



**TERRITORY OF THE BRITISH VIRGIN ISLANDS  
THE BVI BUSINESS COMPANIES ACT**

**AMENDED AND RESTATED**

**MEMORANDUM OF ASSOCIATION**

**AND**

**ARTICLES OF ASSOCIATION**

**OF**

**ESTABLISHMENT LABS HOLDINGS INC.**

**Incorporated on 9 October 2013**

**Approved by unanimous resolutions of the Directors on**  
the 15th day of June, 2018  
Filed on the 19<sup>th</sup> day June, 2018

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**TERRITORY OF THE BRITISH VIRGIN ISLANDS**

**BVI BUSINESS COMPANIES ACT**

**AMENDED AND RESTATED**

**MEMORANDUM OF ASSOCIATION**

**OF**

**ESTABLISHMENT LABS HOLDINGS INC.**

1. NAME

The name of the company is Establishment Labs Holdings Inc. (the “**Company**”).

2. STATUS

The Company is a company limited by shares.

3. REGISTERED OFFICE AND REGISTERED AGENT

The first registered office of the Company is OMC Chambers, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands.

The first registered agent of the Company is Overseas Management Company Trust (B.V.I.) Ltd. of OMC Chambers, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands.

4. CAPACITY AND POWERS

Subject to the BVI Business Companies Act, (the “**Act**”) and any other British Virgin Islands legislation, the Company has, irrespective of corporate benefit:

- (a) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and
- (b) for the purposes of subparagraph (a), full rights, powers and privileges.

5. NUMBER AND CLASSES OF SHARES

The Company is authorized up to issue to a maximum of 109,447,799 shares, divided into the following classes:

- (a) 84,050,000 Common Shares with a par value of \$1.00 each (the “**Common Shares**”);
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- (b) 13,482,782 Class A Ordinary Shares with a par value of US\$1.00 each (the “**Class A Ordinary Shares**”);
- (c) 7,723,848 Class B Ordinary Shares with a par value of US\$1.00 each (the “**Class B Ordinary Shares**”);
- (d) 96,301 Class C Ordinary Shares with no par value (the “**Class C Ordinary Shares**”);
- (e) 1,539,359 Class D Ordinary Shares with no par value (the “**Class D Ordinary Shares**”);
- (f) 323,366 Class E Ordinary Shares with no par value (the “**Class E Ordinary Shares**”);
- (g) 357,143 Class F Ordinary Shares with no par value (the “**Class F Ordinary Shares**”);
- (h) 1,250,000 Class G Ordinary Shares with no par value (the “**Class G Ordinary Shares**”); and
- (i) 625,000 Class G-1 Ordinary Shares with no par value (the “**Class G-1 Ordinary Shares**”).

## 6. RIGHTS ATTACHING TO SHARES

### 6.1 Common Shares

Subject to the Articles, the terms of the issue of any Common Shares of the Company confers on the holder:

- (a) the right to one vote at a meeting of the Members or on any Resolution of Members;
- (b) the right to an equal share in any Distribution paid by the Company; and
- (c) the right to an equal share in the distribution of the surplus assets of the Company on a winding up.

### 6.2 Class A Ordinary Shares

Subject to the Articles, the terms of the issue of any Class A Ordinary Share of the Company confers on the holder:

- (a) the right to one vote at a meeting of the Members or on any Resolution of Members;
  - (b) the right to an equal share in any Distribution paid by the Company;
  - (c) the right to an equal share in the distribution of the surplus assets of the Company on a winding up; and
  - (d) the right to appoint and remove directors in accordance with the Articles.
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### 6.3 Class B Ordinary Shares

Subject to the Articles, the terms of the issue of any Class B Ordinary Share of the Company confers on the holder:

- (a) the right to one vote at a meeting of the Members or on any Resolution of Members;
- (b) the right to an equal share in any Distribution paid by the Company;
- (c) the right to an equal share in the distribution of the surplus assets of the Company on a winding up; and
- (d) the right to appoint and remove directors in accordance with the Articles.

### 6.4 Class C Ordinary Shares

Subject to the Articles, the terms of the issue of any Class C Ordinary Share of the Company confers on the holder:

- (a) the right to one vote at a meeting of the Members or on any Resolution of Members provided the holders of Class C Ordinary Shares vote together with the holders of Ordinary Class A Shares and Ordinary Class B Shares and not as a separate class;
- (b) the right to an equal share in any Distribution paid by the Company; and
- (c) the right to an equal share in the distribution of the surplus assets of the Company on a winding up.

### 6.5 Class D Ordinary Shares

Subject to the Articles, the terms of the issue of any Class D Ordinary Share of the Company confers on the holder:

- (a) the right to one vote at a meeting of the Members or on any Resolution of Members provided the holders of Class D Ordinary Shares vote together with the holders of Class A Ordinary Shares, Class B Ordinary Shares and Class C Ordinary Shares not as a separate class;
  - (b) the right to an equal share in any Distribution paid by the Company; and
  - (c) the right to an equal share in the distribution of the surplus assets of the Company on a winding up.
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6.6 For so long as any Class D Ordinary shares remain outstanding, in addition to any other vote or consent required in this Memorandum or the Articles or by law, the vote or written consent of the holders of at least a majority of the outstanding Class D Ordinary Shares, voting together as a single class, shall be necessary for effecting or validating the following actions (whether consummated by merger, amendment, issuance of new shares, consideration or otherwise):

(a) amends the preferences, rights or privileges of the Class D Ordinary Shares;

or

(b) pays or declares any dividend or distribution on any company shares

6.7 Class E Ordinary Shares

Subject to the Articles, the terms of the issue of any Class E Ordinary Share of the Company confers on the holder:

(a) the right to one vote at a meeting of the Members or on any Resolution of Members provided the holders of Class E Ordinary Shares vote together with the holders of Class A Ordinary Shares, Class B Ordinary Shares, Class C Ordinary Shares and Class D Ordinary Shares not as a separate class;

(b) the right to an equal share in any Distribution paid by the Company; and

(c) the right to an equal share in the distribution of the surplus assets of the Company on a winding up.

6.8 Class F Ordinary Shares

Subject to the Articles, the terms of the issue of any Class F Ordinary Share of the Company confers on the holder:

(a) the right to one vote at a meeting of the Members or on any Resolution of Members provided the holders of Class F Ordinary Shares vote together with the holders of Class A Ordinary Shares, Class B Ordinary Shares, Class C Ordinary Shares, Class D Ordinary Shares and Class E Ordinary Shares not as a separate class;

(b) the right to an equal share in any Distribution paid by the Company; and

(c) the right to an equal share in the distribution of the surplus assets of the Company on a winding up.

6.9 Class G Ordinary Shares

Subject to the Articles, the terms of the issue of any Class G Ordinary Share of the Company confers on the holder:

(a) the right to one vote at a meeting of the Members or on any Resolution of Members provided the holders of Class G Ordinary Shares vote together with the holders of

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Class A Ordinary Shares, Class B Ordinary Shares, Class C Ordinary Shares, Class D Ordinary Shares, Class E Ordinary Shares and Class F Ordinary Shares not as a separate class;

- (b) the right to an equal share in any Distribution paid by the Company; and
- (c) the right to an equal share in the distribution of the surplus assets of the Company on a winding up.

#### 6.10 Class G-1 Ordinary Shares

Subject to the Articles, the terms of the issue of any Class G-1 Ordinary Share of the Company confers on the holder:

- (a) the right to one vote at a meeting of the Members or on any Resolution of Members provided the holders of Class G-1 Ordinary Shares vote together with the holders of Class A Ordinary Shares, Class B Ordinary Shares, Class C Ordinary Shares, Class D Ordinary Shares, Class E Ordinary Shares, Class F Ordinary Shares and Class G Ordinary Shares not as a separate class;
- (b) the right to an equal share in any Distribution paid by the Company; and
- (c) the right to an equal share in the distribution of the surplus assets of the Company on a winding up.
- (d) In the event of any Deemed Liquidation Event or any liquidation, dissolution or winding up of the Company, either voluntary or involuntary, the holders of the Class G-1 Ordinary Shares shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Company to the holders of the Class A Ordinary Shares, Class B Ordinary Shares, Class C Ordinary Shares, Class D Ordinary Shares, Class E Ordinary Shares, Class F Ordinary Shares and Class G Ordinary Shares by reason of their ownership of such Class G-1 Ordinary Shares, an amount per share for each share of Class G-1 Ordinary Shares equal to the greater of (i) \$16.00 plus all declared or accrued but unpaid dividends (if any) on such Class G-1 Ordinary Share and (ii) the amount that a holder of a Class G-1 Ordinary Share would have received had such Class G-1 Ordinary Share been converted into Common Shares pursuant to Article 7 immediately prior to such Deemed Liquidation Event or such liquidation, dissolution or winding up (the “**Class G-1 Liquidation Preference**”). If upon the Deemed Liquidation Event or such liquidation, dissolution or winding up of the Company, the assets of the Company legally available for distribution to the holders of the Class G-1 Ordinary Shares are insufficient to permit the payment to such holders of the full amounts specified herein, then the entire assets of the Company legally available for distribution shall be distributed to the holders of Class G-1 Ordinary Shares. After the payment or setting aside for payment to the holders of Class G-1 Ordinary Shares of the full amounts specified in this Section 6.10(d), the entire remaining assets of the Company legally available for distribution shall be distributed pro rata to holders of the Common Shares, Class A Ordinary Shares, Class B Ordinary Shares, Class C Ordinary Shares, Class D Ordinary Shares, Class E Ordinary Shares, Class F Ordinary Shares and Class G Ordinary Shares in proportion to the number of shares of shares held by them.

