

Certified to be a true copy

Alroyley 09/02/2012
secretary dated

No 906936

The Companies Act 2006

Company limited by shares

Written resolutions

of

MITIE Technical Facilities Management Limited

(18 January 2012 (the "Circulation Date"))

SATURDAY



A34

18/02/2012

#163

COMPANIES HOUSE

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006, the directors of MITIE Technical Facilities Management Limited (the "Company") propose that

- (a) resolution 1 below is passed as an ordinary resolution (the "Ordinary Resolution"), and
- (b) resolutions 2 and 3 below are passed as special resolutions (the "Special Resolutions")

Ordinary Resolution

- 1 That, subject to the passing of resolution 2 below, the existing issued 3,350,000 B ordinary shares of £1 in the capital of the company held by MITIE Technical Facilities Management Holdings Limited be and are hereby re-designated "A" ordinary shares of £1, having the rights set out in the articles of association to be adopted by the Company pursuant to resolution 2 below

Special Resolutions

That

the articles of association of the Company be amended by deleting to the fullest extent permitted by law all of the provisions of the Company's memorandum of association which, by virtue of Section 28, Companies Act 2006, are to be treated as provisions of the Company's articles of association,

any limit on the maximum amount of shares that may be allotted by the Company which is imposed by the amount of the Company's authorised share capital that was in force immediately before 18 January 2012 be revoked, and

the draft articles of association attached to this resolution be and they are adopted by the Company in substitution for, and to the exclusion of, its existing articles of association

That

in substitution for any equivalent authorities and powers granted to the directors prior to the passing of this resolution, the directors be and they are generally and unconditionally authorised pursuant to Section 551, Companies Act 2006 to exercise all powers of the Company to allot shares in the Company, and grant rights to subscribe for or to convert any security into shares of the Company (such shares, and rights to subscribe for or to convert any security into shares of the Company being "relevant securities") up to an aggregate nominal amount of £6,703,001, provided that, this authority shall expire on the day preceding the 5th anniversary of the passing of this resolution, except that the Company may at any time before such expiry make an offer or agreement which would or might require relevant securities to be allotted after such expiry and the directors may allot relevant securities in pursuance of such an offer or agreement as if this authority had not expired, and

the directors be and are hereby empowered, pursuant to Section 570, Companies Act 2006, to allot equity securities (within the meaning of Section 560, Companies Act 2006, for cash up to an aggregate nominal amount of £6,703,001 pursuant to the authority conferred by resolution (a) above as if Section 561, Companies Act 2006 did not apply to any such allotment provided that this power shall expire on the day preceding the 5th anniversary of the passing of this resolution, save that the directors may,

notwithstanding such expiry, allot any shares or grant any right to subscribe for, or to convert any security into, shares in pursuance of an offer or agreement to do so made by the Company before this authority expires

The undersigned, being the sole shareholder entitled to vote on the resolutions on the Circulation Date (see Note 4), hereby irrevocably agrees to the Ordinary Resolution and the Special Resolutions

 
on behalf of MITIE Technical Facilities Management Holdings Limited

Notes

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

By hand (by delivering the signed copy to MITIE Technical Facilities Management Limited, 8 Monarch Court The Brooms, Emersons Green, Bristol, BS16 7FH marked for the attention of the Company Secretary)

By post (by returning the signed copy to MITIE Technical Facilities Management Limited, 8 Monarch Court The Brooms, Emersons Green, Bristol, BS16 7FH marked for the attention of the Company Secretary)

Please note that return of this document will not be accepted by fax or email

- 2 The resolutions will lapse if sufficient votes in favour of them have not been received by 9.00am on 31 January 2012. Unless you do not wish to vote on the resolutions, please ensure that your agreement reached the Company on or before this date and time. If the Company has not received this document from you by then you will be deemed to have voted against all of the resolutions.
- 3 Once you have signified your agreement to the resolutions such agreement cannot be revoked.
- 4 In the case of joint holders of shares, only the vote of the holder whose name appears first in the register of members of the Company in respect of such joint holding will be counted by the Company to the exclusion of the other joint holder(s).
- 5 If you are signing this document on behalf of a person under a power of attorney or other authority please send a copy of the relevant power of attorney or authority when returning this document. If you require any assistance in completing this document please contact the Company Secretary.

Articles of Association

of

MITIE TECHNICAL FACILITIES MANAGEMENT LIMITED

Company number 906936

(Private company limited by shares)

as adopted by written resolution passed on 18 January 2012

Osborne Clarke

One London Wall

London

EC2Y 5EB

Tel +44 (0) 20 7105 7000

Fax +44 (0) 20 7105 7005

PAC/0972330/O13016710/PAC

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THE COMPANIES ACTS 1985 to 2006

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

of

MITIE TECHNICAL FACILITIES MANAGEMENT LIMITED

(Adopted by written resolution passed on 18 January 2012)

1 Preliminary

1 1 In these Articles the following words have the following meanings

"Act"	the Companies Act 2006,
"Adoption Date"	18 January 2012,
"Approved Borrowing Limit"	the Standard Borrowing Limit (at the relevant time) unless an Enhanced Borrowing Limit has been approved under articles 19 1 and 19 2, in which event the Approved Borrowing Limit shall be such Enhanced Borrowing Limit as is applicable at the relevant time,
"A Shareholder"	a holder of A Shares and "A Shareholders" shall be construed accordingly,
"A Shares"	"A" ordinary shares of £1 (one pound) each in the Company,
"Articles"	these articles of association, as from time to time altered,
"Assumed Financing Structures"	the financing structures, practices and policies assumed in the Business Plan for the Company Group as at the Adoption Date,
"Average Excess Borrowing"	the amount of the Borrowing averaged over each of the 28 calendar days in any consecutive 60 calendar day period when such Borrowing is (a) at its greatest, and, (b) in excess of the relevant borrowing limit,
"B Shares"	"B" ordinary shares of £0 01 (one penny) each in the Company,
"B Shareholder"	a holder of B Shares and "B Shareholders" shall be construed accordingly,
"Bad Leaver"	a holder of B Shares who is leaving the employment of the MITIE Group for any reason, save one which would make him/her a Good Leaver,
"Bank Borrowings"	the amount of the aggregated net borrowing of the Company Group as shown in the Company Group bank statements as at the relevant date,

"Banking Day"	any day on which the clearing banks in the City of London are open for normal commercial business (excluding Saturday and Sunday),
"Board"	the board of directors of the Company, as from time to time constituted,
"Book Debt"	any amount deemed to be recoverable from a customer and to which a value has been attributed in the Company's last audited accounts (and, for the avoidance of doubt, shall include, but not be limited to, invoiced receivables, applications for payment and contract retentions), in each case net of any provision relating thereto made in the Company's last audited accounts,
"Borrowing"	the total of the Bank Borrowings and the Commercial & Trade Borrowings,
"Business"	the business of the Company and any subsidiary companies thereof (direct or indirect) from time to time,
"Business Plan"	the approved business plan, from time to time, of the Company Group (as approved by the Board, the A Shareholders and the C Shareholder) as at the relevant time,
"C Director"	any director(s) appointed or so designated by the holder of the C Shares and holding office pursuant to article 18 2,
"C Shares"	"C" ordinary shares of £1 (one pound) each in the Company,
"C Shareholder"	a holder of C Shares and "C Shareholders" shall be construed accordingly,
"Calculation Day"	A the Banking Day immediately preceding the day of completion pursuant to the applicable SPA or where applicable in the case of Articles 11, 12 and 13, the Banking Day immediately preceding the Banking Day prior to the date of despatch by the C Shareholder of the relevant notice, or where applicable in the case of article 14 the Banking Day immediately preceding the Banking Day prior to the date of payment by the C Shareholder of the relevant consideration,
"CIPT"	A in relation to any financial year, the Index Linked Profit Threshold calculated on a cumulative annual basis from the first such Index Linked increase that shall apply to the financial year ending 31 March 2012,
"Commercial & Trade Borrowings"	the amount of the aggregated borrowing of each member company of the Company Group in respect of all borrowings other than Bank Borrowings and including but not limited to all borrowings under finance leases, creditor financing and debt factoring,
"Companies Acts"	subject to article 13, the Companies Acts as defined in s2 of the Companies Act 2006, insofar as they apply to the Company,
"Company"	MITIE Technical Facilities Management Limited,
"Company Group"	the Company and its Subsidiaries from time to time,
"Daily Official List"	the daily Official List of the London Stock Exchange,
"Director"	a director of the Company from time to time,
"Earliest Earn-out Date"	the seventh calendar day following the annual general meeting of MITIE held in 2016,
"Earn-out Formula"	the meaning given to it in article 10 11,
"Earn-out Multiple"	the earn-out multiple shall be

