

DATED

1 November

2011

**COMPANIES ACT 2006  
PRIVATE COMPANY LIMITED BY SHARES**

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**Articles of Association**

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Relating to  
**E-RESISTIBLE LIMITED**  
(registered number 6429611)

THURSDAY



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COMPANIES HOUSE

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**THE COMPANIES ACT 2006**  
**PRIVATE COMPANY LIMITED BY SHARES**  
**ARTICLES OF ASSOCIATION**

of

**E-RESISTIBLE LIMITED (Company)**

(Adopted by special resolution passed on *1 November* 2011)

**Introduction**

**1. Interpretation**

1.1 In these articles, unless the context otherwise requires

<b>Act</b>	means the Companies Act 2006,
<b>Acting in Concert</b>	has the meaning given to it in the City Code on Takeovers and Mergers published by the Panel on Takeovers and Mergers (as amended from time to time),
<b>Appointor</b>	has the meaning given in article 11.1,
<b>articles</b>	these articles of association as amended from time to time,
<b>Board</b>	the board of Directors of the Company from time to time,
<b>Business Day</b>	means any day (other than a Saturday, Sunday or public holiday in the United Kingdom) on which clearing banks in the City of London are generally open for business,
<b>Civil Partner</b>	in relation to an individual Shareholder, a civil partner as defined in the Civil Partnerships Act 2004,
<b>Conflict</b>	has the meaning given in article 7.1,
<b>Controlling Interest</b>	means an interest in shares giving to the holder or holders control of the Company within the meaning of section 1124 of the Corporation Tax Act 2010,
<b>Eligible Director</b>	means a director who would be entitled to vote on the matter at a meeting of directors (but excluding any director whose vote is not to be counted in respect of the particular matter),

<b>Fair Value</b>	means the value of the Sale Shares determined in accordance with clause 21,
<b>Family Trusts</b>	in relation to an individual Shareholder, a trust or settlement set up wholly for the benefit of that individual Shareholder ( <b>Settlor</b> ) and/or the Settlor's Privileged Relations,
<b>Group</b>	the Company and its Subsidiaries (if any) from time to time. References to a Group Company are to any one or more of those companies,
<b>Member of the Same Group</b>	as regards any company, a company which is from time to time a parent undertaking of any such company (a <b>Parent Undertaking</b> ) or a Subsidiary Undertaking of any such Parent Undertaking,
<b>Model articles</b>	means the model articles for private companies limited by shares contained in Schedule 1 of the Companies (Model articles) Regulations 2008 (SI 2008/3229) as amended prior to the date of adoption of these articles,
<b>Permitted Transfer</b>	a transfer of Shares in accordance with article 16,
<b>Permitted Transferee</b>	in relation to a Shareholder <p>(a) who is an individual, to any of his Privileged Relations, Family Trusts or to the trustees of those Family Trusts,</p> <p>(b) that is an undertaking (as defined in section 1161(1) of the Act), to any Member of the same Group,</p>
<b>Privileged Relation</b>	the spouse, Civil Partner, widow or widower of a Shareholder and the Shareholder's children and grandchildren (including step and adopted children), and step and adopted children of the Shareholder's children,
<b>Sale Shares</b>	the shares specified or deemed to be specified for sale in a Transfer Notice or Deemed Transfer Notice,
<b>Seller</b>	the transferor of shares pursuant to a Transfer Notice,
<b>Share</b>	an ordinary Share in the issued share capital of the Company,

<b>Subsidiary</b>	has the meaning given in s 1159 of the Act,
<b>Subsidiary Undertaking</b>	has the meaning given in s 1162 of the Act,
<b>Transfer Notice</b>	a notice in writing given by any Shareholder to the Company where that shareholder desires, or is required by these articles, to transfer (or enter into an agreement to transfer) any shares Where such notice is deemed to have been served, it shall be referred to as a <b>Deemed Transfer Notice</b>

- 1 2 Save as otherwise specifically provided in these articles, words and expressions which have particular meanings in the Model articles shall have the same meanings in these articles, subject to which and unless the context otherwise requires, words and expressions which have particular meanings in the Act shall have the same meanings in these articles
- 1 3 Headings in these articles are used for convenience only and shall not affect the construction or interpretation of these articles
- 1 4 A reference in these articles to an "article" is a reference to the relevant article of these articles unless expressly provided otherwise
- 1 5 Unless expressly provided otherwise, a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of
- 1 5 1 any subordinate legislation from time to time made under it, and
- 1 5 2 any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts
- 1 6 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms
- 1 7 The Model articles shall apply to the Company, except in so far as they are modified or excluded by these articles
- 1 8 Articles 8, 9(1), 11(2) and (3), 13, 14(1), (2), (3) and (4), 17(2), 21, 44(2), 52 and 53 of the Model articles shall not apply to the company
- 1 9 Article 7 of the Model articles shall be amended by
- 1 9 1 the insertion of the words "for the time being" at the end of article 7(2)(a), and
- 1 9 2 the insertion in article 7(2) of the words "(for so long as he remains the sole director)" after the words "and the director may"
- 1 9 3 article 20 of the Model articles shall be amended by the insertion of the words "(including alternate directors) and the secretary" before the words "properly incur"
- 1 10 In article 25(2)(c) of the Model articles, the words "evidence, indemnity and the payment of a reasonable fee" shall be deleted and replaced with the words "evidence and indemnity"