- (e) Dividends on the Class G-1 Ordinary Shares shall begin to accrue on at an annual rate of \$0.96 per share from the date on which the Company issues such Class G-1 Ordinary Shares and shall be cumulative. The Company shall have no obligation to pay any dividends, except when, as and if declared by the Board of Directors out of any assets at the time legally available therefor or as otherwise specifically provided in this Memorandum. No distribution shall be made with respect to other shares of the Company until all declared or accrued but unpaid dividends on the Class G-1 Ordinary Shares have been paid or set aside for payment to the holders thereof.
- (f) For so long as any Class G-1 Ordinary shares remain outstanding, in addition to any other vote or consent required in this Memorandum or the Articles or by law, the vote or written consent of the holders of at least a majority of the outstanding Class G-1 Ordinary Shares, voting together as a single class, shall be necessary for effecting or validating the following actions (whether consummated by merger, amendment, issuance of new shares, consideration or otherwise):
  - i. amends the preferences, rights or privileges of the Class G-1 Ordinary Shares;
  - ii. elects to effect an automatic conversion of Ordinary Shares into Common Shares pursuant to Section 7.1(b); or
  - iii. pays or declares any dividend or distribution on any company shares.

## 7. CONVERSION

### 7.1 Automatic Conversion

Each Ordinary Share shall convert automatically into one Common Share (or, with respect to Class F Ordinary Shares and Class G-1 Ordinary Shares, as such ratio may be adjusted pursuant to Section 7.3) (such ratio, the “**Conversion Ratio**”) upon the earliest of:

- (a) the closing of a firm underwritten public offering of Common Shares with gross proceeds of at least US\$35 million; or
- (b) such date and time as is specified by the affirmative written vote or written consent of the holders of at least a majority of the outstanding Class A Ordinary Shares, Class B Ordinary Shares, Class C Ordinary Shares, Class D Ordinary Shares, Class E Ordinary Shares, Class F Ordinary Shares and Class G Ordinary Shares voting as a single class.

### 7.2 No Fractional Shares

No fractional Common Shares shall be issued upon conversion of Ordinary Shares. In lieu of any fractional shares to which the holder would otherwise be entitled, the Company shall pay cash equal to such fraction multiplied by the then fair market value of a share of the Company’s Common Shares, as determined by the Board of Directors. For such purpose, all shares of the Company’s Ordinary Shares held by each holder of Ordinary Shares shall be aggregated, and any resulting fractional share of Common Shares shall be paid in cash.

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**7.3 Adjustment for Future Equity Financings**

- (a) If the Company issues equity securities in an equity financing that is not the Company's initial public offering of registered securities under the Securities Act of 1933, as amended (such initial public offering, the "**IPO**"), for a consideration per share (such consideration per share being referred to as the "**Future Equity Financing Price**") less than \$14.00 per share, then the Conversion Ratio for each Class F Ordinary Share (or if the Class F Ordinary Shares have been converted to Common Shares in accordance with Section 7.1(b), each such converted Common Share) shall be equal to the quotient of (a) 14.0 divided by (b) the Future Equity Financing Price multiplied by 0.85 (the "**Class F Price Adjustment**"). The Class F Price Adjustment obligation in this Section 7.3(a) shall terminate immediately upon the closing of the IPO if such IPO consists of the closing of a firm underwritten public offering of Common Shares with gross proceeds of at least US\$35 million (a "**Qualifying IPO**") but otherwise shall continue until conversion occurs pursuant to the terms of this Section 7.3(a) or the conversion right expires in connection with Section 7.3(b).
- (b) If the Company issues equity securities in the IPO for a consideration per share (such consideration per share being referred to as the "**IPO Price**") less than \$15.00 per share, then the Conversion Ratio for each Class F Ordinary Share (or if the Class F Ordinary Shares have been converted to Common Shares in accordance with Section 7.1(b), each such converted Common Share) shall be equal to the quotient of (a) 15.0 divided by (b) the IPO Price multiplied by 0.85 (the "**Class F IPO Price Adjustment**"). The Class F IPO Price Adjustment obligation in this Section 7.3(b) shall terminate immediately upon the closing of any IPO below \$15 per share by reason of the automatic conversion set forth herein, or upon the closing of a Qualifying IPO above \$15 per share but shall continue for further public offerings if such IPO is not a Qualifying IPO and the shares have not otherwise converted hereunder.
- (c) If the Company issues equity securities in a public offering registered under the U.S. Securities Act of 1933, as amended (a "**Public Offering**") for a price to the public (the "**Public Offering Price**") of less than \$17.60 per share, then the Conversion Ratio for each Class G-1 Ordinary Share (or if the Class G-1 Ordinary Shares have been converted to Common Shares in accordance with Section 7.1(b), each holder of such converted Common Shares shall be issued additional Common Shares as though such increased Conversion Ratio applied at the time of such conversion) shall be increased (but shall not be decreased hereunder) to an amount equal to the quotient of (a) 17.6 divided by (b) the Public Offering Price multiplied by 0.90 (the "**Class G-1 IPO Price Adjustment**"). The Class G-1 IPO Price Adjustment obligation in this Section 7.3(c) shall terminate immediately upon the closing of (i) any Public Offering with a Public Offering Price below \$17.60 per share pursuant to which an adjustment to the Conversion Ratio occurs under this Section 7.3(c), or (ii) a firm-commitment underwritten Public Offering with gross proceeds of at least US\$35 million, which may be the Company's IPO (a "**Qualifying Offering**"), with a Public Offering Price above \$17.60 per share but shall continue for further public offerings if the shares have not otherwise converted pursuant to the terms of Section 7.1(a).
- (d) If the Company issues equity securities in an equity financing that is not a Public Offering for a Future Equity Financing Price less than \$16.00 per share, then the Conversion Ratio for each Class G-1 Ordinary Share (or if the Class G-1 Ordinary Shares have been converted to Common Shares in accordance with Section 7.1(b), each holder of such converted
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Common Shares shall be issued additional Common Shares as though such increased Conversion Ratio applied at the time of such conversion) shall be increased (but shall not be decreased hereunder) to an amount equal to the quotient of (a) 16.0 divided by (b) the Future Equity Financing Price multiplied by 0.90 (the “**Class G-1 Financing Price Adjustment**”). The Class G-1 Financing Price Adjustment shall terminate immediately upon the closing of (i) any equity financing below \$16 per share pursuant to which an adjustment to the Conversion Ratio occurs under this Section 7.3(d) or (ii) a Qualifying Offering, but otherwise shall continue until conversion occurs pursuant to the terms of Section 7.1(a).

8. VARIATION OF CLASS RIGHTS

Subject to the Articles, the rights attached to any class or series of shares (unless otherwise provided by the terms of issue of the shares of that class or series), whether or not the Company is being wound-up, may be varied with the consent in writing of all the holders of the issued shares of that class or series or with the sanction of a resolution passed by a majority of the votes cast at a separate meeting of the holders of the shares of the class or series.

9. RIGHTS NOT VARIED BY THE ISSUE OF SHARES PARI PASSU

Rights conferred upon the holders of the shares of any class or series issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class or series, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

10. REGISTERED SHARES

The Company shall issue registered shares only, and such shares may be in full or fractional form. The Company is not authorised to issue bearer shares, convert registered shares to bearer shares, or exchange registered shares for bearer shares.

11. AMENDMENT OF MEMORANDUM AND ARTICLES OF ASSOCIATION

Subject to Clause (a) and the Articles, the Company may amend its Memorandum or Articles by a Resolution of Members or a Resolution of Directors, save that no amendment may be made by a Resolution of Directors:

- (a) to restrict the rights or powers of the Members to amend the Memorandum or Articles;
  - (b) to change the percentage of Members required to pass a Resolution of Members to amend the Memorandum or Articles;
  - (c) in circumstances where the Memorandum or Articles cannot be amended by the Members;
  - (d) to clauses 6 (except where such amendment is for the purposes of setting out the rights of any new classes of shares issued under Clause 5), 9 or this clause 11;
  - (e) which, by its terms, materially and adversely affects any holder of Ordinary Shares in a unique or disproportionate manner relative to all holders of the Ordinary Shares, without the prior written consent of each such holder of Ordinary Shares; or
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- (f) to any right or protection specifically granted to any Madryn Holder in the Memorandum or Articles, in a manner adverse to such Madryn Holder, without the written consent of such Madryn Holder.