	(a) in respect of Level 1 Profit, Upper Earn-out Multiple, and,
	(b) in respect of Level 2 Profit, the lower of (i) 4 and (ii) the P/E Ratio less 0.5,
"Effective Taxation"	the amount of corporation tax (in respect of the relevant financial year to 31 March) which would be payable by applying the higher of
	(a) the consolidated (where applicable, and being the average of the applicable tax rates in respect of each relevant company weighted pro rata to each such company's profits in the relevant financial year) tax rate of the Company Group, and,
	(b) the prevailing mainstream corporation tax rate applicable to each relevant entity in such group,
"Election Period"	the period of 30 calendar days from the end of the applicable Notice Period or, where MITIE is unable to complete the relevant transaction within such period as a result of any regulatory or legal constraint, such period may be extended by up to 3 sequential periods of 30 calendar days provided that each Shareholder (or his nominated representative and/or attorney from time to time) consents to each such extension,
"Enhanced Borrowing Amount"	the amount (if any) at the relevant time of the borrowings of the Company in excess of the Standard Borrowing Limit,
"Enhanced Borrowing Approval"	an enhanced borrowing approval in the form set out in serial 1 of part A of the Subscription Board Minutes,
"Enhanced Borrowing Limit"	such borrowing limit, at the relevant time, above the Standard Borrowing Limit (or any previously agreed Enhanced Borrowing Limit) as is approved, from time to time, under the terms of articles 19.1 and 19.2,
"Enhanced Borrowing Request"	an enhanced borrowing request in the form set out in serial 2 of Part A of the Subscription Board Minutes,
"Event"	has the meaning in Article 6.3(a),
"Excluded Contracts"	those contracts which have been excluded from the calculation of the Profits Threshold and are to be assigned by the relevant member company of the Company Group to a member company of the MITIE Group (other than any member company of the Company Group) within 12 calendar months of the date of this Agreement and as are detailed in Part A of the Subscription Board Minutes,
"Good Leaver"	a B Shareholder who is leaving the employment of the MITIE Group
	(i) as a result of him/her falling victim to a physical or mental incapacity to the extent that he/she is unable to perform his/her duties of employment (provided, if required by the C Shareholder, he/she is so assessed following a medical examination by a doctor nominated by the C Shareholder),
	(ii) having retired (being retirement in accordance with the then prevailing employment policies of the relevant MITIE Group Company

employing the relevant person),

(iii) having died,

(iv) having left the employment of the MITIE Group by reason of having been transferred pursuant to The Transfer of Undertakings (Protection of Employees) Regulations 2009, or

(v) having been designated a Good Leaver by the C Shareholder,

"Group Funding Policy"	MITIE Group's funding policy from time to time relating to treasury and finance policies for external finance, finance leases and/or equivalent external funding arrangements,
"Group Policies"	the policies adopted by MITIE from time to time for the MITIE Group including, but not limited to, any policies in respect of accounts, information technology, investments, property and vehicles,
"holding company"	a holding company as defined in s1159 of the Companies Act 2006,
"IFRS"	the applicable International Financial Reporting Standards or such successor accounting principles as are applicable from time to time and are consistent with the treatment of other relevant MITIE subsidiaries,
"Index"	the All Items Retail Prices Index (RPI) maintained by the Office for National Statistics (or by any government department upon which the duty to maintain such an index shall have devolved) or any index replacing it
"Index Linked"	increased annually on 31 March in each year by the greater of (a) 6%, or, (b) one percent plus the same percentage as the Index has increased in the last 12 months, the first such increase to be based upon the relevant increase in the index for the 12 calendar month period ending on 31 March 2012,
"Intra-Group Transactions"	all intra-MITIE Group transactions including but not limited to all transactions detailed in the following sub-clauses of the definition of 'Profits Adjustments' (ii)(j), (ii)(k), (ii)(m), (ii) (p), (ii)(q), (ii)(r) and, (ii)(s),
"Level 1 Profit"	when calculating the Offer Price, that element of the Profits which equates (when applying for the purposes only of such calculation, the Upper Earn-out Multiple) to an Offer Price of £25 or less per B Share,
"Level 2 Profit"	when calculating the Offer Price, that element (if any) of the Profits which equates (when applying for the purposes of such calculation the Upper Earn-out Multiple) to an Offer Price in excess of £25 per B Share,
"London Stock Exchange"	London Stock Exchange plc,
"Mainstream Taxation"	the amount of corporation tax (in respect of the relevant financial year to 31 March) which would be payable by applying the mainstream corporation tax rate applicable to each relevant entity in the Company Group,
"Market Capitalisation"	the aggregate market value of all MITIE Shares calculated pursuant to paragraph 5 R(5) of Annex 1 to Rule 10 of the Listing Rules produced by the Financial Services Authority,
"MITIE"	MITIE Group PLC (SC19230) with registered office at 35 Duchess Road, Rutherglen, Glasgow G73 1AU,
"MITIE Group"	MITIE, its Subsidiaries, any holding companies of the Company and any Subsidiary of any such holding companies (from time to time) and "Group Company" means any particular one of them,

"MITIE Shares"	MITIE ordinary shares of 2½ pence each and "MITIE Share" means one of them,
"MITIE WACC"	the relevant weighted average cost of capital for MITIE Group PLC as calculated under the terms of serial 3 of part A of the Subscription Board Minutes,
"MTFMHL"	MITIE Technical Facilities Management Holdings Limited (7094957) with registered office at 1, Harlequin Office Park, Fieldfare, Emersons Green, Bristol BS16 7FN,
"Net Asset Value Threshold"	means <ul style="list-style-type: none"> (a) the amount of £16,132,000 (being the net assets of the Company Group as at 31 March 2011), (b) as adjusted on an arms-length basis to reflect the decrease (if any) in the net assets of the Company Group in respect of the Excluded Contracts, (c) as adjusted from time to time in accordance with Article 6 3, and where such sum shall be Index Linked,
"Notice Period"	the meaning give to such term in article 10 3,
"Offer"	in relation to MITIE, the same meaning as <i>"offer"</i> in The Takeover Code (as issued from time to time by the Panel on Takeovers and Mergers) in respect of a third party offer for MITIE but not including any offer for MITIE made by scheme of arrangement solely for the purposes of a capital reorganisation of the MITIE Group,
"Offer Price"	the price for the relevant B Shares as calculated in accordance with articles 10 7, 10 11, 11 2 and 12 2,
"Option"	the conditional put option over his/her Shares granted to each B Shareholder by article 14 of these Articles,
"Option Period"	21 days commencing on the later of the day following an Offer becoming wholly unconditional and the satisfaction of the condition set out in article 14 1,
"P/E Ratio"	the average price/earning ratio per MITIE Share as shown in the London edition of The Financial Times for the five Banking Days immediately preceding the Calculation Day,
"Profits"	the total of the annual consolidated or aggregated (as and where applicable) profits (or, where applicable, losses) of the Company and its Subsidiaries (where applicable) after Effective Taxation which is in excess of the applicable CIPT in respect of each of the two years ending on 31 March (or the last accounting reference date of the Company, if different) immediately preceding the date of a Transfer Notice (and if any accounting period is longer or shorter than 12 months then such adjustments shall be made as are reasonably necessary to ensure such consolidated or aggregated (as and where applicable) post tax profit/loss reflects a true 12-month position) ("Total Adjusted Profit") divided by 2, represented by the following equation

$$\text{Profits} = \text{Total Adjusted Profit} / 2$$

but where such annual consolidated or aggregated (as and where applicable) profits (losses) shall be calculated according to the Profit