- 1 11 Article 27(3) of the Model articles shall be amended by the insertion of the words ", subject to article 10," after the word "But"
- 1 12 Article 29 of the Model articles shall be amended by the insertion of the words ", or the name of any person(s) named as the transferee(s) in an instrument of transfer executed under article 28(2)," after the words "the transmittee's name"
- 1 13 Articles 31(a) to (d) (inclusive) of the Model articles shall be amended by the deletion, in each case, of the words "either" and "or as the directors may otherwise decide"
- 1 14 The liability of the members is limited to the amount, if any, unpaid on their shares in the Company

## **Directors**

### **2. Decisions of directors other than at meetings**

- 2 1 A decision of the directors other than at a meeting is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter (such decision to take the form of a resolution in writing, where each eligible director has signed one or more copies of it, or to which each eligible director has otherwise indicated agreement in writing)
- 2 2 A decision may not be taken in accordance with this article if the eligible directors purporting to pass such decision would not have formed a quorum at such a meeting

### **3. Calling a Directors' Meeting**

Any director may call a directors' meeting by giving not less than 5 business days' notice of the meeting (or such lesser notice as all the directors may agree) to the directors or by authorising the company secretary (if any) to give such notice

### **4. Quorum for Directors' Meetings**

- 4 1 Subject to articles 4 2 and 4 3, the quorum for the transaction of business at a meeting of directors is any two eligible directors
- 4 2 For the purposes of any meeting (or part of a meeting) held pursuant to article 7 to authorise a director's conflict, if there is only one eligible director in office other than the conflicted director(s), the quorum for such meeting (or part of a meeting) shall be one eligible director
- 4 3 If and so long as there shall be only one director only, article 7(2) of the Model articles shall apply and he shall be entitled to exercise all the powers and shall carry out all the duties assigned to directors. In such instance, the quorum for the transaction of business shall be one director
- 4 4 If the total number of directors in office for the time being is less than the quorum required, the directors must not take any decision other than a decision
- 4 4 1 to appoint further directors, or

4 4 2 to call a general meeting so as to enable the shareholders to appoint further directors

## 5. Casting Vote

If the numbers of votes for and against a proposal at a meeting of directors are equal, the chairman or other director chairing the meeting shall not have a casting vote

## 6. Transactions or other arrangements with the Company

6 1 Subject to sections 177(5) and 177(6) and sections 182(5) and 182(6) of the Act and provided he has declared the nature and extent of his interest in accordance with the requirements of the Companies Acts, a director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction or arrangement with the company

6 1 1 may be a party to, or otherwise interested in, any transaction or arrangement with the company or in which the company is otherwise (directly or indirectly) interested,

6 1 2 shall be an eligible director for the purposes of any proposed decision of the directors (or committee of directors) in respect of such contract or proposed contract in which he is interested,

6 1 3 shall be entitled to vote at a meeting of directors (or of a committee of the directors) or participate in any unanimous decision, in respect of such contract or proposed contract in which he is interested,

6 1 4 may act by himself or his firm in a professional capacity for the company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a director,

6 1 5 may be a director or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate in which the company is otherwise (directly or indirectly) interested, and

6 1 6 shall not, save as he may otherwise agree, be accountable to the company for any benefit which he (or a person connected with him (as defined in section 252 of the Act)) derives from any such contract, transaction or arrangement or from any such office or employment or from any interest in any such body corporate and no such contract, transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit nor shall the receipt of any such remuneration or other benefit constitute a breach of his duty under section 176 of the Act

## 7. Directors' Conflicts of Interest

7 1 The directors may, in accordance with the requirements set out in this article, authorise any matter or situation proposed to them by any director which would, if not authorised, involve a director (an **Interested Director**) breaching his duty under section 175 of the Act to avoid conflicts of interest (**Conflict**)