12. DEFINITIONS

The meanings of words in this Memorandum are as defined in the Articles annexed hereto.

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We, **OVERSEAS MANAGEMENT COMPANY TRUST (B.V.I.) LTD** ., of OMC Chambers, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands, for the purpose of incorporating a BVI Business Company under the laws of the British Virgin Islands hereby sign this Memorandum of Association the 9<sup>th</sup> day of October, 2013

Incorporator

SGD: Sallr Husein

Authorised Signatory

**OVERSEAS MANAGEMENT COMPANY TRUST (B.V.I.) LTD.**

**TERRITORY OF THE BRITISH VIRGIN ISLANDS**

**BVI BUSINESS COMPANIES ACT**

**AMENDED AND RESTATED**

**ARTICLES OF ASSOCIATION  
OF**

**ESTABLISHMENT LABS HOLDINGS INC.  
(a company limited by shares)**

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## INTERPRETATION

### 1. Definitions

1.1 In these Articles, the following words and expressions shall, where not inconsistent with the context, have the following meanings, respectively:

Act	BVI Business Companies Act, as from time to time amended or restated;
Affiliate	an individual, firm, corporation, partnership, association, limited liability company, trust or any other entity (collectively, a “ <b>Person</b> ”) shall be deemed an Affiliate of another Person who, directly or indirectly, controls, is controlled by or is under common control with such Person, including, without limitation, any general partner, limited partner, managing member, officer or director of such Person or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, such Person;
Articles	these Articles of Association as originally registered or as from time to time amended or restated;
Board	the board of directors appointed or elected pursuant to these Articles and acting by Resolution of Directors;
Company	Establishment Labs Holdings Inc.;
Convertible Securities	any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for shares of the Company, but excluding Options;
Distribution	(a) the direct or indirect transfer of an asset, other than the Company’s own shares, to or for the benefit of a Member; or  (b) the incurring of a debt to  or for the benefit of a Member;  in relation to shares held by a Member and whether by means of the purchase of an asset, the purchase, redemption or other acquisition of shares, a transfer of indebtedness or otherwise, and includes a dividend;
Investors	CPH TU, L.P. and each other person to whom the rights of an Investor are assigned (as permitted hereby);
Investor Directors	three persons designated by the holders of at least a majority of the then outstanding Class B Ordinary Shares held by the Investors (which individuals shall initially be Nicholas Lewin, Edward

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	Shutter and David Hung), for so long as the Investors and their Affiliates continue to hold at least 25% of the total Class B Ordinary Shares, which number is subject to appropriate adjustment for all share splits, dividends, combinations, recapitalizations and the like; provided, however, that in the event that the size of the Board is increased to seven (7) or more directors, the Investors shall have the right to designate a total of three (3) directors;
Key Holder	Medical Device Holdings S.A., Global Silicone Ltd., Premium Group Holdings Ltd., CPH TU, L.P. and Marmoniel LLC, each person to whom the rights of a Key Holder are assigned (as permitted hereby);
Madryn Holders	collectively, Madryn Health Partners, LP and Madryn Health Partners (Cayman Master), LP, and their respective successors and assigns, for as long as they hold Ordinary Shares in the Company;
Member	a person whose name is entered in the register of members as the holder of one or more shares, or fractional shares, in the Company;
Memorandum	the Memorandum of Association of the Company as originally registered or as from time to time amended or restated;
Ordinary Shares	Class A Ordinary Shares, Class B Ordinary Shares, Class C Ordinary Shares, Class D Ordinary Shares, Class E Ordinary Shares, Class F Ordinary Shares, Class G Ordinary Shares and/or Class G-1 Ordinary Shares;
Resolution of Directors	(a) a resolution approved at a duly constituted meeting of directors or of a committee of directors of the Company by the affirmative vote of a simple majority of the directors present who voted and did not abstain; or  (b) a resolution consented to in writing by all of the directors or of all the members of the committee, as the case may be;
Resolution of Members	(a) a resolution approved at a duly constituted meeting of Members by the affirmative vote of a simple majority of the votes of those Members entitled to vote and voting on the resolution; or  (b) a resolution consented to in writing by all of the Members entitled to vote thereon;
Seal	the common seal of the Company;
Secretary	the person appointed to perform any or all of the duties of secretary of the Company and includes any deputy or assistant secretary and any person appointed by the Board to perform any of the duties of the Secretary;

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Shareholder	each holder of Class A Ordinary Shares, Class B Ordinary Shares, Class C Ordinary Shares, Class D Ordinary Shares, Class E Ordinary Shares, Class F Ordinary Shares, Class G Ordinary Shares, Class G-1 Ordinary Shares or Common Shares together with any subsequent investors, or transferees, the Investors and the Key Holders;
Shares	shall mean and include any securities of the Company the holders of which are entitled to vote for members of the Board, including without limitation, all shares of the Company, by whatever name called, now owned or subsequently acquired by a Shareholder, however acquired, whether through share splits, share dividends, reclassifications, recapitalizations, similar events or otherwise; and
Treasury Share	a share of the Company that was previously issued but was repurchased, redeemed or otherwise acquired by the Company and not cancelled.

**1.2**In these Articles, where not inconsistent with the context:

- (a) words denoting the plural number include the singular number and vice versa;
- (b) words denoting the masculine gender include the feminine and neuter genders;
- (c) words importing persons include companies, associations or bodies of persons whether corporate or not;
- (d) a reference to voting in relation to shares shall be construed as a reference to voting by Members holding the shares, except that it is the votes allocated to the shares that shall be counted and not the number of Members who actually voted and a reference to shares being present at a meeting shall be given a corresponding construction;
- (e) a reference to money is unless otherwise stated a reference to the currency in which shares of the Company shall be issued;
- (f) the words:-
  - (i) "may" shall be construed as permissive; and
  - (ii) "shall" shall be construed as imperative; and
- (g) unless otherwise provided herein, words or expressions defined in the Act shall bear the same meaning in these Articles.

**1.3**In these Articles, expressions referring to writing or its cognates shall, unless the contrary intention appears, include facsimile, printing, lithography, photography, electronic mail and other modes of representing words in visible form.

**1.4**Headings used in these Articles are for convenience only and are not to be used or relied upon in the construction hereof.

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## SHARES

### 2. Power to Issue Shares

Subject to the provisions of the Memorandum, the unissued shares of the Company shall be at the disposal of the Board which may, without prejudice to any rights previously conferred on the holders of any existing shares or class or series of shares, offer, allot, grant options over or otherwise dispose of the shares to such persons, at such times and upon such terms and conditions as the Company may by Resolution of Directors determine.

### 3. Power of the Company to Purchase its Shares

Subject to these Articles, the Company may by Resolution of Directors purchase, redeem or otherwise acquire and hold its own shares. Sections 60, 61 and 62 of the Act shall not apply to the Company.

### 4. Treatment of Purchased, Redeemed or Acquired Shares

**4.1** Subject to Article 4.2, a share that the Company purchases, redeems or otherwise acquires may be cancelled or held by the Company as a Treasury Share.

**4.2** The Company may only hold a share that has been purchased, redeemed or otherwise acquired as a Treasury Share if the number of shares purchased, redeemed or otherwise acquired, when aggregated with shares of the same class already held by the Company as Treasury Shares, does not exceed 50% of the shares of that class previously issued by the Company, excluding shares that have been cancelled.

### 5. Treasury Shares

**5.1** Treasury Shares may be transferred by the Company and the provisions of the Act, the Memorandum and these Articles that apply to the issue of shares apply to the transfer of Treasury Shares.

**5.2** All the rights and obligations attaching to a Treasury Share are suspended and shall not be exercised by or against the Company while it holds the share as a Treasury Share.

### 6. Consideration

**6.1** A share may be issued for consideration in any form, including money, a promissory note or other written obligation to contribute money or property, real property, personal property (including goodwill and know-how), services rendered or a contract for future services.

**6.2** No share may be issued for a consideration other than money unless the Board passes a resolution stating:

- (a) the amount to be credited for the issue of the share;
  - (b) its determination of the reasonable present cash value of the non-money consideration for the issue; and
  - (c) that, in its opinion, the present cash value of the non-money consideration for the issue is not less than the amount to be credited for the issue of the share.
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**6.3** No share may be issued by the Company that:

- (a) increases the liability of a person to the Company; or
- (b) imposes a new liability on a person to the Company,

unless that person, or an authorised agent of that person, agrees in writing to becoming the holder of the share.

