equal to the amount of the Significant Profits that is to be distributed in the order of priority set out in Article 5 and to be paid within [•] months of a Significant Transaction.<sup>25</sup>

[If and to the extent that the Board does not approve the Special Dividend, interest will accrue on the amount that would otherwise be payable if the Special Dividend had been approved by the Board at an annual rate of [•] per cent. above the base rate from time to time of [•] Bank plc, calculated on a daily basis over a 365 day year from and including the date the Board does not approve the Special Dividend to the actual date

<sup>24</sup> Suggested provision to be used to address that the dividend is to be discretionary for accounting standards.

<sup>25</sup> Board discretion included to address accounting issues of a dividend e.g. that the dividend must be discretionary for it not to be treated as a debt.

of payment, compounded to the end of each calendar month in respect of the period from that date up to (and including) the date of actual payment. Such interest will automatically become a debt due from and immediately payable by the Company on the payment date specified in Article 4.10 as if the Special Dividend had been so approved by the Board.]<sup>26</sup>

- 4.11 If it is not lawful for the Special Dividend to be paid, the Shareholders shall (to the extent lawful and within their control) take any necessary action reasonably requested by the Investor Majority to enable the Special Dividend to be paid lawfully.
- 4.12 Once the Investor Majority Consent [and Board approval] is obtained, the Special Dividend will automatically become a debt due from and immediately payable by the Company on the payment date specified in Article 4.10. If and to the extent that the debt so constituted is not paid in full on that date, the unpaid amount will carry interest at an annual rate of [•] per cent. above the base rate from time to time of [•] Bank plc, calculated on a daily basis over a 365 day year from and including the date any sum becomes due to the actual date of payment, compounded to the end of each calendar month in respect of the period from that date up to (and including) the date of actual payment.
- 4.13 The Company will procure that the profits of any other members of its Group available for distribution will be paid by way of dividend to the Company (or, as the case may be, the relevant member of its Group that is its immediate holding company or Parent Undertaking) if and to the extent that dividends are necessary to permit lawful and prompt payment by the Company of any dividend.
- 4.14 Where the Company is in Arrears, the first Available Profits arising will be applied in [the following order of priority]:
- (a) [first,] in or towards paying off all Arrears of the Preference Dividend;
  - (b) [second,] in or toward paying the Special Dividend if the Available Profits are as a result of a Significant Transaction;
  - (c) [[third,] in or towards the redeeming of all Series A Shares which have not been redeemed on or by the due date for redemption in accordance with Article 6.]
- 4.15 Articles 30(2) and 32 of the Model Articles shall not apply to the Preference Dividend or the Special Dividend.
- ...
- 5.5 Where any Special Dividend has been paid on a Series A Share, such amount so paid by way of Special Dividend shall be set off against (and up to the amount of) any amount subsequently payable on that Series A Share under Article [5.1(b)] and such Series A Shareholder shall only receive under Article [5.1(b)] the balance (if any) of the Preference Amount in respect of such Series A Share held by that holder.

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<sup>26</sup> Suggested provision to be used to address that the dividend is to be discretionary for accounting standards.

...

<sup>27</sup>[9.7 If at the time of conversion of any Series A Shares any Arrears [(including any Arrears in respect of any Preference Dividend)] thereon are outstanding, then the aggregate amount of all Arrears on such Series A Shares held by the relevant Series A Shareholder shall:

- (a) to the extent that the Company has sufficient reserves to do so, be capitalised into Ordinary Shares at a price per Ordinary Share equal to the applicable Capitalisation Price; and
- (b) to the extent that the Company has insufficient reserves to permit such capitalisation in full, (i) the outstanding balance of any Arrears on any Series A Shares so converted shall be released, waived or otherwise forgone, and (ii) the holder of any such converted Series A Shares shall be entitled to subscribe at nominal value for such number of Ordinary Shares as would have been issued to that holder had the amount of Arrears so released, waived and otherwise foregone been capitalised in accordance with Article 9.7(a).]<sup>28</sup>