7 2 Any authorisation under this article 7 will be effective only if

- 7 2 1 the matter in question shall have been proposed by any director for consideration in the same way that any other matter may be proposed to the directors under the provisions of these articles or in such other manner as the directors may determine,
  - 7 2 2 any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director, and
  - 7 2 3 the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's vote had not been counted
- 7 3 Any authorisation of a Conflict under this article 7 may (whether at the time of giving the authorisation or subsequently)
- 7 3 1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter or situation so authorised,
  - 7 3 2 provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the directors or otherwise) related to the Conflict,
  - 7 3 3 provide that the Interested Director shall or shall not be an eligible director in respect of any future decision of the directors vote in relation to any resolution related to the Conflict,
  - 7 3 4 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the directors think fit,
  - 7 3 5 provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a director of the Company) information that is confidential to a third party, he will not be obliged to disclose that information to the Company, or to use it in relation to the Company's affairs where to do so would amount to a breach of that confidence, and
  - 7 3 6 permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the directors and be excused from reviewing papers prepared by, or for, the Directors to the extent they relate to such matters
- 7 4 Where the directors authorise a Conflict, the Interested Director will be obliged to conduct himself in accordance with any terms and conditions imposed by the directors in relation to the Conflict
- 7 5 The directors may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director, prior to such revocation or variation, in accordance with the terms of such authorisation
- 7 6 In authorising a Conflict the directors may decide (whether at the time of giving the authorisation or subsequently) that if a director has obtained any information through his involvement in the Conflict otherwise than as a director of the Company and in respect of

which he owes a duty of confidentiality to another person, the director is under no obligation to

7 6 1 disclose such information to the directors or to any director or other officer or employee of the company, or

7 6 2 use or apply any such information in performing his duties as a director, where to do so would amount to a breach of that confidence

7 7 Director is not required, by reason of being a director (or because of the fiduciary relationship established by reason of being a director), to account to the Company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the directors or by the Company in general meeting (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds

## 8. **Records of Decisions to be Kept**

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

## 9. **Number of Directors**

Unless otherwise determined by ordinary resolution, the number of directors (other than alternate directors) shall be subject to a maximum of five and shall not be less than one (who, if a sole director, must be a natural person in accordance with section 155 of the Act)

## 10. **Appointment of Directors**

In any case where, as a result of death or bankruptcy, the company has no shareholders and no directors, the transmittee(s) of the last shareholder to have died or to have a bankruptcy order made against him (as the case may be) have the right, by notice in writing, to appoint a natural person (including a transmittee who is a natural person), who is willing to act and is permitted to do so, to be a director

## 11. **Appointment and Removal of Alternate Directors**

11 1 Any director (**appointor**) may appoint as an alternate any other director, or any other person approved by resolution of the directors, to

11 1 1 exercise that director's powers, and

11 1 2 carry out that director's responsibilities,

in relation to the taking of decisions by the directors, in the absence of the alternate's appointor

11 2 Any appointment or removal of an alternate must be effected by notice in writing to the company signed by the appointor, or in any other manner approved by the directors

11 3 The notice must

11 3 1 identify the proposed alternate, and



- 11 3 2 in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice

## **12. Rights and Responsibilities of Alternate Directors**

- 12 1 An alternate director may act as alternate director to more than one director and has the same rights in relation to any decision of the directors as the alternate's appointor
- 12 2 Except as the articles specify otherwise, alternate directors
  - 12 2 1 are deemed for all purposes to be directors,
  - 12 2 2 are liable for their own acts and omissions,
  - 12 2 3 are subject to the same restrictions as their appointors, and
  - 12 2 4 are not deemed to be agents of or for their appointors and, in particular (without limitation), each alternate director shall be entitled to receive notice of all meetings of directors and of all meetings of committees of directors of which his appointor is a member
- 12 3 A person who is an alternate director but not a director
  - 12 3 1 may be counted as participating for the purposes of determining whether a quorum is present (but only if that person's appointor is not participating),
  - 12 3 2 may participate in a decision of the directors (but only if his appointor is an eligible director in relation to that decision, but does not participate)
- 12 4 A director who is also an alternate director is entitled, in the absence of his appointor, to a separate vote on behalf of his appointor, in addition to his own vote on any decision of the directors (provided that his appointor is an eligible director in relation to that decision)
- 12 5 An alternate director may be paid expenses and may be indemnified by the company to the same extent as his appointor but shall not be entitled to receive any remuneration from the company for serving as an alternate director except such part of the alternate's appointor's remuneration as the appointor may direct by notice in writing made to the company

## **13. Termination of Alternate Directorship**

- 13 1 An alternate director's appointment as an alternate terminates
  - 13 1 1 when the alternate's appointor revokes the appointment by notice to the company in writing specifying when it is to terminate,
  - 13 1 2 on the occurrence, in relation to the alternate, of any event which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a director,
  - 13 1 3 on the death of the alternate's appointor, or