**6.4** The consideration for a share with par value shall not be less than the par value of the share.

## **7. Forfeiture of Shares**

**7.1** Where a share is not fully paid for on issue, the Board may, subject to the terms on which the share was issued, at any time serve upon the Member a written notice of call specifying a date for payment to be made.

**7.2** The written notice of call shall name a further date not earlier than the expiration of fourteen days from the date of service of the notice on or before which the payment required by the notice is to be made and shall contain a statement that in the event of non-payment at or before the time named in the notice, the share will be liable to be forfeited.

**7.3** Where a notice complying with the foregoing provisions has been issued and the requirements of the notice have not been complied with, the Board by Resolution of Directors may, at any time before tender of payment forfeit and cancel the share to which the notice relates and direct that the register of members be updated.

**7.4** Upon forfeiture and cancellation pursuant to Article 7.3, the Company shall be under no obligation to refund any moneys to that Member and that Member shall be discharged from any further obligation to the Company as regards the forfeited share.

## **8. Share Certificates**

**8.1** The Company shall not be required to issue certificates in respect of its shares to a Member, but may elect to do so by the determination of any one director or the Secretary in his sole discretion, upon the request and at the expense of the Member.

**8.2** If the Company issues share certificates, the certificates shall be signed by at least one director or such other person who may be authorised by Resolution of Directors to sign share certificates, or shall be under the common seal of the Company, with or without the signature of any director, and the signatures and common seal may be facsimiles.

**8.3** Any Member receiving a share certificate for registered shares shall indemnify and hold the Company and its directors and officers harmless from any loss or liability which it or they may incur by reason of wrongful or fraudulent use or representation made by any person by virtue of the possession thereof. If a share certificate for registered shares is worn out or lost it may be renewed on production of the worn out certificate or on satisfactory proof of its loss together with such indemnity as may be required by a Resolution of Directors.

## **9. Fractional Shares**

The Company may issue fractional shares and a fractional share shall have the corresponding fractional rights, obligations and liabilities of a whole share of the same class or series of shares.

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## REGISTRATION OF SHARES

### 10. Register of Members

**10.1** The Board shall cause there to be kept a register of members in which there shall be recorded the name and address of each Member, the number of each class and series of shares held by each Member, the date on which the name of each Member was entered in the register of members and the date upon which any person ceased to be a Member.

**10.2** The register of members may be in such form as the Board may approve, but if it is in magnetic, electronic or other data storage form, the Company must be able to produce legible evidence of its contents. Unless the Board otherwise determines, the magnetic, electronic or other data storage form shall be the original register of members.

### 11. Registered Holder Absolute Owner

**11.1** The entry of the name of a person in the register of members as a holder of a share in the Company is *prima facie* evidence that legal title in the share vests in that person.

**11.2** The Company may treat the holder of a registered share as the only person entitled to:

- (a) exercise any voting rights attaching to the share;
- (b) receive notices;
- (c) receive a Distribution in respect of the share; and
- (d) exercise other rights and powers attaching to the share.

### 12. Transfer of Registered Shares

**12.1** Registered shares in the Company shall only be transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee.

**12.2** The instrument of transfer shall also be signed by the transferee if registration as a holder of the share imposes a liability to the Company on the transferee.

**12.3** The instrument of transfer shall be sent to the Company for registration.

**12.4** Subject to Article 13, the Company shall, on receipt of an instrument of transfer, enter the name and address of the transferee of the share in the register of members unless the Board resolves to refuse or delay the registration of the transfer for reasons that shall be specified in the resolution.

**12.5** The Board is permitted to pass a Resolution of Directors refusing or delaying the registration of a transfer where it reasonably determines that it is in the best interest of the Company to do so. Without limiting the generality of the foregoing, the Board may refuse or delay the registration of a transfer of shares if the transferor has failed to pay an amount due in respect of those shares. Notwithstanding anything to the contrary herein, the Board may not prohibit the following "Permitted Transfers" (i) in the case of any Madryn Holder, a transfer to any of their respective affiliates; (ii) with respect to any other Member, a transfer to such Member's affiliates; (iii) with respect to a Member who is an individual, a transfer to any member of such Member's family; and (iv) in the case of a Madryn Holder (in addition to clause (i) above) (A) a transfer

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pursuant to a pledge or grant of a security interest, to a bank or other funding source in support of borrowings made by such Madryn Holder from such person, (B) a transfer by any Madryn Holder which is a fund pursuant to a pledge, or grant of a security interest, to its trustee in support of its obligations to its trustee (provided, that in the case of clauses (A) and (B), no pledge or grant of a security interest shall release the transferor Madryn Holder from any of its obligations hereunder), and (C) a transfer made in connection with the Madryn Holder's pro rata transfer of all or any part of or interest in any loans or other indebtedness owing to any such Madryn Holder under the Credit Agreement (the "**Credit Agreement**") dated as of August 24, 2017, as amended, by and between the Company, the Guarantors (as defined in the Credit Agreement), the Lenders (as defined in the Credit Agreement) and Madryn Health Partners, LP, a Delaware limited partnership, as the Administrative Agent (as defined in the Credit Agreement) in accordance with the terms thereof

**12.6**Where the Board passes a resolution to refuse or delay the registration of a transfer, the Company shall, as soon as practicable, send the transferor and the transferee a notice of the refusal or delay.

**12.7**The transfer of a share is effective when the name of the transferee is entered in the register of members and the Company shall not be required to treat a transferee of a share in the Company as a Member until the transferee's name has been entered in the register of members.

**12.8**If the Board is satisfied that an instrument of transfer has been signed but that the instrument has been lost or destroyed, it may resolve:

(a)to accept such evidence of the transfer of the shares as it considers appropriate; and

(b)that the transfer of shares be recorded, including by the entry of the transferee's name in the register of members.

### **13. Legend**

**13.1**Each certificate representing Transfer Shares held by the Key Holders or issued to any permitted transferee in connection with a transfer permitted by these Articles shall be endorsed with the following legend:

THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO, AND IN CERTAIN CASES PROHIBITED BY, THE TERMS AND CONDITIONS OF THE MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION OF THE COMPANY. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

**13.2**The Company may instruct its transfer agent to impose transfer restrictions on the shares represented by certificates bearing the legend referred to in these Articles to enforce the provisions of these Articles and the Company will promptly do so. The legend shall be removed upon the amendment and restatement of these Articles at the request of the holder.

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**14. Lock-Up**

**14.1** Each Key Holder hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the final prospectus relating to the Company's IPO and ending on the date specified by the Company and the managing underwriter (such period not to exceed 180 days), or such other period as may be requested by the Company or an underwriter to accommodate regulatory restrictions on (1) the publication or other distribution of research reports and (2) analyst recommendations and opinions, (including, but not limited to, the restrictions contained in FINRA Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor provisions or amendments thereto) (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 Capital Shares held immediately prior to the effectiveness of the registration statement for the IPO 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 Capital Shares, whether any such transaction described in (a) or (b) above is to be settled by delivery of Capital Shares or other securities, in cash or otherwise. The foregoing provisions of this Article shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, and shall only be applicable to the Key Holders if all officers, directors and holders of more than one percent (1%) of the outstanding Ordinary Shares enter into similar agreements. The underwriters in connection with the IPO are intended third-party beneficiaries of this Article and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. Each Key Holder further agrees to execute such agreements as may be reasonably requested by the underwriters in the IPO that are consistent with this Article or that are necessary to give further effect thereto.

**14.2** The Company may impose stop-transfer instructions with respect to the Capital Shares of each Key Holder (and transferees and assignees thereof) until the end of such restricted period.

**15. Transmission of Registered Shares**

**15.1** The executor or administrator of the estate of a deceased Member, the guardian of an incompetent Member, the liquidator of an insolvent Member or the trustee of a bankrupt Member shall be the only person recognised by the Company as having any title to the Member's share.

**15.2** Any person becoming entitled by operation of law or otherwise to a share in consequence of the death, incompetence or bankruptcy of any Member may be registered as a Member upon such evidence being produced as may reasonably be required by the Board. An application by any such person to be registered as a Member shall for all purposes be deemed to be a transfer of the share of the deceased, incompetent or bankrupt Member and the Board shall treat it as such.

**15.3** Any person who has become entitled to a share or shares in consequence of the death, incompetence or bankruptcy of any Member may, instead of being registered himself, request in writing that some person to be named by him be registered as the transferee of such share and such request shall likewise be treated as if it were a transfer.

**16. Protective Provisions**

**16.1** Each of the following events shall be considered a "Deemed Liquidation Event" unless the holders of at least a majority of the Ordinary Shares elect otherwise: (a) a merger or consolidation in which the Company or Establishment Labs S.A., a Costa Rican company (the "Operating Company"), is a constituent party or (2) a subsidiary of the Company is a constituent party and the Company or the Operating Company issues shares of its capital stock pursuant to such merger or consolidation, except any such merger or consolidation

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involving the Company, the Operating Company or a subsidiary thereof in which the shares of the Company or the Operating Company outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the shares of (1) the surviving or resulting company; or (2) if the surviving or resulting company is a wholly owned subsidiary of another company immediately following such merger or consolidation, the parent company of such company or resulting company; or (b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company or any subsidiary of the Company of all or substantially all the assets of the Company and its subsidiaries taken as a whole, or the sale or disposition (whether by merger, consolidation or otherwise) of one or more subsidiaries of the Company if substantially all of the assets of the Company and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Company.