Adjustments,

"Profits Adjustments

the applicable profits (losses) shall be adjusted on the following basis

- (i) (a) first, according to the specific accounting principles, bases, conventions and rules set out or referred to in paragraph (ii) below,
 - (b) secondly, and subject to (i)(a) above, according to IFRS as applicable at the date of this Agreement or as at the relevant date, and where MTFMHL shall be entitled to elect, acting reasonably, which such IFRS shall be applied, and,
 - (c) thirdly, and subject to paragraphs (i)(a) and (b) above and, on a basis consistent with the accounting policies of MITIE Group (to the extent applicable and required by MITIE Group) as at the date of this Agreement or as at the relevant date, and where MTFMHL shall be entitled to elect, acting reasonably, which such accounting policies shall be applied,
- (ii) the following shall be applied to the calculation of annual consolidated (where applicable) profits/losses as required by paragraph (i) above
- (a) valuing work in progress and accrued revenue at the amount agreed to be paid by customers or otherwise at an amount reasonably acceptable (on an item by item basis) to the A Shareholder based on previous financial years (where relevant), or in default of agreement as certified by an independent quantity surveyor or expert (as applicable),
 - (b) after making such adjustment as is appropriate for the increase or decrease in the profit on uncompleted contracts,
 - (c) after making such adjustment as is reasonable where work has been invoiced in one accounting period but where such work (or part of it) falls to be undertaken in a prior or subsequent accounting period,
 - (d) after making such adjustment as is reasonable where costs have been incurred in one accounting period but where the invoice for such costs (or part of them) is received in another accounting period,
 - (e) after deleting any profit or loss resulting directly or indirectly from any dealing by the Company or any of its Subsidiaries (where applicable) being conducted otherwise than on an arm's length basis,
 - (f) after treating any Book Debt which is more than three months overdue at the date at which the relevant accounts are prepared up to and which remains unpaid at the date of a Transfer Notice Request and which has not already been provided for as an irrecoverable or doubtful bad debt,
 - (g) after deducting any release of any provisions during the two years which were originally created prior to the commencement of that two year period,
 - (h) after adding back any unnecessary provisions created

during the relevant two year period,

- (i) all defined benefit pension charges and/or income will be accounted for on a defined contribution basis (including, for the avoidance of doubt, any adjustments in respect of any shortfalls/deficits which the any member of the Company Group is required, or is reasonably expected to be required, to pay upon the termination of any customer contract from time to time or otherwise),
- (j) expensing the annual management charge levied by MITIE being a percentage (but not less than 1% or such other amount as is adopted by MITIE in relation to its transfer pricing policy across the MITIE Group) of the turnover of the Company and its Subsidiaries (where applicable) in the relevant year, providing always that in levying such charge, MITIE shall act reasonably and on a bona fide arms-length basis consistent with the treatment of other MITIE subsidiaries,
- (k) expensing such other annual management charge, service charges and/or transfer pricing charges (either in substitution for, or in addition to, the annual management charge at (ii)(j) above) as may be levied by the divisional administration Group Company or any other Group Company, providing always that in levying such charge, MITIE shall act reasonably and on a bona fide arms-length basis consistent with the treatment of other MITIE subsidiaries,
- (l) expensing the normal amortisation expense incurred in the year ending 31 March 2011 and any increase charge due to impairment of goodwill, but excluding any additional amortisation charge due to a change in the IFRS applicable as at the date of this Agreement,
- (m) expensing any charges relating to the use by the Company and/or any of its Subsidiaries (where applicable) of intellectual property belonging to MITIE and/or any other Group Company, providing always that in levying such charge, MITIE shall act reasonably and on a bona fide arms-length basis consistent with the treatment of other MITIE subsidiaries,
- (n) where the employment costs of the directors of the Company and/or any of its Subsidiaries (where applicable) have been reduced (temporarily or otherwise) below market rates through not taking contractual entitlements to salary, bonuses, benefits or other forms of remuneration there will be an appropriate adjustment to reflect the market rate,
- (o) if the Company and/or any of its Subsidiaries (where applicable) has not complied with its obligations to
 - (i) comply with Group Policies,
 - (ii) without prejudice to the foregoing, ensure that its premises are properly and adequately maintained, and that in particular expenditure that is properly required to be incurred in any one year is not brought forward or deferred so as improperly to increase or decrease the Profits relating to that year, and,
 - (iii) pay its auditors in a timely manner as their fees fall

due,

then after allowing such additional amount as is reasonable in the circumstances to reflect the additional expenditure that would have been incurred had the Company and/or its Subsidiary (as appropriate) complied with those obligations,

- (p) expensing such expense as relates, in respect of the relevant accounting period, to the grant of any rights under any discretionary share based employee incentive scheme as has been granted by MITIE in respect of any employee of the Company and/or its Subsidiaries (where applicable) (excluding, for the avoidance of doubt and without limitation, any such expense as relates to MITIE group-wide all-employee save as you earn scheme,
- (q) after disallowing any inter-group charges made by the Company to any of its subsidiaries that are (i) in excess of the amount charged to the Company by MITIE or any other company in the MITIE Group, and/or are (ii) not on a bona fide arms-length basis consistent with the practice of other MITIE subsidiaries,
- (r) for the avoidance of doubt, excluding any profits or losses whatsoever in relation to the Excluded Contracts,
- (s) after making reasonable adjustments (as determined by the C Shareholder) to reflect any financing structures utilised in the Company Group from time to time other than the Assumed Financing Structures,

"Profit Threshold"	subject to article 6 3, the amount of £16,800,000, less Mainstream Taxation,
"Relevant Proportion"	expressed as a percentage, the proportion that the Relevant Shares bear to the aggregate number of the total number of issued B Shares of the Company at the relevant time,
"Relevant Shares"	In relation to the relevant B Shareholder, the B Shares owned by such B Shareholder in relation to which the C Shareholder has served a Transfer Notice,
"Remaining Shares"	the meaning given to it in article 10 12,
"Shares"	A Shares and/or B Shares and/or C Shares as the context permits,
"Shortfall"	in respect of any applicable financial year ending 31 March (or part thereof), the amount (if any) by which the annual consolidated or aggregated (as and where applicable) profits (or, where applicable, losses) of the Company and its Subsidiaries (where applicable) after Effective Taxation are less than the CIPT for that financial year,
"SPA"	an agreement materially in the form as attached at Part B of the Subscription Board Minutes (including, for the avoidance of doubt, the claw-back mechanism therein) and on terms reasonably similar to the treatment of other comparable share purchase agreements for the purchase of shares from minority shareholders at the relevant time,
"Standard Borrowing Amount"	the amount (if any) of borrowings of the Company below, or equal to, the Standard Borrowing Limit,
"Standard Borrowing"	the total of

Limit"

(a) in respect of the Bank Borrowings, an amount equal to the aggregate of the fully paid-up subscription price of the issued share capital of the Company (as applicable at the relevant time) subject to a maximum of £20,000,000 or such other amount as is agreed between MTFMHL, the C Shareholder, and the Company expressly in writing from time to time, and,

(b) in respect of Commercial & Trade Borrowings, an amount calculated as the lower of