**[OR]**

[9.7 On the Conversion Date (or as soon afterwards as it is possible to calculate the amount payable), the Company will, if it has sufficient Available Profits, pay to holders of the Series A Shares falling to be converted a dividend equal to all Arrears in relation to those Series A Shares to be calculated on a daily basis down to and including the day immediately preceding the Conversion Date. If the Company has insufficient Available Profits to pay all such Arrears in full then it will pay the same to the extent that it is lawfully able to do so and any Arrears that remain outstanding shall continue to be a debt due from and immediately payable by the Company.]<sup>29</sup>

**[OR]**

[9.7 If at the time of conversion of any Series A Shares any Arrears [(including any Arrears in respect of any Preference Dividend)] thereon are outstanding, then:

- (a) [all Arrears of any Preference Dividend on such Series A Shares shall be released, waived or otherwise foregone, such that no Arrears in respect of any Preference Dividend shall be outstanding on the Ordinary Shares arising from such conversion; and]
- (b) the aggregate amount of all Arrears [(other than in respect of any Preference Dividend)] on such Series A Shares shall remain and be outstanding as

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<sup>27</sup> One of these alternatives should be selected for use in Article 9.7 concerning the treatment of accrued dividends on Series A Shares upon conversion.

<sup>28</sup> This option provides for a capitalisation of any accrued dividends.

<sup>29</sup> This option provides for a cash payment of any accrued dividends.

Arrears on the Ordinary Shares arising from such conversion (being divided pro-rata amongst such Ordinary Shares).]<sup>30</sup>

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<sup>30</sup> This option provides for a carry-over of accrued unpaid dividends, with an additional option for a waiver of preferred dividends.

## Appendix B – EIS/VCT

**"Connected Person"** means any person with whom any relevant person is connected (as determined in accordance with the provisions of section 1122 of the CTA);

**"EIS Investors"** means [•] [has the meaning given in the [Shareholders' Agreement] [Subscription Agreement];]<sup>31</sup>

**"Preference Dividend"** has the meaning given in Article [35.1];

**"Relevant Connected Person"** has the meaning given in Article [35.1];

...

### EXAMPLE LIQUIDATION PREFERENCE

5.1 On a distribution of assets on a liquidation or a return of capital (other than a conversion, redemption or purchase of Shares) the surplus assets of the Company remaining after payment of or provisioning for its liabilities ("**Surplus Assets**") shall be applied (to the extent that the Company is lawfully permitted to do so):

5.1.1 first, in distributing to the holders of the Deferred Shares, if any, a total of one penny in aggregate for the entire class of Deferred Shares (which payment shall be deemed satisfied by distribution to any one holder of Deferred Shares);

5.5.2 thereafter, in paying a sum equal to £X plus £100 (where X is an amount equal to the sum of the aggregate Preference Amount in respect of the Series A Shares then outstanding) to be distributed as to 0.00001% of such amount to the holders of Ordinary Shares pro-rata according to the number of Ordinary Shares held by such holders and as to the balance of such amount to the holders of the Series A Shares on a pro-rata basis such that each holder of Series A Shares receives in respect of each Series A Share held the Preference Amount, provided that, if there are insufficient Surplus Assets to pay the amounts payable under Article [5.1(b)] in full, the Surplus Assets will be distributed among the holders of the Ordinary Shares and Series A Shares pro-rata to the amounts which such holders would otherwise have been entitled to receive pursuant to this Article [5.1(b)];

5.5.3 thereafter, the balance of the Surplus Assets (if any) shall be distributed as to 0.00001% of such balance (if any) to the holders of Series A Shares pro-rata to the number of Series A Shares held and as to the balance to the holders of the Ordinary Shares pro-rata to the number of Ordinary Shares held,

*provided further* that if the sum which would be distributed in aggregate pursuant to Articles 5.1.2 and 5.1.3 to each holder of Series A Shares on an as-converted to Ordinary Shares basis would be greater than the sum to otherwise be paid to such holder of Series A Shares in respect of each Series A Share held, then such holder shall instead be paid the greater sum.