**16.2**At any time when the Investors and their Affiliates continue to hold at least 25% of the Class B Ordinary Shares (subject to appropriate adjustment in the event of any share dividend, share split, combination or other similar recapitalization with respect to the Class B Ordinary Shares), the Company shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law, or otherwise by the Memorandum and these Articles), the written consent of the holders of at least a majority of the then-outstanding Shares held by the Investors, given in writing or by vote at a meeting; consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect:

- (a)liquidate, dissolve or wind-up the business and affairs of the Company, effect any merger or consolidation or any other Deemed Liquidation Event, or consent to any of the foregoing;
  - (b)amend, alter or repeal any provision of the Memorandum and these Articles, the;
  - (c)create, or authorize the creation of, or issue or obligate itself to issue shares of, any additional class or series of shares unless the same ranks junior to the Class G-1 Ordinary Shares, Class G Ordinary Shares, Class F Ordinary Shares, Class E Ordinary Shares, Class D Ordinary Shares, Class C Ordinary Shares, Class B Ordinary Shares and the Class A Ordinary Shares of the Company (with respect to the distribution of assets on the liquidation, dissolution or winding up of the Company, the payment of dividends and rights of redemption, or increase the authorized number of Ordinary Shares);
  - (d)create, or authorize the creation of, or issue, or authorize the issuance of any debt security, or permit any subsidiary to take any such action with respect to any debt security, if the aggregate indebtedness of the Company and its subsidiaries for borrowed money following such action would exceed US\$500,000, including any debt security issued for the financing of the construction or purchase of a new production facility, unless such debt security has received the prior approval of the Board, including at least one of the Investor Directors;
  - (e)create, or hold shares in, any subsidiary that is not wholly owned (either directly or through one or more other subsidiaries) by the Company, or sell, transfer or otherwise dispose of any shares of any direct or indirect subsidiary of the Company, or permit any direct or indirect subsidiary to sell, lease, transfer, exclusively license or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of such subsidiary;
  - (f)encumber or grant a security interest in any of the Company's property (tangible or intangible) or business;
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- (g) grant an exclusive license for, or create a negative pledge for, all or substantially all of the Company's intellectual property assets;
- (h) authorize a non pro rata Distribution;
- (i) increase or decrease the authorized number of directors constituting the Board; or
- (j) permit any subsidiary to do any of the foregoing.

## **ALTERATION OF SHARES**

### **17. Power to Alter Shares**

**17.1** The Company may amend the Memorandum to increase or reduce the maximum number of shares that the Company is authorised to issue, or to authorise the Company to issue an unlimited number of shares.

**17.2** Subject to the Memorandum and these Articles, the Company may:

- (a) divide its shares, including issued shares, into a larger number of shares; or
- (b) combine its shares, including issued shares, into a smaller number of shares;

provided that, where shares are divided or combined, the aggregate par value (if any) of the new shares must be equal to the aggregate par value (if any) of the original shares.

**17.3** A division or combination of shares, including issued shares, of a class or series shall be for a larger or smaller number, as the case may be, of shares in the same class or series.

### **18. Restrictions on the Division of Shares**

The Company shall not divide its shares if it would cause the maximum number of shares that the Company is authorised to issue to be exceeded.

## **DISTRIBUTIONS**

### **19. Distributions**

**19.1** The Board may, by Resolution of Directors, authorise a Distribution by the Company to Members at such time and of such an amount as it thinks fit if it is satisfied, on reasonable grounds, that immediately after the Distribution, the value of the Company's assets exceeds its liabilities and the Company is able to pay its debts as they fall due. The resolution shall include a statement to that effect.

**19.2** Notice of any Distribution that may have been authorised shall be given to each Member entitled to the Distribution in the manner provided in Article 27 and all Distributions unclaimed for three years after having been authorised may be forfeited by Resolution of Directors for the benefit of the Company.

**19.3** All Distributions authorized to be made by Resolution of Directors pursuant to Article 19.1 shall be made to the Shareholders pro rata in proportion to their holdings of Shares.

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**20. Power to Set Aside Profits**

The Board may, before authorising any Distribution, set aside out of the profits of the Company such sum as it thinks proper as a reserve fund, and may invest the sum so set apart as a reserve fund in such securities as it may select.

**21. Unauthorised Distributions**

**21.1**If, after a Distribution is authorised and before it is made, the Board ceases to be satisfied on reasonable grounds that immediately after the Distribution the value of the Company's assets exceeds its liabilities and the Company is able to pay its debts as they fall due, such Distribution is deemed not to have been authorised.

**21.2**A Distribution made to a Member at a time when, immediately after the Distribution, the value of the Company's assets did not exceed its liabilities and the Company was not able to pay its debts as they fell due, is subject to recovery in accordance with the provisions of the Act.

**22. Distributions to Joint Holders of Shares**

If two or more persons are registered as joint holders of any shares, any one of such persons may give an effectual receipt for any Distribution payable in respect of such shares.

### MEETINGS OF MEMBERS

**23. General Meetings**

The Board, by Resolution of Directors, may convene meetings of the Members of the Company at such times and in such manner as the Board considers necessary or desirable.

**24. Location**

Any meeting of the Members may be held in such place within or outside the British Virgin Islands as the Board considers appropriate.

**25. Requisitioned General Meetings**

The Board shall call a meeting of the Members if requested in writing to do so by Members entitled to exercise at least thirty percent of the voting rights in respect of the matter for which the meeting is being requested.

**26. Notice**

**26.1**The Board shall give not less than seven days' notice of meetings of Members to those persons whose names, on the date the notice is given, appear as Members in the register of members of the Company and are entitled to vote at the meeting.

**26.2**A meeting of Members held in contravention of the requirement in Article 26.1 is valid if Members holding a ninety percent majority of the total voting rights on all the matters to be considered at the meeting have waived notice of the meeting and, for this purpose, the presence of a Member at the meeting shall be deemed to constitute waiver on his part.

**26.3**The inadvertent failure of the Board to give notice of a meeting to a Member, or the fact that a Member has not received notice, does not invalidate the meeting.

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**27. Giving Notice**

**27.1**A notice may be given by the Company to any Member either by delivering it to such Member in person or by sending it to such Member's address in the register of members or to such other address given for the purpose. Notice may be sent by mail, courier service, cable, telex, telecopier, facsimile or other mode of representing words in a legible form.

**27.2**Any notice required to be given to a Member shall, with respect to any shares held jointly by two or more persons, be given to whichever of such persons is named first in the register of members and notice so given shall be sufficient notice to all the holders of such shares.

**28. Service of Notice**

Any notice shall be deemed to have been served at the time when the same would be delivered in the ordinary course of transmission and, in proving such service, it shall be sufficient to prove that the notice was properly addressed and prepaid, if posted, and the time when it was posted, delivered to the courier or to the cable company or transmitted by e-mail, telex, facsimile or other method as the case may be.

**29. Participating in Meetings by Telephone**

A Member shall be deemed to be present at a meeting of Members if he participates by telephone or other electronic means and all Members participating in the meeting are able to hear each other.

**30. Quorum at General Meetings**

**30.1**A meeting of Members is properly constituted if at the commencement of the meeting there are present in person or by proxy not less than fifty percent of the votes of the shares or class or series of shares entitled to vote on Resolutions of Members to be considered at the meeting.

**30.2**If within two hours from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved; in any other case it shall stand adjourned to the next business day at the same time and place or to such other time and place as the Board may determine, and if at the adjourned meeting there are present within one hour from the time appointed for the meeting in person or by proxy not less than one third of the votes of the shares or each class or series of shares entitled to vote on the resolutions to be considered by the meeting, those present shall constitute a quorum but otherwise the meeting shall be dissolved.

**30.3**If a quorum is present, notwithstanding the fact that such quorum may be represented by only one person then such person may resolve any matter and a certificate signed by such person accompanied where such person be a proxy by a copy of the proxy form shall constitute a valid Resolution of Members.

**31. Chairman to Preside**

At every meeting of Members, the chairman of the Board shall preside as chairman of the meeting. If there is no chairman of the Board or if the chairman of the Board is not present at the meeting, the Members present shall choose one of their number to be the chairman. If the Members are unable to choose a chairman for any reason, then the person representing the greatest number of voting shares present in person or by proxy at the meeting shall preside as chairman.