(i) the level of Commercial & Trade Borrowings detailed in the Business Plan as at the relevant date, and,

(ii) 2.5 x the aggregate of the fully paid-up subscription price of the issued share capital of the Company (as applicable at the relevant time) or such other amount as is agreed between MTFMHL, the C Shareholder, and the Company expressly in writing from time to time,

"Subscription Board Minutes" the minutes of the Board meeting held on the same date as the adoption of these articles setting out certain administrative details referenced in these articles,

"Subsidiary" a subsidiary as defined in s1159, Companies Act 2006,

"Table A" Table A in the Companies (Tables A to F) Regulations 1985 (as amended),

"Transfer Notice" the notice containing the offer, subject to contract, by the holder of the C Shares to purchase some or all of the Shares which are the subject of the Transfer Request Notice, and,

"Transfer Request Notice" a notice served by a B Shareholder on the C Shareholder specifying the number of B Shares he wishes the holder of the C Shares to consider purchasing

"Upper Earn-out Multiple" the lower of (a) 10, and, (b) the P/E Ratio less 0.5,

1.2 Save as provided in this article 1 and unless the context otherwise requires, words or expressions contained in these Articles bear the same meaning as in the Companies Acts

1.3 In these Articles, unless expressly provided to the contrary, a reference to any statute or provision of a statute includes a reference to any statutory modification or re-enactment of it and to any subordinate legislation made under it in each case for the time being in force

1.4 Save as aforesaid, and unless the context otherwise requires, words or expressions contained in these Articles shall bear the same meaning as in the Companies Acts. If there is any inconsistency between words and expressions used in the Companies Act 1985 and the Companies Act 2006, the words or expressions shall bear the meaning as in the relevant act concerned

1.5 In these Articles, unless the context otherwise requires

(a) words in the singular include the plural, and vice versa,

(b) words importing any gender include all genders, and,

(c) a reference to a person includes a reference to a company and to an unincorporated body of persons

1.6 In these Articles

- (a) references to writing include references to typewriting, printing, lithography, photography and any other modes of representing or reproducing words in a legible and non-transitory form,
- (b) references to "**executed**" includes any mode of execution,
- (c) references to "**other**" and "**otherwise**" shall not be construed *eiusdem generis* where a wider construction is possible,
- (d) references to a power are to a power of any kind, whether administrative, discretionary or otherwise,
- (e) references to a committee of the Directors are to a committee established in accordance with these Articles, whether or not comprised wholly of Directors, and
- (f) references to "**designation**" in the context of shareholders or Directors are to holders of A Shares or B Shares or Directors appointed by the holders of A Shares, as appropriate

1 7 Headings are inserted for convenience only and do not affect the construction of these Articles

1 8 In these Articles a reference to an Article is to a clause of these Articles and a reference to a Regulation is to a regulation in Table A

2 **Table A**

The Regulations contained in Table A in force at the date of the incorporation of the Company shall apply to the Company save insofar as they are varied or excluded by or are inconsistent with these Articles Regulations 40, 50, 53, 54, 64 to 69 (inclusive), 72 to 77 (inclusive), 80, 84, 88, 89, 93, 94, 95 and 118 shall not apply to the Company

3 **Liability of members**

The liability of the members is limited to the amount, if any, unpaid on the shares held by them

4 **Domicile**

The company's registered office is to be situated in England and Wales

5 **Authority to allot**

The directors of the Company are unconditionally authorised pursuant to Section 551, Companies Act 2006 to exercise all powers of the Company to allot, or to grant any right to subscribe for or to convert any security into, shares in the Company up to an aggregate nominal amount of £4,000,000 This authority shall expire on the date 5 years after the passing of this resolution unless previously revoked, varied or extended save that the directors may, notwithstanding such expiry, allot any shares or grant any right to subscribe for, or to convert any security into, shares in pursuance of an offer or agreement to do so made by the Company before this authority expires

6 **Rights attaching to Shares**

Subject to any special rights which may be attached to any class of shares issued after the date of adoption of these Articles the rights attaching to the Shares are as follows

6 1 **Dividends**

If a dividend is declared by the Board, the profits of the Company available for distribution in respect of any financial year shall be applied sequentially

- (a) firstly, in paying to the holders of the A Shares as a class a dividend equal to 50% of the applicable CIPT in respect of the relevant financial year,
- (b) secondly, in paying to the holders of the A Shares as a class a dividend equal to 50% of the applicable CIPT in respect of the relevant financial year,

- (c) thirdly, in paying to the holders of the A Shares as a class a dividend equal to any dividend accruing (under the provisions of articles 6 1(a) and 6 1(b)) but unpaid in respect of prior years from the date of this Agreement,
- (d) thereafter, fourthly in paying to the A Shareholder, the B Shareholders and the C Shareholder a dividend of such amount as the Board shall decide as if they constituted one class of share pro rata to their existing holdings of Shares,
- (e) thereafter, fifthly, in paying to the A Shareholder a dividend per A Share held equal in aggregate to one-half of the balance of profits of the Company available for distribution in each financial year less the amount already paid in respect of the A Shares under article 8 1(a) insofar as there is sufficient profit remaining after the payment in articles 6 1(a), (b), (c) and (d), and,
- (f) thereafter, sixthly, the balance of the profits available for distribution which are resolved to be distributed shall be distributed among the A Shareholder, the B Shareholders and the C Shareholder *pari passu* as if they constituted one class of share pro rata to their existing holdings of shares,

provided that the B Shareholders and the C Shareholder shall have no entitlement to any dividends whatsoever at any time after the tenth anniversary of the Adoption Date and that after such date the A Shareholder shall be entitled to such dividend as the Board sees fit

6 2 Capital

On a return of assets on liquidation or capital reduction or otherwise, the assets of the Company available for distribution amongst its shareholders after payment of its liabilities shall be applied in the following manner in the following order of priority

- (a) first, in paying to the holders of the A Shares as a class an amount equal in value to the Net Asset Value Threshold,
- (b) second, in paying to the A Shareholder per A Share (i) the subscription price paid per A Share in respect of any subscription following the date of adoption of these Articles, and (ii) a sum equal to all unpaid arrears and accruals of dividends on the A Shares calculated down to the date of the return of capital,
- (c) third, in paying to the holders of the B Shares and the C Shares the subscription price paid per Share (including, for the avoidance of doubt, any premium paid on subscription) together with a sum equal to the unpaid arrears (if any) of dividends thereon calculated down to the date of the return of capital, and,
- (d) fourth, in paying the balance thereof to the holders of the A Shares, the B Shares and the C Shares *pari passu* as if they constituted one class of share pro rata to their existing holdings of Shares

6 3 Adjustment to the Profit Threshold and the Net Asset Value Threshold

- (a) If any sale or acquisition or change in business structure or other corporate activity ("Event") by the Company or the MITIE Group occurs which, in the opinion of the C Shareholder, requires an adjustment to the Profit Threshold and/or the Net Asset Value Threshold to ensure that immediately following the Event occurring, the value of the B Shares is the same, taking into account all of the circumstances, following the Event as it was before the Event, the Profit Threshold and/or the Net Asset Value Threshold shall be so adjusted by way of ordinary resolution of the C Shareholder
- (b) Any dispute relating to an adjustment made under Article 6 3(a) above, shall be referred to MITIE's auditors for the time being (or if they are unable to act a firm of international accountants appointed by the President of the Institute of Chartered Accountants in England and Wales) who shall act as experts and whose decision shall be final and binding upon the parties