13 1 4 when the alternate's appointor's appointment as a director terminates

#### 14. **Secretary**

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

#### 15. **Transfer of Shares Subject to Pre-Emption Rights**

15 1 In this article, references to a transfer of a Share include the transfer or assignment of a beneficial or other interest in that Share or the creation of a trust or encumbrance over that Share and reference to a Share includes a beneficial or other interest in a Share

15 2 Except where the provisions of article 16 (Permitted Transfers), article 17 (Compulsory Transfers), article 19 (Drag Along) or article 20 (Tag Along) apply, any transfer of Shares by a Shareholder shall be subject to the pre-emption rights in this article

15 3 A Seller shall, before transferring or agreeing to transfer any Shares, give a Transfer Notice to the Company specifying

15 3 1 the number of Sale Shares,

15 3 2 if the Seller wishes to sell the Sale Shares to a third party, the name of the proposed transferee,

15 3 3 the price (in cash) per share at which he wishes to transfer the Sale Shares (which will be deemed to be Fair Value of the Sale Shares if no cash price is agreed between the Seller and the Board (**Transfer Price**)), and

15 3 4 whether the Transfer Notice is conditional on all, or a specific number of, the Sale Shares being sold to Shareholders (**Minimum Transfer Condition**)

15 4 Once given (or deemed to have been given) under these articles, a Transfer Notice may not be withdrawn

15 5 A Transfer Notice appoints the Company the agent of the Seller for the sale of the Sale Shares at the Transfer Price

15 6 As soon as practicable following the receipt of a Transfer Notice, the Board shall offer the Sale Shares for sale to the Shareholders in the manner set out in article 15 7 Each offer shall be in writing and give details of the number and Transfer Price of the Sale Shares offered

15 7 The Board shall offer the Sale Shares to all shareholders other than the Seller (**Continuing Shareholders**), inviting them to apply in writing within 20 Business Days of the date of the offer (**First Offer Period**) for the maximum number of Sale Shares they wish to buy

If the Sale Shares are subject to a Minimum Transfer Condition, any allocation made under this article 15 7 and article 15 8 shall be conditional on the fulfilment of the Minimum Transfer Condition

If, at the end of the First Offer Period, the number of Sale Shares applied for is equal to or exceeds the number of Sale Shares, the Board shall allocate the Sale Shares to each Continuing Shareholder who has applied for Sale Shares in the proportion which his existing holding of Shares bears to the total number of Shares held by those Continuing Shareholders who have applied for Sale Shares. Fractional entitlements shall be rounded to the nearest whole number. No allocation shall be made to a Continuing Shareholder of more than the maximum number of Sale Shares which he has stated he is willing to buy.

If only some of the Sale Shares are allocated in accordance with this article, but there are applications for Sale Shares that have not been satisfied, those Sale Shares shall be allocated to the relevant applicant(s) in accordance with the procedure set out in this article 15 7

If, at the end of the First Offer Period, the total number of Sale Shares applied for is less than the number of Sale Shares, the Board shall allocate the Sale Shares to the Continuing Shareholders in accordance with their applications. The balance (**Initial Surplus Shares**) shall be dealt with in accordance with article 15 8

15 8 At the end of the First Offer Period, the Board shall offer the Initial Surplus Shares to all the Continuing Shareholders, inviting them to apply in writing within 20 Business Days of the date of the offer (**Second Offer Period**) for the maximum number of Initial Surplus Shares they wish to buy

If, at the end of the Second Offer Period, the number of Initial Surplus Shares applied for exceeds the number of Initial Surplus Shares, the Board shall allocate the remaining Initial Surplus Shares to each Continuing Shareholder who has applied for Initial Surplus Shares in the proportion that his existing holding of Shares (including any Sale Shares) bears to the total number of Shares (including any Sale Shares) held by those Continuing Shareholders who have applied for Initial Surplus Shares during the Second Offer Period. Fractional entitlements shall be rounded to the nearest whole number. No allocation shall be made to a Continuing Shareholder of more than the maximum number of Initial Surplus Shares which he has stated he is willing to buy.

If, at the end of the Second Offer Period, the number of Initial Surplus Shares applied for is less than the number of Initial Surplus Shares, the Board shall allocate the Initial Surplus Shares to the Continuing Shareholders in accordance with their applications. The balance (**Second Surplus Shares**) shall be dealt with in accordance with article 15 11

15 9 If the Transfer Notice includes a Minimum Transfer Condition and the total number of Sale Shares applied for is less than the number of Sale Shares specified in the Minimum Transfer Condition, the Board shall notify the Seller and all those to whom Sale Shares have been conditionally allocated under article 15 7 and article 15 8, stating that the Minimum Transfer Condition has not been met and that the relevant Transfer Notice has lapsed with immediate effect