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**32. Voting on Resolutions**

At any meeting of the Members the chairman shall be responsible for deciding in such manner as he shall consider appropriate whether any resolution has been carried or not and the result of his decision shall be announced to the meeting and recorded in the minutes thereof.

**33. Power to Demand a Vote on a Poll**

**33.1**At any meeting of Members a resolution put to the vote of the meeting shall, in the first instance, be voted upon by a show of hands and, subject to any rights or restrictions for the time being lawfully attached to any class of shares and subject to the provisions of these Articles, every Member present in person and every person holding a valid proxy at such meeting shall be entitled to one vote and shall cast such vote by raising his hand or speaking its vote if present via telephone or other electronic means.

**33.2**At any general meeting a resolution put to the vote of the meeting shall, in the first instance, be voted upon by a show of hands and, subject to any rights or restrictions for the time being lawfully attached to any class of shares and subject to the provisions of these Articles, every Member present in person and every person holding a valid proxy at such meeting shall be entitled to one vote and shall cast such vote by raising his hand or speaking its vote if present via telephone or other electronic means. If the chairman shall have any doubt as to the outcome of any resolution put to the vote, he shall cause a poll to be taken of all votes cast upon such resolution, but if the chairman shall fail to take a poll then any Member present in person or by proxy who disputes the announcement by the chairman of the result of any vote may immediately following such announcement demand that a poll be taken and the chairman shall thereupon cause a poll to be taken. If a poll is taken at any meeting, the result thereof shall be duly recorded in the minutes of that meeting by the chairman.

**34. Voting by Joint Holders of Shares**

The following shall apply where shares are jointly owned: (a) if two or more persons hold shares jointly each of them may be present in person or by proxy at a meeting of Members and may speak as a Member; (b) if only one of the joint owners is present in person or by proxy he may vote on behalf of all of them; and (c) if two or more of the joint owners are present in person or by proxy they must vote as one.

**35. Instrument of Proxy**

**35.1**A Member may be represented at a meeting of Members by a proxy (who need not be a Member) who may speak and vote on behalf of the Member.

**35.2**An instrument appointing a proxy shall be in such form as the Board may from time to time determine or such other form as the chairman of the meeting shall accept as properly evidencing the wishes of the Member appointing the proxy.

**35.3**The chairman of any meeting at which a vote is cast by proxy or on behalf of any person other than an individual may call for a notarially certified copy of such proxy or authority which shall be produced within seven days of being so requested or the votes cast by such proxy or on behalf of such person shall be disregarded.

**35.4**The instrument appointing a proxy shall be produced at the place appointed for the meeting before the time for holding the meeting at which the person named in such instrument proposes to vote.

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**36. Representation of Members**

**36.1** Any person other than an individual which is a Member may by resolution in writing (certified or signed by a duly authorised person) of its directors or other governing body authorise such person as it thinks fit to act as its representative (in this Article, “**Representative**”) at any meeting of the Members or at the meeting of the Members of any class or series of shares and the Representative shall be entitled to exercise the same powers on behalf of the Member which he represents as that Member could exercise if it were an individual.

**36.2** The right of a Representative shall be determined by the law of the jurisdiction where, and by the documents by which, the Member is constituted or derives its existence. In case of doubt, the Board may in good faith seek legal advice from any qualified person and unless and until a court of competent jurisdiction shall otherwise rule, the Board may rely and act upon such advice without incurring any liability to any Member.

**37. Adjournment of General Meetings**

The chairman may, with the consent of the meeting, adjourn any meeting from time to time, and from place to place.

**38. Business at Adjourned Meetings**

No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

**39. Directors Attendance at General Meetings**

Directors of the Company may attend and speak at any meeting of Members of the Company and at any separate meeting of the holders of any class or series of shares in the Company.

**DIRECTORS AND OFFICERS****40. Election of Directors**

**40.1** The first registered agent of the Company shall, within six months of the date of incorporation of the Company, appoint one or more persons as the first director or directors of the Company. Thereafter, the directors shall be elected by a Resolution of Directors or a Resolution of Members.

**40.2** No person shall be appointed as a director or nominated as a reserve director unless he has consented in writing to act as a director or to be nominated as a reserve director.

**40.3** A director shall not require a share qualification, and may be an individual or a company.

**40.4** Any director which is a body corporate may appoint any person its duly authorised representative for the purpose of representing it at Board meetings or with respect to unanimous written consents.

**41. Number of Directors**

**41.1** Each Shareholder will vote, or cause to be voted, all Shares owned by such Shareholder, or over which such Shareholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to ensure that the size of the Board shall be set and remain at seven.

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**41.2** Each Shareholder will vote, or cause to be voted, all Shares owned by such Shareholder, or over which such Shareholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to ensure that at each annual or special meeting of shareholders at which an election of directors is held or pursuant to any written consent of the shareholders, the following persons shall be elected to the Board: (a) the Investor Directors, for so long as the Investors and their Affiliates continue to hold at least 25% of the Class B Ordinary Shares, which number is subject to appropriate adjustment for all share splits, dividends, combinations, recapitalizations and the like and (b) four (4) persons designated by the holders of at least 75% of the then outstanding Class A Ordinary Shares, which individual shall initially be Dennis Condon, Lisa Colleran, Juan José Chacón Quirós and Allan Weinstein. To the extent that any of paragraphs (a) through (b) shall not be applicable, any member of the Board who would otherwise have been designated in accordance with the terms thereof shall instead be voted upon by all the shareholders of the Company entitled to vote thereon in accordance with, and pursuant to, the Company's governance documents.

**41.3** In the absence of any designation from the Persons or groups with the right to designate a director as specified above, the director previously designated by them and then serving shall be reelected if still eligible to serve as provided herein.

**41.4** Each Shareholder will vote, or cause to be voted, all Shares owned by such Shareholder, or over which such Shareholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to ensure that: (a) no director elected pursuant may be removed from office other than for cause unless (i) such removal is directed or approved by the affirmative vote of the Person(s), or of the holders of at least a majority of the shares, entitled to designate that director or (ii) the Person(s) originally entitled to designate or approve such director is no longer so entitled to designate or approve such director; (b) any vacancies created by the resignation, removal or death of a director elected shall be filled pursuant to the above provisions; and (c) upon the request of any party entitled to designate a director to remove such director, such director shall be removed.

**41.5** All Shareholders will execute any written consents required to perform the obligations of these Articles, and the Company agrees at the request of any party entitled to designate directors to call a special meeting of shareholders for the purpose of electing directors.

**41.6** No Shareholder, nor any Affiliate of any Shareholder, shall have any liability as a result of designating a person for election as a director for any act or omission by such designated person in his or her capacity as a director of the Company, nor shall any Shareholder have any liability as a result of voting for any such designee in accordance with the provisions of these Articles.

**41.7** Each committee of the Board shall include at least one (1) of the Investor Directors.

**41.8** To the extent that the Company has any subsidiaries, including the Operating Company (as defined below), the Company shall cause the Board or managers of all subsidiaries of the Company to be identical to the Board of the Company. The four persons designated by the holders of at least 75% of the Class A Ordinary Shares may be removed with or without cause by the same majority (75%) of the Class A Ordinary Shares. The Investor Directors may be removed with or without cause by the Investors and their Affiliates holding at least 25% of the Class B Ordinary Shares.

## **42. Term of Office of Directors**

Each director shall hold office for the term, if any, as may be specified in the resolution appointing him or until his earlier death, resignation or removal.

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**43. Alternate and Reserve Directors**

**43.1**A director may at any time appoint any person (including another director) to be his alternate director and may at any time terminate such appointment. An appointment and a termination of appointment shall be by notice in writing signed by the director and deposited at the registered office or delivered at a meeting of the Board.

**43.2**The appointment of an alternate director shall terminate on the happening of any event which, if he were a director, would cause him to vacate such office or if his appointor ceases for any reason to be a director.

**43.3**An alternate director has the same rights as the appointing director in relation to any directors' meeting and any written resolution circulated for written consent, save that he may not himself appoint an alternate director or a proxy. Any exercise by the alternate director of the appointing director's powers in relation to the taking of decisions by the directors is as effective as if the powers were exercised by the appointing director.

**43.4**If an alternate director is himself a director or attends a meeting of the Board as the alternate director of more than one director, his voting rights shall be cumulative.

**43.5**Unless the Board determines otherwise, an alternate director may also represent his appointor at meetings of any committee of the directors on which his appointor serves; and this Article shall apply equally to such committee meetings as to meetings of the Board.

**43.6**Where the Company has only one Member who is an individual and that Member is also the sole director, the sole member/director may, by instrument in writing, nominate a person who is not disqualified from being a director under the Act as a reserve director in the event of his death.

**43.7**The nomination of a person as a reserve director ceases to have effect if: (a) before the death of the sole Member/director who nominated him he resigns as reserve director, or the sole Member/director revokes the nomination in writing, or (b) the sole Member/director who nominated him ceases to be the sole Member/director for any reason other than his death.