6 4 **Voting**

- (a) The holders of the Shares shall have the right to receive notice of and attend and vote at any general meeting of the Company Subject to sub-article (b) below, or any special rights, privileges or restrictions attached to any Shares, at a general meeting of the Company on a show of hands every shareholder who (being an individual) is present in person or by proxy (not being himself a shareholder) or (being a corporation) is present by a representative duly authorised under s323 of the Companies Act 2006 (not being himself a shareholder) shall have one vote, and on a poll every shareholder present in person, by representative or by proxy shall have one vote for every Share of which he is the holder
- (b) The C Shareholder shall be entitled to exercise such number of votes as is equal to 50 1% of all votes attaching to all Shares and such votes shall be divided between the C Shares then in issue (provided that such right shall not affect the voting rights attaching to the B Shares and the B Shareholders shall, for the avoidance of doubt, be able to exercise on a poll, one vote per B Share then held)

7 **Issue of Shares**

- 7 1 Unless otherwise agreed in writing by all the shareholders for the time being of the Company entitled to attend and vote at general meetings, and subject to Articles 19 4, any Shares to be issued whether for cash or otherwise shall be offered to the shareholders of that class in proportion, as nearly as may be, to their holdings of Shares
- 7 2 Any such offer as referred to in article 7 1 shall be made by notice specifying the number of Shares and the price per Share at which the same are offered and limiting period (being not less than 14 days unless the shareholder to whom the offer is to be made otherwise agrees) within which the offer, if not accepted, shall be deemed to be declined The price stated in the notice shall be, as nearly as may be, the market value of the Shares at the date of issue valued as a proportion of the value of the whole Company (such valuation to be carried out in accordance with such methodology as is reasonably determined by the C Shareholder as at the relevant date)
- 7 3 Following the expiration of the time limit in article 7 2
 - (a) if a B Shareholder does not take up his proportion of B Shares then such shortfall may be taken up by the C Shareholder,
 - (b) the Directors shall allot the Shares so offered to or amongst the shareholders who have notified their willingness to take all or any of such shares and the Directors shall make such arrangements as they shall think fit concerning entitlements to fractions
- 7 4 Save with the consent of the C Shareholder, no Shares may be allotted or issued to any person who is not immediately prior to such allotment or issue a shareholder
- 7 5 Pursuant to Section 567, CA2006, sub-section (1) of Section 561, CA2006, and sub-sections (1) to (5) inclusive of Section 562, CA2006 shall be excluded from applying to the Company
- 7 6 Any Share issued to a shareholder pursuant to this Article shall on issue be designated as either an A Share, a B Share or a C Share

8 **Lien**

- 8 1 Without prejudice to the lien conferred by regulation 8 of Table A the Company shall have a first and paramount lien on all Shares for all moneys presently payable by a shareholder or his estate to the Company The liens conferred above and by regulation 8 of Table A shall attach to all Shares (whether fully paid up or otherwise) registered in the name of any person indebted or under liability to the Company
- 8 2 All Shares to be sold in the enforcement of the Company's lien or rights of forfeiture shall be offered in accordance with article 7 as if they were unissued Shares of the Company

9 **Calls**

- 9 1 If a call remains unpaid after it has become due and payable the person from whom it is due and payable shall pay interest on the amount unpaid from the day it became due and payable until it is paid

at the rate fixed by the terms of allotment of the Share or in the notice of the call or, if no rate is fixed by the terms of allotment of the Share or in the notice of the call, at the appropriate rate (as defined by the Acts) and all expenses that may have been incurred by the Company by reason of such non-payment but the Directors may waive payment of the interest and expense wholly or in part

- 9 2 If a call remains unpaid after it has become due and payable the Directors may give to the person from whom it is due not less than fourteen clear days' notice requiring payment of the amount unpaid together with any interest and all expenses that may have been incurred by the Company by reason of non-payment which may have accrued. The notice shall name the place where payment is to be made and shall state that if the notice is not complied with the Shares in respect of which the call was made will be liable to be forfeited
- 10 **Transfers of Shares**
- 10 1 Transfers of Shares may only be made in accordance with articles 10 – 15 unless the shareholders otherwise agree in writing
- 10 2 Subject to article 10 3 a B Shareholder seeking to sell or transfer any Shares may serve a Transfer Request Notice to the C Shareholder (and if he/she elects to do so a copy of such notice should be sent for information only to the Board) between the Earliest Earn-out Date and the tenth anniversary of the Adoption Date
- 10 3 Each B Shareholder may only serve one Transfer Request Notice in any calendar year and it must be served in the seven calendar-day period commencing on the eighth calendar day following the annual general meeting of MITIE held in such calendar year (the "**Notice Period**")
- 10 4 Where a Transfer Request Notice is served in the Notice Period in any year from the Earliest Earn-out Date to the second anniversary of the Earliest Earn-out Date (inclusive) (and some/all of the Shares subject to the Transfer Request Notice are, at its election, acquired by the C Shareholder in accordance with this article 10) a B Shareholder may not serve a second Transfer Request Notice until two years have elapsed from the date of the first Transfer Request Notice, unless
- (a) agreed otherwise in writing between the Shareholders, or,
 - (b) such B Shareholder qualifies as either a Good Leaver or a Bad Leaver
- 10 5 A Transfer Request Notice shall stipulate the number of Shares a B Shareholder wishes to sell and the first Transfer Request Notice served by a B Shareholder shall specify a minimum of 20% and a maximum of 80% (or such other amount as is agreed by the C Shareholder) of the B Shareholder's shareholding in the Company as at the date of the Transfer Request Notice as the Shares he/she wishes to be transferred
- 10 6 The serving of a Transfer Request Notice by a B Shareholder shall, conditional on the C Shareholder issuing a Transfer Notice to such a B Shareholder referring to his Transfer Request Notice, oblige the B Shareholder to accept any offer made by the C Shareholder to purchase some or all of the Shares at the Offer Price pursuant to the terms and conditions set out in the Transfer Notice and execute a share purchase agreement relating to the Shares to be sold
- 10 7 The C Shareholder may, at any time in the Election Period, elect to issue a Transfer Notice stating
- (a) the number of Shares it shall purchase,
 - (b) the relevant Offer Price,
 - (c) the method by which the consideration shall be satisfied (being a specified amount of the Offer Price in cash with any balance to be paid in MITIE Shares at the price determined in accordance with article 10 8),
 - (d) that its acceptance is conditional on the execution of an SPA relating to the Shares to be sold, and,
 - (e) any further conditions that must be satisfied before completion of the purchase can take place,
 - (f) the relevant P/E Ratio, and,

- (g) the relevant average of the closing middle market price for MITIE Shares as determined under article 10.8 below
- 10.8 For the purpose of Article 10.7 the value of the MITIE Shares to be issued in payment of the Offer Price shall be the average of the closing middle market price of MITIE Shares as derived from the Daily Official List for the five Banking Days immediately preceding the relevant Calculation Day
- 10.9 The C Shareholder will use its reasonable endeavours to procure that any MITIE Shares issued to the proposing transferor shall be admitted to the Official List and admitted to trading on the London Stock Exchange. In the event that those MITIE Shares are not so admitted within 90 calendar days of such completion date the relevant former B Shareholder shall transfer any MITIE Shares issued to him to such person as the C Shareholder shall nominate for aggregate consideration of £1 and the C Shareholder shall pay such part of the Offer Price represented by such MITIE Shares to the relevant former B Shareholder in cash in £GBP
- 10.10 When a B Shareholder receives MITIE Shares in exchange for his B Shares under articles 10, 11 and/or 12 (but in relation thereto only in relation to those MITIE Shares issued pursuant to the first Transfer Notice issued by MITIE to such B Shareholder), 11 or 12, such B Shareholder shall not thereafter dispose of such MITIE Shares for a period of two years from the date of the allotment of the relevant MITIE Shares. If, notwithstanding, a second Transfer Notice is issued in the calendar year following the first Transfer Notice, such B Shareholder shall not thereafter dispose of the MITIE Shares which are issued pursuant to that second Transfer Notice for a period of one year from the date of the allotment of the relevant MITIE Shares. There shall be no restrictions on the disposal of MITIE Shares which are the subject of any subsequent Transfer Notice
- 10.11 Completion of a transfer of Shares pursuant to these Articles shall be within the applicable Election Period and at the place and time stated in the relevant SPA
- (a) the proposing transferor shall deliver any and all share certificates (or a suitable indemnity in lieu thereof), a completed stock transfer form in respect of the Relevant Shares to MITIE and any other documents required by the SPA to the C Shareholder, and,
- (b) the C Shareholder shall satisfy the Offer Price on the terms set out in the Transfer Notice