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<sup>31</sup> If Investors seeking EIS reliefs are subscribing for Series A Shares, they must be expressly carved out (by name) from the anti-dilution rights in Article 10. A separate share class is not required.

...

35. **50 per cent caps on Corporate Shareholders and their Connected Persons**

35.1 The limitations in this Article [35] shall apply to:

- (a) any Shareholder that is a "company" for the purpose of the independence requirement in section 185(2) and section 296(2) of the Income Tax Act 2007 (a "**Corporate Shareholder**"); and
- (b) any Shareholder that is a Connected Person in relation to that Corporate Shareholder (a "**Relevant Connected Person**").

35.2 At any time on a liquidation or other return of capital event (including the redemption or repurchase of Shares) the aggregate amount payable to any Corporate Shareholder and all of its Relevant Connected Persons shall not exceed 50 per cent. of the assets of the Company available for distribution amongst the participators (as defined in section 454 of the CTA) of the Company at that time.

35.3 At any time, on a distribution of any profits of the Company by way of dividend or otherwise (including on the redemption or repurchase of Shares) no distribution shall be made to any Corporate Shareholder and all of its Relevant Connected Persons if, and to the extent that, the aggregate amount that would (but for this Article [35.3]) be payable to that Corporate Shareholder and its Relevant Connected Persons would exceed 50 per cent. of the total amount of the profits of the Company available for distribution at that time.

35.4 At any time the aggregate number of votes attaching to all the Shares held by any Corporate Shareholder and all of its Relevant Connected Persons shall be restricted to the lower of:

- (a) 49.99 per cent. of the votes attaching to all Shares; and
- (b) the total number of votes that would have been conferred on such Shareholders if this Article [35.4] did not apply.

## Appendix C – Redemption

"Investor Redemption Notice" has the meaning given in Article 6.5;

...

6.5 Subject to the Act, the Investor Majority may require the Company [after [•] years from the Date of Adoption] [with the approval of the Board in its sole discretion] by notice in writing (an "Investor Redemption Notice") to redeem all of the Series A Shares at that time in issue, if at any time:

- (a) the Company has not (for whatever reason) paid the Preference Dividend within [•] Business Days of the due date;
- (b) the Company has not (for whatever reason) redeemed any Series A Shares in accordance with the requirements of this Article within [•] Business Days of the due date;
- (c) there has been proposed a resolution for the winding up of the Company, a resolution for a reduction in the capital of the Company or a resolution varying any of the rights attaching to the Series A Shares; or
- (d) [other issues]

and, if any Investor Redemption Notice is served, all the Series A Shares will immediately become due for redemption on the date of such notice.<sup>32</sup>

6.6 On each date on which all or any of the Series A Shares may be redeemed, the Company shall redeem the number of Series A Shares set out in the Investor Redemption Notice and the relevant Series A Shareholder shall deliver to the Company at its registered office the certificate(s) for the Series A Shares to be redeemed (or an indemnity for lost certificate in a form acceptable to the Board, in respect of any lost certificate(s)) and on such delivery (and against the receipt by the Series A Shareholder for the redemption moneys payable in respect of their Series A Shares) the Company shall pay each Series A Shareholder (or, in the case of joint holders, to the Series A Shareholder whose name stands first in the register of Shareholders in respect of those Series A Shares) the Preference Amount for each Series A Share being redeemed.

6.7 The Company shall, in the case of a redemption in full, cancel the share certificate of the Series A Shareholder concerned, and, in the case of a redemption of part of the holding of Series A Shares included in a certificate, either (a) note the amount and date of redemption on the original certificate or (b) cancel the original certificate and without charge issue a new certificate to the holder for the balance of the Series A Shares not redeemed on that occasion.

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<sup>32</sup> Suggested text to be used to address accounting issues of redemption e.g. that the redemption must be discretionary for it not to be treated as a debt.