**44. Removal of Directors**

**44.1**A director may be removed from office, with or without cause:

(a) by a Resolution of Members at a meeting of the Members called for the purpose of removing the director or for purposes including the removal of the director;

(b) by a Resolution of Members consented to in writing by all of the Members entitled to vote thereon; or

(c) by a Resolution of the Members entitled to appoint such director in accordance with these Articles.

**44.2**Notice of a meeting called under Article 44.1(a) shall state that the purpose of the meeting is, or the purposes of the meeting include, the removal of a director.

**45. Vacancy in the Office of Director**

**45.1**Notwithstanding Article 40, the Board may appoint one or more directors to fill a vacancy on the Board.

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**45.2** For the purposes of this Article, there is a vacancy on the Board if a director dies or otherwise ceases to hold office as a director prior to the expiration of his term of office or there is otherwise a vacancy in the number of directors as fixed pursuant to Article 41.

**45.3** The term of any appointment under this Article may not exceed the term that remained when the person who has ceased to be a director left or otherwise ceased to hold office.

**46. Remuneration of Directors**

With the prior or subsequent approval by a Resolution of Members, the Board may, by a Resolution of Directors, fix the emoluments of directors with respect to services to be rendered in any capacity to the Company.

**47. Resignation of directors**

A director may resign his office by giving written notice of his resignation to the Company and the resignation shall have effect from the date the notice is received by the Company or from such later date as may be specified in the notice.

**48. Directors to Manage Business**

**48.1** The business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

**48.2** The Board has all the powers necessary for managing, and for directing and supervising, the business and affairs of the Company.

**48.3** The Board may authorise the payment of all expenses incurred preliminary to and in connection with the formation and registration of the Company and may exercise all such powers of the Company as are not by the Act or by the Memorandum or these Articles required to be exercised by the Members of the Company, subject to any delegation of such powers as may be authorised by these Articles and to such requirements as may be prescribed by a Resolution of Members; but no requirement made by a Resolution of Members shall prevail if it is inconsistent with these Articles nor shall such requirement invalidate any prior act of the Board which would have been valid if such requirement had not been made.

**48.4** Subject to the provisions of the Act, all cheques, promissory notes, draft, bills of exchange and other negotiable instruments and all receipts for moneys paid to the Company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as shall from time to time be determined by Resolution of Directors.

**49. Committees of Directors**

**49.1** The Board may, by a Resolution of Directors, designate one or more committees of directors, each consisting of one or more directors.

**49.2** Each committee of directors has such powers and authorities of the Board, including the power and authority to affix the Seal, as are set forth in these Articles or the Resolution of Directors establishing the committee, except that the Board has no power to delegate the following powers to a committee of directors:

- (a) to amend the Memorandum or these Articles;
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- (b) to designate committees of directors;
- (c) to delegate powers to a committee of directors;
- (d) to appoint or remove directors;
- (e) to appoint or remove an agent;
- (f) to approve a plan of merger, consolidation or arrangement;
- (g) to make a declaration of solvency or approve a liquidation plan; or
- (h) to make a determination that the Company will, immediately after a proposed Distribution, meet the solvency test set out in the Act.

**49.3** A committee of directors, where authorised by the Board, may appoint a sub-committee.

**49.4** The meetings and proceedings of each committee of directors consisting of two or more directors shall be governed *mutatis mutandis* by the provisions of these Articles regulating the proceedings of directors so far as the same are not superseded by any provisions in the resolution establishing the committee.

## **50. Officers and Agents**

**50.1** The Board may, by a Resolution of Directors, appoint any person, including a person who is a director, to be an officer or agent of the Company. Such officers may consist of a chairman of the Board, a vice chairman of the Board, a president and one or more vice presidents, secretaries and treasurers and such other officers as may from time to time be deemed desirable. Any number of offices may be held by the same person.

**50.2** Each officer or agent has such powers and authorities of the Board, including the power and authority to affix the Seal, as are set forth in these Articles or Resolution of Directors appointing the officer or agent, except that no officer or agent has any power or authority with respect to the following:

- (a) to amend the Memorandum or these Articles;
  - (b) to change the registered office or agent;
  - (c) to designate committees of directors;
  - (d) to delegate powers to a committee of directors;
  - (e) to appoint or remove directors;
  - (f) to appoint or remove an agent;
  - (g) to fix emoluments of directors;
  - (h) to approve a plan of merger, consolidation or arrangement;
  - (i) to make a declaration of solvency or approve a liquidation plan;
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(j)to make a determination that the Company will, immediately after a proposed distribution, meet the solvency test set out in the Act; or

(k)to authorise the Company to continue as a company incorporated under the laws of a jurisdiction outside the British Virgin Islands.

#### **51. Removal of Officers and Agents**

The officers and agents of the Company shall hold office until their successors are duly elected and qualified, but any officer or agent elected or appointed by the Board may be removed at any time, with or without cause, by Resolution of Directors. Any vacancy occurring in any office of the Company may be filled by Resolution of Directors.

#### **52. Duties of Officers**

In the absence of any specific allocation of duties it shall be the responsibility of the chairman of the Board to preside at meetings of directors and Members, the vice chairman to act in the absence of the chairman, the president to manage the day to day affairs of the Company, the vice presidents to act in order of seniority in the absence of the president but otherwise to perform such duties as may be delegated to them by the president, the Secretary to maintain the register of members, register or directors, minute books, records (other than financial records) of the Company, and Seal and to ensure compliance with all procedural requirements imposed on the Company by applicable law, and the treasurer to be responsible for the financial affairs of the Company.

#### **53. Remuneration of Officers**

The emoluments of all officers shall be fixed by Resolution of Directors.

#### **54. Standard of Care**

A director, when exercising powers or performing duties as a director, shall exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation, (a) the nature of the Company, (b) the nature of the decision, and (c) the position of the director and the nature of the responsibilities undertaken by him.

#### **55. Conflicts of Interest**

**55.1**A director shall, forthwith after becoming aware of the fact that he is interested in a transaction entered into or to be entered into by the Company, disclose the interest to the Board, unless the transaction or proposed transaction (a) is between the director and the Company and (b) is to be entered into in the ordinary course of the Company's business and on usual terms and conditions.

**55.2**A transaction entered into by the Company in respect of which a director is interested is voidable by the Company unless the director complies with Article 55.1 or (a) the material facts of the interest of the director in the transaction are known by the Members entitled to vote at a meeting of Members and the transaction is approved or ratified by a Resolution of Members or (b) the Company received fair value for the transaction.

**55.3**For the purposes of this Article, a disclosure is not made to the Board unless it is made or brought to the attention of every director on the Board.

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**55.4**A director who is interested in a transaction entered into or to be entered into by the Company may vote on a matter relating to the transaction, attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purposes of a quorum and sign a document on behalf of the Company, or do any other thing in his capacity as director that relates to the transaction.

**56. Indemnification and Exculpation**

**56.1** Subject to Article 56.2 the Company shall indemnify against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings any person who:

(a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a director, an officer or a liquidator of the Company; or

(b) is or was, at the request of the Company, serving as a director, officer or liquidator of, or in any other capacity is or was acting for, another body corporate or a partnership, joint venture, trust or other enterprise.

**56.2** Article 56.1 does not apply to a person referred to in that Paragraph unless the person acted honestly and in good faith and in what he believed to be the best interests of the Company and, in the case of criminal proceedings, the person had no reasonable cause to believe that his conduct was unlawful.

**56.3** The decision of the Board as to whether the person acted honestly and in good faith and in what he believed to be the best interests of the Company and as to whether the person had no reasonable cause to believe that his conduct was unlawful is, in the absence of fraud, sufficient for the purposes of these Articles, unless a question of law is involved.

**56.4** The termination of any proceedings by any judgment, order, settlement, conviction or the entering of a *nolle prosequi* does not, by itself, create a presumption that the person did not act honestly and in good faith and with a view to the best interests of the Company or that the person had reasonable cause to believe that his conduct was unlawful.

**56.5** If a person referred to in this Article has been successful in defence of any proceedings referred to therein, the person is entitled to be indemnified against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred by the person in connection with the proceedings.

**56.6** Expenses, including legal fees, incurred by a Director (or former Director) in defending any legal, administrative or investigative proceedings may be paid by the Company in advance of the final disposition of such proceedings upon receipt of an undertaking by or on behalf of the Director (or former Director, as the case may be) to repay the amount if it shall ultimately be determined that the Director (or former Director, as the case may be) is not entitled to be indemnified by the Company.

**56.7** The indemnification and advancement of expenses provided by, or granted under these Articles are not exclusive of any other rights to which the person seeking indemnification or advancement of expenses may be entitled under any agreement, Resolution of Members, resolution of disinterested directors or otherwise, both as to acting in the person's official capacity and as to acting in another capacity while serving as a Director of the Company.