If

15 9 1 the Transfer Notice includes a Minimum Transfer Condition and such Minimum Transfer Condition has been satisfied, or the Transfer Notice does not include a Minimum Transfer Condition, and

15 9 2 allocations under article 15 7 and, if necessary, article 15 8 have been made in respect of some or all of the Sale Shares,

the Board shall give written notice of allocation (**Allocation Notice**) to the Seller and each Continuing Shareholder to whom Sale Shares have been allocated (**Applicant**) The Allocation Notice shall specify the number of Sale Shares allocated to each Applicant, the amount payable by each Applicant for the number of Sale Shares allocated to him (**Consideration**) and the place and time for completion of the transfer of the Sale Shares (which shall be at least 5 Business Days and not more than 15 Business Days after the date of the **Allocation Notice**)

- 15 10 On the service of an Allocation Notice, the Seller shall, against payment of the Consideration, transfer the Sale Shares allocated in accordance with the requirements specified in the Allocation Notice

If the Seller fails to comply with the requirements of the Allocation Notice

- 15 10 1 any director of the Company, or some other person nominated by a resolution of the Board, may, on behalf of the Seller

15 10 1 1 complete, execute and deliver in his name all documents necessary to give effect to the transfer of the relevant Sale Shares to the Applicants,

15 10 1 2 receive the Consideration and give a good discharge for it, and

15 10 1 3 (subject to the transfers being duly stamped) enter the Applicants in the register of Shareholders as the holders of the Shares purchased by them, and

- 15 10 2 the Company shall pay the Consideration into a separate bank account in the Company's name on trust (but without interest) for the Seller until he has delivered his certificate for the relevant Shares (or an indemnity, in a form reasonably satisfactory to the Board, in respect of any lost certificate, together with such other evidence (if any) as the Board may reasonably require to prove good title to those Shares) to the Company

- 15 11 If an Allocation Notice does not relate to all of the Sale Shares or the Transfer Notice lapses pursuant to article 15 9 then, subject to article 15 12 and within 8 weeks following service of the Allocation Notice or the date of the lapse of the Transfer Notice (as the case may be), the Seller may transfer the Second Surplus Shares or the Sale Shares (in the case of a lapsed offer) (as the case may be) to any person at a price at least equal to the Transfer Price The sale of the Sale Shares (following the lapse of a Transfer Notice) in accordance with this article 15 11 shall continue to be subject to any Minimum Transfer Condition

- 15 12 The Seller's right to transfer Shares under article 15 11 does not apply if the Board reasonably considers that

15 12 1 the transferee is a person (or a nominee for a person) who is a competitor with (or an Associate of a competitor with) the business of the Company or with a Subsidiary Undertaking of the Company, or

15 12 2 the sale of the Sale Shares is not bona fide or the price is subject to a deduction, rebate or allowance to the transferee, or

15 12 3 the Seller has failed or refused to provide promptly information available to the Seller and reasonably requested by the Board to enable it to form the opinion mentioned above

15 13 The restrictions imposed by this article may be waived in relation to any proposed transfer of Shares with the consent of Shareholders who, but for the waiver, would or might have been entitled to have such Shares offered to them in accordance with this article

## 16. Permitted Transfers

16 1 A Shareholder (the **Original Shareholder**) may transfer all or any of his or its Shares to a Permitted Transferee

16 2 If the Original Shareholder is a company, and a Permitted Transfer has been made, the Permitted Transferee shall, within 10 Business Days of ceasing to be a Member of the Same Group as the Original Shareholder, transfer the Shares it holds to

16 2 1 the Original Shareholder, or

16 2 2 a Member of the Same Group as the Original Shareholder,

(which in either case is not in liquidation), without any price or other restriction. If the Permitted Transferee fails to make a transfer in accordance with this article 16 2, a Deemed Transfer Notice shall be given in respect of such Shares

16 3 Where Shares are held by the trustees of a Family Trust, the trustees may transfer Shares to

16 3 1 the Original Shareholder,

16 3 2 another Privileged Relation of the Original Shareholder,

16 3 3 another Family Trust of which the Original Shareholder is the Settlor, or

16 3 4 to the new (or remaining) trustees upon a change of trustees of a Family Trust without any price or other restriction

16 4 A transfer of Shares may only be made to a Family Trust if the Board (acting unanimously) is satisfied

16 4 1 with the terms of the trust instrument and, in particular, with the powers of the trustees,

16 4 2 with the identity of the proposed trustees,

16 4 3 that the proposed transfer will not result in 50% or more of the aggregate of the Company's equity share capital being held by trustees of that and any other trusts, and

16 4 4 that no costs incurred in connection with the setting up or administration of that Family Trust are to be paid by the Company