For the avoidance of doubt an SPA (in the form prepared by the C Shareholder) shall be entered into by the relevant transferor and the C Shareholder where required by the C Shareholder in respect of transfers of Shares hereunder, including in relation to Good Leavers and Bad Leavers. In the event that a SPA is not entered into by any transferor of Shares hereunder, the terms of clauses 1, 2, 4.2-4.7 inclusive, 6-16 inclusive and paragraphs 1, 2, 3.2, 4, 7, 9 and 10 of schedule 3 of the pro-forma SPA shall be deemed incorporated into the terms of the relevant Transfer Request Notice, Transfer Notice, stock transfer form and any other documentation effecting such transfer, and shall be contractually binding upon the relevant B Shareholder for the benefit of the C Shareholder

Earn-out

If a B Shareholder serves a Transfer Request Notice in a Notice Period occurring between the Earliest Earn-out Date and the tenth anniversary of the Adoption Date inclusive and the C Shareholder elects to issue a Transfer Notice in relation thereto, the Offer Price to be set out in each Transfer Notice shall be calculated as the Profits multiplied by the applicable Earn-out Multiple multiplied by the Relevant Proportion as follows

$$\text{Offer Price} = P \times EM \times RP$$

where

- (a) *P* is the applicable Profits,
- (b) *EM* is the applicable Earn-out Multiple, and,
- (c) *RP* is the Relevant Proportion

(the "Earn-out Formula")

- 10.12 On the fifteenth (15th) day following the annual general meeting of MITIE held in 2021, all the B Shareholders shall be deemed to have sent a Transfer Request Notice in respect of all of their Shares held on such date (such Shares being "**Remaining Shares**") whereupon the C Shareholder shall have

the option to acquire any or all of such Remaining Shares by issuing a Transfer Notice to each relevant B Shareholder stating an Offer Price which for these purposes shall be the lower of

- (a) the price that the relevant B Shareholder paid for all his Remaining Shares subject to such transfer,
- (b) the price that the relevant B Shareholder paid for the Shares subject to such transfer less the Relevant Proportion of the aggregate of the Shortfall (if any) for each financial year from 1 April 2011 to 31 March 2021, and,
- (c) market value determined in accordance with the provisions of ss272 and 273 Taxation of Chargeable Gains Act 1992 ("**TCGA**")

10 13 Notwithstanding the provisions of articles 10, 11 and 12, the C Shareholder shall have the right, in its absolute discretion, to waive the requirements for a Transfer Request Notice to be served (or deemed to be served) only within a Notice Period if, in its reasonable opinion, exceptional circumstances warrant the granting of such waiver

11 Transfer of Shares by a Good Leaver

11 1 A Good Leaver shall be deemed to have given a Transfer Request Notice in respect of all his B Shares on the last day of the Notice Period commencing prior to the date that he became a Good Leaver unless the Good Leaver leaves between 31 March and the last day of the next Notice Period in that same year in which case he shall be deemed to give a Transfer Request Notice in respect of all his B Shares on the last day of the Notice Period after the date he became a Good Leaver

11 2 Subject to article 11 3, if the C Shareholder elects to give a Transfer Notice to the Good Leaver, such Transfer Notice shall state an Offer Price using the Earn-out Formula provided that if (a) the calculation of the Offer Price using the Earn-out Formula would be less than (b) the Offer Price if calculated using the approach set out in article 12 2, then the approach set out in article 12 2 shall apply

11 3 If a Good Leaver is deemed to serve a Transfer Request Notice before it is possible to calculate an Offer Price using the Earn-out Formula, then the Offer Price shall be the price the B Shareholder paid for all the B Shares subject to the Transfer Request Notice

11 4 The provisions of articles 10 6 – 10 11 shall apply to a transfer of shares by a Good Leaver (to the extent applicable)

12 Transfer of Shares by a Bad Leaver

12 1 A Bad Leaver shall be deemed to have given a Transfer Request Notice in respect of all his B Shares on the last day of the next Notice Period commencing after the date the relevant Bad Leaver became a Bad Leaver

12 2 If a Transfer Request Notice is deemed to be given by a Bad Leaver at any time prior to the tenth anniversary of the Adoption Date and if the C Shareholder elects to give a Transfer Notice to the Bad Leaver, the Offer Price which the Bad Leaver shall be obliged to accept shall be the lower of

- (a) the price that the Bad Leaver paid for all his Shares (as held as at the relevant date),
- (b) the price that the Bad Leaver paid for all his Shares (as held as at the relevant date) less the Relevant Proportion of the aggregate of the Shortfall for each financial year (or part thereof) from 1st April 2011 to the date upon which a Transfer Request Notice is given or is deemed to be given, and,
- (c) market value determined in accordance with the provisions of ss272 and 273 TCGA

12 3 The provisions of articles 10 6 - 10 11 shall apply to a transfer of Shares by a Bad Leaver (to the extent applicable)

13 Third Party Offer for the Company

13 1 If an offer is made by or on behalf of a bona fide third party arms length purchaser (such purchaser, for the avoidance of doubt, not being a member of the MITIE Group) (the "**Offeror**") to acquire all the

issued Shares in the capital of the Company at an arms length price (the "**Third Party Offer**") and the A Shareholder and the C Shareholder wish to accept the Third Party Offer, then the A Shareholder and the C Shareholder shall notify all the B Shareholders of

- (a) the identity of the Offeror,
- (b) the offer price for each A Share,
- (c) the offer price for each B Share, and,
- (d) the offer price for each C Share

The offer price for each B Share shall be such arms-length consideration as is certified by the Company's auditors as being an arms-length apportionment of the total consideration for the issued share capital of the Company between each share class applying the principles set out in article 14 1

13 2 Upon such notification and conditional only on acceptance of the Third Party Offer by the A Shareholder and the C Shareholder, the B Shareholders shall

- (a) be deemed to have accepted the Third Party Offer in accordance with its terms and shall sell to the Offeror the B Shares held by him/her with full title guarantee and free of all liens, charges and encumbrances, and,
- (b) be obliged to deliver to the Offeror or his/her nominee an executed transfer of the B Shares held by him/her and the certificate(s) in respect of them (or a suitable indemnity in lieu thereof)

14 Takeover Offer for MITIE

14 1 In the event of an Offer becoming wholly unconditional the C Shareholder grants to each B Shareholder the right, conditional upon receipt of the approval of MITIE Shareholders if required by the Takeover Code or any other approval or consent required by law, regulation or the Takeover Code, to require the C Shareholder to purchase all of the Shares held by each B Shareholder for a price calculated as follows