- 6.8 If on any due date for redemption of Series A Shares the Company is prohibited by law from redeeming all or any of the Series A Shares then due to be redeemed, it shall on the due date redeem that number of the Series A Shares as it may then lawfully redeem, and if there is more than one holder whose Series A Shares are due to be redeemed then the Series A Shares shall be redeemed in proportion as nearly as may be to their existing holdings of Series A Shares and the Company shall redeem the balance of those shares as soon as practical after it is not so prohibited and, for so long as the prohibition remains and any Series A Shares have not been redeemed (and notwithstanding any other provisions of these Articles) the Preference Dividend shall continue to accrue up to the date of redemption and the Company shall not pay any dividend or otherwise make any distribution of capital or otherwise (except in the ordinary course of business) decrease its profits available for distribution. If the Company fails to make any partial redemption of Series A Shares on any due date for redemption, then subsequent redemptions of Series A Shares shall be deemed to be of those Series A Shares which first became due for redemption.
- 6.9 [If and to the extent that the Board does not approve the redemption for Series A Shares required by the Investors under Article 6.5 (save if it is due to the Company having insufficient Available Profits), interest will accrue on the amount that would otherwise be payable if the redemption had been approved by the Board at an annual rate of *[insert rate that is commercially reasonable]* per cent. above the base rate from time to time of [•] Bank plc, calculated on a daily basis over a 365 day year from and including the date the Board does not approve the redemption to the actual date of payment, compounded to the end of each calendar month in respect of the period from that date up to (and including) the date of actual payment. Such interest will automatically become a debt due from and immediately payable by the Company on the payment date specified in Article 6.5 as if the redemption had been so approved by the Board.]<sup>33</sup>

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<sup>33</sup> Suggested provision to be used to address that the redemption requirement is to be discretionary for accounting standards.



## Appendix D – Alternative Anti-Dilution Calculations

### *[Full Ratchet]*

$$N = \left( \frac{W}{X} \right) - Z$$

Where:

- N = the number of Anti-Dilution Shares to be issued to the Exercising Investor;
- W = the aggregate Starting Price of the Series A Shares held by the Exercising Investor immediately prior to the Qualifying Issue;
- X = the average equivalent price per Equity Share in respect of the New Securities granted or issued pursuant to the Qualifying Issue (and for which purpose any non-cash consideration shall be valued at a cash equivalent sum agreed by the Board and the Investor Majority and failing such agreement a sum certified by the Auditors acting as experts and not as arbitrators as being in their opinion the cash equivalent value of such non-cash consideration);
- Z = the number of Series A Shares held by the Exercising Investor immediately prior to the Qualifying Issue.

**OR**

### *[Narrow Based Weighted Average Ratchet]*

$$N = \left( \frac{W}{WA} \right) - Z$$

Where:

- N = the number of Anti-Dilution Shares to be issued to the Exercising Investor;
- W = the aggregate Starting Price of the Series A Shares held by the Exercising Investor immediately prior to the Qualifying Issue;
- WA = the weighted average price per share held by the Exercising Investors as calculated by the following formula:

$$WA = \frac{(T + M)}{(B + Y)}$$

- T = the aggregate Starting Price of all the Series A Shares held by all such Exercising Investors immediately prior to the Qualifying Issue;
- M = the aggregate of amounts to be paid in respect of the New Securities to be issued pursuant to the Qualifying Issue [and the aggregate of amounts paid in respect of all previous Qualifying Issues (if any)] (and for which purpose any non-cash consideration shall be valued at a cash equivalent sum agreed by the Board and the Investor Majority and failing such agreement a sum certified by the Auditors acting as experts and not as arbitrators as being in their opinion the cash equivalent value of such non-cash consideration);
- B = the aggregate number of Series A Shares held by all Exercising Investors immediately prior to the Qualifying Issue;
- Y = the number of Equity Shares issued or granted pursuant to the Qualifying Issue (or in the case of Relevant Securities issued or granted pursuant to the Qualifying Issue, an equivalent number of Equity Shares to be determined in accordance with Article 10.3) [and all previous Qualifying Issue(s) (if any)];
- Z = the number of Series A Shares held by the relevant Exercising Investor immediately prior to the Qualifying Issue.