- 16 5 If a Permitted Transfer is made to the spouse or Civil Partner of the Original Shareholder, the Permitted Transferee shall within 10 Business Days of ceasing to be the spouse or Civil Partner of the Original Shareholder (whether by reason of divorce or otherwise) either
- 16 5 1 execute and deliver to the Company a transfer of the Shares held by him to the Original Shareholder (or, to any Permitted Transferee of the Original Shareholder) for such consideration as may be agreed between them, or
  - 16 5 2 give a Transfer Notice to the Company in accordance with article 15 3, failing which a Deemed Transfer Notice shall be given in respect of the relevant Shares
- 16 6 Where, under a deceased Shareholder's will (or the laws as to intestacy), the persons legally or beneficially entitled to any Shares (whether immediately or contingently) are Privileged Relations of the deceased Shareholder, the legal representative of the deceased Shareholder may transfer any Shares to those Privileged Relations who are Permitted Transferees, in each case without restriction as to price or otherwise Shares previously transferred as permitted by this article may be transferred by the transferee to any other Permitted Transferee of the Original Shareholder without any price or other restriction
- 16 7 Subject to article 16 7 and without prejudice to article 17, on the death, bankruptcy or liquidation of a Permitted Transferee (other than a joint holder), his personal representatives, trustee in bankruptcy or its liquidator shall execute and deliver to the Company a transfer of the Shares held by the Permitted Transferee (without any price or other restriction) within 10 Business Days after the date of the grant of probate, the making of the bankruptcy order or the passing of a resolution or making of an order for winding up The transfer shall be to the Original Shareholder, if still living (and not bankrupt or in liquidation) or, if so directed by the Original Shareholder, to any Permitted Transferee of the Original Shareholder If the transfer is not executed and delivered within 10 Business Days of that period, or if the Original Shareholder has died or is bankrupt or is in liquidation, the personal representative or trustee in bankruptcy or liquidator shall be deemed to have given a Transfer Notice

## **17. Compulsory Transfers**

- 17 1 A person entitled to a Share in consequence of the bankruptcy of a Shareholder (or equivalent procedure in any jurisdiction outside England and Wales) shall be deemed to have given a Transfer Notice in respect of that Share
- 17 2 A person entitled to a Share, who is not a Permitted Transferee, as a result of the death of a Shareholder shall be deemed to have given a Transfer Notice in respect of that Share at such time as the Directors may determine
- 17 3 If a Shareholder which is a body corporate either suffers or resolves to appoint a liquidator, administrator or administrative receiver over it, or any material part of its assets (other than a voluntary liquidation for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or suffers or takes any equivalent action in any jurisdiction outside England and Wales, that Shareholder shall be deemed to have given a Transfer Notice in respect of all Shares held by it
- 17 4 If a Share remains registered in the name of a deceased Shareholder for longer than one year after the date of his death, the Directors may require the legal personal representatives of that deceased Shareholder either

17 4 1 to effect a Permitted Transfer of those Shares (including an election to be registered in respect of the Permitted Transfer), or

17 4 2 to show, to the satisfaction of the Directors, that a Permitted Transfer will be effected before (or promptly on) the completion of the administration of the estate of the deceased Shareholder

If either paragraph 17 4 1 or paragraph 17 4 2 of this article 17 4 is not fulfilled to the satisfaction of the Directors, a Deemed Transfer Notice shall be given in respect of each such Share

17 5 Forthwith upon a Transfer Notice being deemed to be served under this article 17 the Shares subject to the relevant Deemed Transfer Notice (**Restricted Shares**) shall cease to confer on the holder of them any rights

17 5 1 to vote (whether on a show of hands, on a poll or otherwise and whether in person, by proxy or otherwise), including in respect of any resolution of any class of Shares,

17 5 2 to receive dividends or other distributions otherwise attaching to those Shares, or

17 5 3 to participate in any future issue of Shares issued in respect of those Shares

The Directors may reinstate the rights referred to in this article 17 5 at any time by resolution of the Board and, in any event, such rights shall be reinstated in respect of any Shares transferred pursuant to this article on completion of such transfer

## 18. Co-Sale

18 1 No transfer (other than a Permitted Transfer) of any of the Shares may be made or validly registered unless the relevant Shareholder (a **Selling Member**) shall have observed the following procedures of this article

18 2 After the Selling Member has gone through the pre-emption process set out in article 15, save where the provisions of article 19 apply the Selling Member shall give to each holder of Shares who has not taken up their pre-emptive rights under article 15 (an **Equity Holder**) not less than 15 Business Days' notice in advance of the proposed sale (a **Co-Sale Notice**) The Co-Sale Notice shall specify