P x X x Y

where

- (a) **P** is the greater of
 - (i) the consolidated or aggregated (as and where applicable) profits (or where applicable losses) of the Company and its Subsidiaries (where applicable) after Effective Taxation and after the Profits Adjustments which are in excess of the applicable CIPT for the relevant trading period (to be adjusted to a period of twelve months if longer or shorter than twelve months) as shown in the last audited annual accounts of the Company (and the accounts of its Subsidiaries (where applicable)) and where such profits (loss) shall be calculated according to the Profits Adjustments, or,
 - (ii) the average of the consolidated or aggregated (as and where applicable) profits (or where applicable, losses) of the Company and its Subsidiaries (where applicable) after Effective Taxation and after the Profits Adjustments which are in excess of the applicable CIPT for the two relevant trading periods (to be adjusted to a period of twelve months if longer or shorter than twelve months) as shown in the last two audited annual accounts of the Company (and the accounts of its Subsidiaries (where applicable)) and where such profits (losses) shall be calculated according to the Profits Adjustments
- (b) **X** is the Earn-out Multiple, and
- (c) **Y** is the Relevant Proportion,

provided always that the aggregate consideration that may be payable by the C Shareholder in respect of the acquisition of all the B Shares held by B Shareholders shall be capped at 24 9% of the Market Capitalisation of MITIE as at the close of business on the last Banking Day prior to the Adoption Date. If the aggregate consideration actually paid is so capped each B Shareholder shall be entitled to such amount of consideration as is proportional to his holding of B Shares

- 14 2 Each B Shareholder may exercise his Option during the Option Period in respect of all (but not part) of the Shares owned by him at the commencement of the Option Period
- 14 3 The Option shall be exercised by a B Shareholder serving a notice on the C Shareholder which shall be irrevocable and oblige the B Shareholder to transfer all of his B Shares
- 14 4 If a notice is so served the C Shareholder shall purchase the Shares of each B Shareholder, at its election, either
- (a) for cash, or
 - (b) by issuing, fully paid, to the relevant B Shareholder sufficient MITIE Shares valued at the price of the Offer for it to satisfy the purchase price for those Shares, or,
 - (c) a mixture of cash and MITIE Shares as per paragraph (b) above
- 14 5 The MITIE Shares issued to the B Shareholders pursuant to this article 14 shall rank par passu in all respects with all other MITIE Shares then in issue save in respect of any dividend then declared but unpaid
- 14 6 Completion of the acquisition of a B Shareholder's Shares pursuant to this article 14 shall take place at 1, Harlequin Office Park, Fieldfare, Emersons Green, Bristol BS16 7FN seven days after the expiry of the Option Period (or at such other time and place as the C Shareholder may direct) when
- (a) each B Shareholder who exercises the Option shall sell his Shares to the C Shareholder with full title guarantee free from all liens, charges and encumbrances and with all rights attached or attaching to them at or after the date of the Notice,
 - (b) each B Shareholder who exercises the Option shall deliver a duly completed and executed stock transfer form in favour of the C Shareholder in respect of his Shares together with the relevant share certificate(s) (or a suitable indemnity in lieu thereof),
 - (c) the C Shareholder shall allot or procure the allotment of the relevant number of MITIE Shares fully paid to each B Shareholder and/or shall pay the appropriate cash consideration, and,
 - (d) the Shareholders shall procure that a Board meeting is held at which the transfers of the Shares to the C Shareholder are approved (subject to them being appropriately stamped) and registered in the Company's books
- 14 7 Each of the Shareholders hereby irrevocably waives all rights of pre-emption conferred on him/her by these Articles or otherwise over all Shares in respect of which a notice is served pursuant to this article 14 and/or transferred pursuant to articles 10-13
- 15 **Further Provisions concerning the transfer of Shares**
- 15 1 Without prejudice to the restrictions set out elsewhere in these Articles, save with the consent of the Board, no transfer, disposal, charge, mortgage, assignment or other dealing in any Shares or any interest or right therein shall occur other than the transfer of the whole legal and equitable title to such Shares free from all liens, charges and encumbrances and with all rights, title and interest in existence at the date of transfer together with all rights which may arise in respect thereof thereafter (and "**transfer**", in the context of a transfer of Shares, shall be construed accordingly in these Articles)
- 15 2 The Directors may decline to register the transfer of a Share on which the Company has a lien
- 15 3 The instrument of transfer of a Share shall be signed by or on behalf of the transferor (and in the case of a transfer of a partly paid Share also by the transferee) and the transferor shall be deemed to remain the holder of the Share until the name of the transferee is entered in the Register in respect thereof All instruments of transfer, when registered, shall be retained by the Company
- 15 4 Save where otherwise approved in writing by the C Shareholder, the B Shares shall only be transferred to a C Shareholder

16 Class meetings and variation of rights

16 1 The provisions of these Articles relating to general meetings shall apply, with necessary modifications, to any meeting of the holders of Shares of a class held otherwise than in connection with the variation or abrogation of the rights attached to Shares of that class

16 2 Save as provided for elsewhere in these Articles, all or any of the special rights for the time being attached to any Share or class of Shares in the capital of the Company may, either with the prior consent in writing of the holders of not less than three-fourths of the issued Shares of the class or with the sanction of an extraordinary resolution passed at a separate meeting of the holders of Shares of the class duly convened and held as hereinafter provided (but not otherwise) be varied or abrogated. To such meetings the provisions of these Articles with respect to notice and proceedings at general meetings shall apply mutatis mutandis apply, but so that the quorum shall be a person or persons present in person, by proxy or by corporate representative, holding or representing not less than one-third of the issued Shares of the class

17 Proceedings at general meetings

17 1 Every notice calling a general meeting shall comply with the provisions of s325(1) of the Companies Act 2006 as to giving information to shareholders in regard to their right to appoint proxies

17 2 No business shall be transacted at any general meeting unless a quorum is present at the time when the meeting proceeds to business. The quorum shall be the C Shareholder or its proxy or duly authorised representative

17 3 If within half an hour of the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of shareholders, shall be dissolved, in any other case it shall stand adjourned to the same day in the same week, at the same time and place or to such other day and at such other time and place as the Directors may determine. If at any such adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the meeting shall be dissolved

17 4 Except as set out in these Articles and subject to any special rights, privileges or restrictions attached to any Shares, at a general meeting of the Company on a show of hands every shareholder who (being an individual) is present in person or by proxy (not being himself a shareholder) or (being a corporation) is present by a representative duly authorised under s323 of the Companies Act 2006 (not being himself a shareholder) shall have one vote, and on a poll every shareholder present in person, by representative or by proxy shall have one vote for every Share of which he is the holder. No resolution of the shareholders in general meeting shall be valid unless the C Shareholder votes in favour of such a resolution

17 5 A poll may be demanded at any general meeting by the chairman or any shareholder present in person, by proxy or by corporate representative and entitled to vote. Regulation 46 of Table A shall be modified accordingly

17 6 Any shareholder able to participate in the proceedings of any general meeting by means of a communication device (including, without limitation, a telephone) which allows all shareholders present at that meeting (whether in person or by proxy or by means of such type of communication device) to hear at all times that shareholder and that shareholder to hear at all times all shareholders present who speak shall be deemed to be present at such meeting and shall be counted when reckoning a quorum

17 7 A resolution executed or approved in writing by or on behalf of the holders of all the issued Shares entitled to vote thereon shall be as valid and effective for all purposes as a resolution passed at a general meeting duly convened and held and may consist of several documents in the like form, each executed by or on behalf of one or more persons. In the case of a corporation the resolution may be signed on its behalf by a Director or the secretary thereof or by its duly appointed attorney or duly authorised representative

18 Directors

18 1 Unless otherwise determined by ordinary resolution, there shall be at least two Directors (of whom one shall be a C Director) and the maximum number of Directors shall be determined by the Company in general meeting