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**56.8** The Company may purchase and maintain insurance in relation to any person who is or was a director, an officer or a liquidator of the Company, or who at the request of the Company is or was serving as a director, an officer or a liquidator of, or in any other capacity is or was acting for, another body corporate or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the Company has or would have had the power to indemnify the person against the liability under Article 56.1.

## **MEETINGS OF THE BOARD OF DIRECTORS**

### **57. Board Meetings**

The Board or any committee thereof may meet at such times and in such manner and places within or outside the British Virgin Islands as it may determine to be necessary or desirable. Any director or the Secretary of the Company may call a Board meeting.

### **58. Notice of Board Meetings**

A director shall be given reasonable notice of a Board meeting, but a Board meeting held without reasonable notice having been given to all directors shall be valid if all the directors entitled to vote at the meeting waive notice of the meeting, and for this purpose, the presence of a director at the meeting shall be deemed to constitute waiver on his part (except where a director attends a meeting for the express purpose of objecting to the transaction of business on the grounds that the meeting is not properly called). The inadvertent failure to give notice of a meeting to a director, or the fact that a director has not received the notice, does not invalidate the meeting.

### **59. Participation in Meetings by Telephone**

A director shall be deemed to be present at a meeting of directors if he participates by telephone or other electronic means and all directors participating in the meeting are able to hear each other.

### **60. Quorum at Board Meetings**

The quorum necessary for the transaction of business at a meeting of directors shall be two directors.

### **61. Board to Continue in the Event of Vacancy**

The continuing directors may act notwithstanding any vacancy in their body, save that if their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum for a Board meeting, the continuing directors or director may act only for the purpose of appointing directors to fill any vacancy that has arisen or summoning a meeting of Members.

### **62. Chairman to Preside**

At every Board meeting the chairman of the Board shall preside as chairman of the meeting. If there is not a chairman of the Board or if the chairman of the Board is not present at the meeting, the vice chairman of the Board shall preside. If there is no vice chairman of the Board or if the vice chairman of the Board is not present at the meeting, the directors present shall choose one of their number to be chairman of the meeting.

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**63. Powers of Sole Director**

If the Company shall have only one director the provisions herein contained for Board meetings shall not apply but such sole director shall have full power to represent and act for the Company in all matters as are not by the Act or the Memorandum or these Articles required to be exercised by the Members of the Company.

**64. Proceedings if One Director**

If the Company shall have only one director, in lieu of minutes of a meeting the director shall record in writing and sign a note or memorandum (or adopt a resolution in writing) concerning all matters requiring a Resolution of Directors and such note, memorandum or resolution in writing shall be kept in the minute book. Such a note, memorandum or resolution in writing shall constitute sufficient evidence of such resolution for all purposes.

**CORPORATE RECORDS****65. Documents to be Kept**

**65.1** The Company shall keep the following documents at the office of its registered agent:

- (a) the Memorandum and these Articles;
- (b) the register of members or a copy of the register of members;
- (c) the register of directors or a copy of the register of directors;
- (d) the register of charges or a copy of the register of charges;
- (e) copies of all notices and other documents filed by the Company in the previous ten years.

**65.2** Where the Company keeps a copy of its register of members or register of directors at the office of its registered agent, it shall within 15 days of any change in the register, notify the registered agent, in writing, of the change, and it shall provide the registered agent with a written record of the physical address of the place or places at which the original register of members or the original register of directors is kept.

**65.3** Where the place at which the original register of members or the original register of directors is changed, the Company shall provide the registered agent with the physical address of the new location of the records within 14 days of the change of location.

**65.4** The Company shall keep the following records at the office of its registered agent or at such other place or places, within or outside the British Virgin Islands, as the Board may determine:

- (a) the minutes of meetings and Resolutions of Members and of classes of Members; and
- (b) the minutes of meetings and Resolutions of Directors and committees of directors.

**65.5** Where any of the minutes or resolutions described in the previous paragraph are kept at a place other than at the office of the Company's registered agent, the Company shall provide the registered agent with a written record of the physical address of the place or places at which the records are kept.

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**65.6**Where the place at which any of the records described in Article 65.4 is changed, the Company shall provide the registered agent with the physical address of the new location of the records within 14 days of the change of location.

**65.7**The Company's records shall be kept in written form or either wholly or partly as electronic records.

**66. Form and Use of Seal**

The Board shall provide for the safe custody of the Seal. An imprint thereof shall be kept at the office of the registered agent of the Company. The Seal when affixed to any written instrument shall be witnessed by any one director, the Secretary or Assistant Secretary, or by any person or persons so authorised from time to time by Resolution of Directors.

## **ACCOUNTS**

**67. Books of Account**

The Company shall keep records and underlying documentation that:

- (a)are sufficient to show and explain the Company's transactions; and
- (b)will, at any time, enable the financial position of the Company to be determined with reasonable accuracy.

**68. Form of Records**

**68.1**The records required to be kept by the Company under the Act, the Mutual Legal Assistance (Tax Matters Act), 2003, the Memorandum or these Articles shall be kept in written form or either wholly or partly as electronic records complying with the requirements of the Electronic Transactions Act (British Virgin Islands).

**68.2**The records and underlying documentation shall be kept for a period of at least five years from the date of completion of the relevant transaction or the company terminates the business relationship to which the records and underlying documentation relate.

**69. Financial Statements**

**69.1**If required by a Resolution of Members, the Board shall cause to be made out and served on the Members or laid before a meeting of Members a profit and loss account and balance sheet of the Company for such period and on such recurring basis as the Members think fit.

**69.2**The Company's profit and loss account and balance sheet shall be drawn up so as to give respectively a true and fair view of the profit or loss of the Company for that financial period, and a true and fair view of the state of affairs of the Company as at the end of that financial period.

**70. Distribution of Accounts**

A copy of such profit and loss account and balance sheet shall be served on every Member in the manner and with similar notice to that prescribed herein for calling a meeting of Members or upon such shorter notice as the Members may agree to accept.

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## **AUDITS**

### **71. Audit**

The Company may by Resolution of Members call for the accounts to be examined by an auditor.

### **72. Appointment of Auditor**

**72.1** The first auditor shall be appointed by Resolution of Directors; subsequent auditors shall be appointed by a Resolution of Members.

**72.2** The auditor may be a Member of the Company but no director or other officer shall be eligible to be an auditor of the Company during his continuance in office.

### **73. Remuneration of Auditor**

The remuneration of the auditor of the Company:

- (a) in the case of an auditor appointed by the Board, may be fixed by Resolution of Directors; and
- (b) subject to the foregoing, shall be fixed by Resolution of Members or in such manner as the Company may by Resolution of Members determine.

### **74. Duties of Auditor**

The auditor shall examine each profit and loss account and balance sheet required to be served on every Member of the Company or laid before a meeting of the Members of the Company and shall state in a written report whether or not:

- (a) in its opinion the profit and loss account and balance sheet give a true and fair view respectively of the profit and loss for the period covered by the accounts, and of the state of affairs of the Company at the end of that period; and
- (b) all the information and explanations required by the auditor have been obtained.

### **75. Access to Records**

Every auditor of the Company shall have right of access at all times to the books of account of the Company, and shall be entitled to require from the directors and officers of the Company such information and explanations as he thinks necessary for the performance of the duties of the auditor.

### **76. Auditor Entitled to Notice**

The auditor of the Company shall be entitled to receive notice of, and to attend any meetings of Members of the Company at which the Company's profit and loss account and balance sheet are to be presented.

## **VOLUNTARY LIQUIDATION**

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**77. Liquidation**

The Company may be liquidated in accordance with the Act only if (a) it has no liabilities; or (b) it is able to pay its debts as they fall due and the value of its assets equals or exceeds its liabilities. The Board shall be permitted to pass a Resolution of Directors for the appointment of an eligible individual as a voluntary liquidator (or two or more eligible individuals as joint voluntary liquidators) of the Company if the Members have, by a Resolution of Members, approved the liquidation plan in accordance with the Act.

**FUNDAMENTAL CHANGES****78. Changes**

Notwithstanding section 175 of the Act, the Board may sell, transfer, lease, exchange or otherwise dispose of the assets of the Company without the sale, transfer, lease, exchange or other disposition being authorised by a Resolution of Members.

**79. Continuation under Foreign Law**

The Company may by Resolution of Members or by Resolution of Directors continue as a company incorporated under the laws of a jurisdiction outside the British Virgin Islands in the manner provided under those laws.

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We, **OVERSEAS MANAGEMENT COMPANY TRUST (B.V.I.) LTD** ., of OMC Chambers, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands, for the purpose of incorporating a BVI Business Company under the laws of the British Virgin Islands hereby sign these Articles of Association the 9<sup>th</sup> day of October, 2013

Incorporator

SGD: Sallr Husein

Authorised Signatory

**OVERSEAS MANAGEMENT COMPANY TRUST (B.V.I.) LTD.**