18 2 1 the identity of the proposed purchaser (the **Buyer**),

18 2 2 the price per share which the Buyer is proposing to pay,

18 2 3 the manner in which the consideration is to be paid,

18 2 4 the number of Shares which the Selling Member proposes to sell, and

18 2 5 the address where the counter-notice should be sent

18 3 Each Equity Holder shall be entitled within 15 Business Days after receipt of the Co-Sale Notice, to notify the Selling Member that they wish to sell a certain number of Shares held by them at the proposed sale price, by sending a counter-notice which shall specify the number

of Shares which such Equity Holder wishes to sell. The maximum number of shares which an Equity Holder can sell under this procedure shall be

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

where

- X is the number of Shares held by the Equity Holder,  
Y is the total number of Shares,  
Z is the number of Shares the Selling Member proposes to sell

Any Equity Holder who does not send a counter-notice within such 15 Business Day period shall be deemed to have specified that they wish to sell no Shares

- 18.4 Following the expiry of 15 Business Days from the date the Equity Holders receive the Co-Sale Notice, the Selling Member shall be entitled to sell to the Buyer on the terms notified to the Equity Holders a number of shares not exceeding the number specified in the Co-Sale Notice less any shares which Equity Holders have indicated they wish to sell, provided that at the same time the Buyer (or another person) purchases from the Equity Holders the number of shares they have respectively indicated they wish to sell on terms no less favourable than those obtained by the Selling Member from the Buyer
- 18.5 No sale by the Selling Member shall be made pursuant to any Co-Sale Notice more than three months after service of that Co-Sale Notice

18.6 Sales made in accordance with this article 18 shall not be subject to article 15

## 19. Drag Along

- 19.1 If the holders of more than 50% of the Shares in issue for the time being (**Selling Shareholders**) wish to transfer all of their interest in the Shares (**Sellers' Shares**) to a bona fide arm's length purchaser (**Proposed Buyer**), the Selling Shareholders may require all other Shareholders (**Called Shareholders**) to sell and transfer all their shares to the Proposed Buyer (or as the Proposed Buyer directs) in accordance with the provisions of this article (**Drag Along Option**)
- 19.2 The Selling Shareholders may exercise the Drag Along Option by giving written notice to that effect (**Drag Along Notice**) at any time before the transfer of the Sellers' Shares to the Proposed Buyer. The Drag Along Notice shall specify
- 19.2.1 that the Called Shareholders are required to transfer all their Shares (**Called Shares**) pursuant to this article 19,
- 19.2.2 the person to whom the Called Shares are to be transferred,
- 19.2.3 the consideration payable for the Called Shares which shall, for each Called Share, be an amount equal to the price per share offered by the Proposed Buyer for the Sellers' Shares, and
- 19.2.4 the proposed date of the transfer



- 19 3 Once issued, a Drag Along Notice shall be irrevocable. However, a Drag Along Notice shall lapse if, for any reason, the Selling Shareholders have not sold the Sellers' Shares to the Proposed Buyer within 30 Business Days of serving the Drag Along Notice. The Selling Shareholders may serve further Drag Along Notices following the lapse of any particular Drag Along Notice.
- 19 4 No Drag Along Notice shall require a Called Shareholder to agree to any terms except those specifically set out in this article 19 4.
- 19 5 Completion of the sale of the Called Shares shall take place on the Completion Date. Completion Date means the date proposed for completion of the sale of the Sellers' Shares unless
- 19 5 1 all of the Called Shareholders and the Selling Shareholders agree otherwise in which case the Completion Date shall be the date agreed in writing by all of the Called Shareholders and the Selling Shareholders, or
- 19 5 2 that date is less than 10 Business Days after the date on which the Drag Along Notice is served, in which case the Completion Date shall be the tenth Business Day after delivery of the Drag Along Notice.
- 19 6 The rights of pre-emption set out in these articles shall not apply to any transfer of shares to a Proposed Buyer (or as it may direct) pursuant to a sale for which a Drag Along Notice has been duly served.
- 19 7 Within 10 Business Days of the Selling Shareholders serving a Drag Along Notice on the Called Shareholders, the Called Shareholders shall deliver stock transfer forms for the Called Shares, together with the relevant share certificates (or a suitable indemnity for any lost share certificates) to the Company. On the Completion Date, the Company shall pay the Called Shareholders, on behalf of the Proposed Buyer, the amounts they are due for their shares pursuant to article 19 2 3 to the extent that the Proposed Buyer has put the Company in the requisite funds. The Company's receipt for the price shall be a good discharge to the Proposed Buyer. The Company shall hold the amounts due to the Called Shareholders pursuant to article 19 2 3 in trust for the Called Shareholders without any obligation to pay interest.
- 19 8 To the extent that the Proposed Buyer has not, on the Completion Date, put the Company in funds to pay the consideration due pursuant to article 19 2 3, the Called Shareholders shall be entitled to the return of the stock transfer forms and share certificates (or suitable indemnity) for the relevant Called Shares and the Called Shareholders shall have no further rights or obligations under this article 19 in respect of their Shares.
- 19 9 If any Called Shareholder does not, on completion of the sale of the Called Shares, execute transfer(s) in respect of all of the Called Shares held by it, the defaulting Called Shareholder shall be deemed to have irrevocably appointed any person nominated for the purpose by the Selling Shareholders to be his agent and attorney to execute all necessary transfer(s) on his behalf, against receipt by the Company (on trust for such holder) of the consideration payable for the Called Shares, to deliver such transfer(s) to the Proposed Buyer (or as they may direct) as the holder thereof. After the Proposed Buyer (or its nominee) has been registered as the holder, the validity of such proceedings shall not be questioned by any such person. Failure to produce a share certificate shall not impede the registration of shares under this article 19.