- 18 2 The C Shareholder shall be entitled to appoint any number of Directors to the Board, to remove any Directors so appointed by it and to designate any Director as a C Director. Any Director appointed by the C Shareholder shall automatically become a C Director.
- 18 3 In addition to the situations set out in regulation 81 of Table A, the office of Director shall be automatically vacated if
- (a) he/she resigns the office of Director by providing notice in writing to the Company,
 - (b) he/she is requested to resign by notice in writing addressed to him/her at his/her address as shown in the register of Directors and signed by a C Director (without prejudice to any claim for damages which he/she may have for breach of any contract between him/her and the Company), or,
 - (c) he/she is convicted of an indictable offence or his/her conduct (whether or not concerning the affairs of the Company) is the subject of an investigation by an inspector appointed by the Secretary of State or by the Serious Fraud Squad (or any successor body or body equivalent in any foreign jurisdiction) and the Directors shall resolve that it is undesirable in the interests of the Company that he/she remains a Director of the Company, or,
 - (d) his/her contract of employment is terminated for any reason, or,
 - (e) he/she has been in breach of any material provision of his/her contract of employment or engagement with the Company for a period of 30 days after having been given written notice (if the breach is capable of remedy) to rectify the same.
- 18 4 The Directors may resolve that a person who is willing to act as a Director, either to fill a vacancy or as an additional Director, provided that the appointment does not cause the number of Directors to exceed any number fixed as the maximum number of Directors.
- 18 5 The Directors shall not be required to retire by rotation.
- 18 6 The Board may exercise all the powers of the Company to borrow and raise money and to mortgage and charge its undertaking, property and uncalled capital or any part of it, and subject to s 551 of the Companies Act 2006, to issue debentures, debenture stock and other securities outright or as security for any debt, liability or obligation of the Company or of any third party.
- 18 7 The chairman of the Board shall at all times be a C Director.
- 18 8 Subject to Section 175(6), CA2006, a director may vote at any meeting of the directors or a committee of the directors of which he is a member on any resolution, and a director may participate in the transaction of the business of the directors and count in the quorum at any such meeting of the directors or a committee of the directors of which he is a member notwithstanding that it concerns or relates in any way to a matter in which he has directly or indirectly any kind of interest or duty. This Article does not affect any obligation of a director to comply with Section 177 and/or Section 182, CA2006 (or, as the case may be, Section 317, CA1985) or Regulations 85 and 86 regarding disclosure of interests. Regulations 94 to 97 (inclusive) shall not apply to the company.
- 18 9 The quorum necessary for the transaction of the business of the Board shall be two Directors (one of which must be a C Director). A person who holds office only as an alternate Director shall, if his/her appointor is not present, be counted in the quorum.
- 18 10 Questions arising at any meeting of the Board shall be decided by a majority of votes provided that a C Director votes in favour of the decision. For the avoidance of doubt, a resolution of Directors shall not be validly passed unless at least one C Director votes in favour of the resolution.
- 18 11 A Director may, and the secretary on the requisition of a Director shall, summon a meeting of the Board at any time. Unless otherwise agreed by all the Directors of the Board, not less than seven days' notice of meetings of the Directors shall be given to each of the Directors at their address in the United Kingdom whether present in the United Kingdom or not.
- 18 12 Meetings of the Directors may be held by means of a communication device (including a conference telephone or similar equipment) so long as all participants can hear each other and address each other simultaneously. Such meetings shall be as effective as if the Directors had met in person and each person so participating in the meeting shall be deemed to be present at the meeting and shall be counted when reckoning a quorum.

- 18 13 A resolution executed or approved in writing by all the Directors shall be as valid and effective for all purposes as a resolution passed at a meeting of the Board duly convened and held and may consist of several documents in the like form, each signed by one or more of the Directors. A resolution signed by an alternate Director need not also be signed by his/her appointor and, if it is signed by a Director who has appointed an alternate Director, it need not be signed by the alternate Director in that capacity
- 18 14 The Directors may grant retirement pensions or annuities or other allowances including allowances on death, to any person or to the widow or widower or dependants of any person, in respect of services rendered by him/her to the Company as managing Director or in any other executive office or employment under the Company or indirectly as an executive officer or employee of any subsidiary company of the Company or of its holding company (if any) notwithstanding that he/she may be or may have been a Director of the Company and may make payments towards insurances or trusts for such purposes in respect of such persons and may include rights in respect of such pensions, annuities and allowances in the terms of engagement of any such person
- 19 Borrowing Limit and obligation to subscribe for Additional Shares**
- 19 1 In the event that the Board determines, from time to time, that additional borrowings are required for the operation of the business of the Company in excess of the Standard Borrowing Limit or any previously agreed Enhanced Borrowing Limit (as agreed under the terms of this Article 19 1 and Article 19 2) then it shall serve an Enhanced Borrowing Request on the company secretaries of each of the C Shareholder and MTFMHL
- 19 2 Upon receipt of an Enhanced Borrowing Request the C Shareholder and MTFMHL may, at their absolute discretion, approve such Enhanced Borrowing Request by issuing to the Company an Enhanced Borrowing Approval signed by duly authorised signatories of each of the C Shareholder and MTFMHL. The Enhanced Borrowing Limit set out in such Enhanced Borrowing Approval shall be deemed effective (and shall supersede any previously agreed Enhanced Borrowing Approval) immediately upon the date of receipt by the Company of such Enhanced Borrowing Approval
- 19 3 The B Shareholders shall use their reasonable endeavours to procure that the Company does not in aggregate borrow more than the Approved Borrowing Limit
- 19 4 If the Company exceeds the Approved Borrowing Limit for any 28 calendar days in any period of 60 consecutive calendar days then the A Shareholder and B Shareholders shall (within 28 calendar days of the expiry of the period of 60 consecutive calendar days) subscribe for additional Shares in the Company in the following manner
- (a) the B Shareholders shall subscribe for such number of additional B Shares (respectively) pro rata to their existing shareholdings for cash at a subscription price of £1 per Share (or such higher amount as may equal at the relevant date, the prevailing market value (as determined under ss272 and 273 TCGA) of such shares, as reasonably determined by the A Shareholder) as shall cause the amount of the issued paid up share capital of the Company (including the relevant share premium) to exceed the Average Excess Borrowing by 5 per cent,
 - (b) if the B Shareholders fail to subscribe for the total number of B Shares to be issued to them in accordance with article 19 4(a) then the A Shareholder may subscribe for such number of additional B Shares as shall make up the deficit,
 - (c) no provision of this article 19 4 shall cause the A Shareholder in respect of the subscription of Shares to provide aggregate consideration that may be in excess of 24.9% of the Market Capitalisation as at the close of business on the last Banking Day prior to the date of this Agreement or otherwise cause it to obtain shareholder approval, and,
 - (d) the Shareholders shall together procure the passing of such resolutions at a general meeting of the Company or if the Company so elects by written resolution authorising the allotment of such Shares, in compliance with all necessary legislation, as shall be necessary to give effect to this article 19
- 19 5 The interest rate applicable to
- (a) the amount of borrowings up to and including the Standard Borrowing Limit shall be calculated as set out in serial 4 of part A of the Subscription Board Minutes, and,
 - (b) the Enhanced Borrowing Amount shall be calculated as set out in serial 3 of Part A of the Subscription Board Minutes

20 **Indemnity**

20 1 Subject to the provisions of the Companies Act 2006, the Company may

- (a) indemnify any person who is or was a Director, directly or indirectly (including by funding any expenditure incurred or to be incurred by him/her), against any loss or liability, whether in connection with any proven or alleged negligence, default, breach of duty of trust by him/her or otherwise, in relation to the Company or any associated company, and/or,
- (b) purchase and maintain insurance for any person who is or was a Director against any loss or liability or any expenditure he/she may incur whether in connection with any proven or alleged negligence, default, breach of trust by him/her or otherwise, in relation to the Company or any associated company

For the purposes of this article, "**associated company**" has the same meaning as it has for the purposes of s232 of the Companies Act 2006

21 **Winding up**

Subject to article 6 2, in a winding up the liquidator may, with the sanction of a special resolution, distribute all or any of the assets in specie among the shareholders in such proportions and manner as may be determined by such resolution, provided always that if any such distribution is proposed to be made otherwise than in accordance with the existing rights of the shareholders, every shareholder shall have the same right of dissent and other ancillary rights as set out in s111 of the Insolvency Act 1986