19 10 Following the issue of a Drag Along Notice, on any person becoming a Shareholder of the Company pursuant to the exercise of a pre-existing option to acquire shares in the Company or on the conversion of any convertible security of the Company (a New Shareholder), a Drag Along Notice shall be deemed to have been served on the New Shareholder on the same terms as the previous Drag Along Notice. The New Shareholder shall then be bound to sell and transfer all Shares acquired by it to the Proposed Buyer (or as the Proposed Buyer may direct) and the provisions of this article 19 shall apply with the necessary changes to the New Shareholder, except that completion of the sale of the Shares shall take place immediately on the Drag Along Notice being deemed served on the New Shareholder.

## 20. Tag Along

20 1 Except in the case of transfers pursuant to article 17 (Compulsory Transfers), the provisions of article 20 2 to article 20 5 shall apply if, in one or a series of related transactions, one or more Sellers propose to transfer any of the Shares (**Proposed Transfer**) which would, if carried out, result in any person (**Buyer**), and any person Acting in Concert with the Buyer, acquiring a Controlling Interest in the Company.

20 2 Before making a Proposed Transfer, a Seller shall procure that the Buyer makes an offer (**Offer**) to

20 2 1 the other Shareholders to purchase all of the Shares held by them,

20 2 2 the holders of any existing options to acquire Shares (granted by the Company or under any share option arrangements established by the Company) that are already capable of exercise or that are expected to become capable of exercise before the Proposed Transfer, to purchase any Shares acquired on the exercise of options at any time before the Proposed Transfer, and

20 2 3 the holders of any securities of the Company that are convertible into Shares (**Convertible Securities**), to purchase any Shares arising from the conversion of such Convertible Securities at any time before the Proposed Transfer,

for a consideration in cash per Share that is at least equal to the highest price per Share offered or paid by the Buyer, or any person Acting in Concert with the Buyer, in the Proposed Transfer or in any related previous transaction in the 3 months preceding the date of the Proposed Transfer (**Specified Price**).

20 3 The Offer shall be given by written notice (**Offer Notice**), at least 20 Business Days (**Offer Period**) before the proposed sale date (**Sale Date**). To the extent not described in any accompanying documents, the Offer Notice shall set out

20 3 1 the identity of the Buyer,

20 3 2 the purchase price and other terms and conditions of payment,

20 3 3 the Sale Date, and

20 3 4 the number of Shares proposed to be purchased by the Buyer (**Offer Shares**).

20 4 If the Buyer fails to make the Offer to all of the persons listed in article 20 2 in accordance with article 20 2 and article 20 3, the Seller shall not be entitled to complete the Proposed

Transfer and the Company shall not register any transfer of Shares effected in accordance with the Proposed Transfer

20 5 If the Offer is accepted by any Shareholder (**Accepting Shareholder**) within the Offer Period, the completion of the Proposed Transfer shall be conditional on completion of the purchase of all the Offer Shares held by Accepting Shareholders

## **21. Fair Value**

21 1 Where a Transfer Notice is given (or deemed to be given in accordance with these articles) and no price has been specified in such notice, the parties shall appoint an independent expert (**Expert**) to determine the Fair Value of the Sale Shares

21 2 The Fair Value of the Sale Shares shall be the value that the Expert certifies to be the fair market value in his opinion based on the following assumptions

21 2 1 the value of the shares in question is that proportion of the fair market value of the entire issued share capital of the Company that the Sale Shares bear to the then total issued share capital of the Company (with no premium or discount for the size of the Seller's shareholding or for the rights or restrictions applying to the Shares under the articles or any other agreement made between the Shareholders),

21 2 2 the sale is between a willing buyer and a willing seller on the open market,

21 2 3 the sale is taking place on the date that the Transfer Notice was given (or was deemed to be given),

21 2 4 if the Company is then carrying on its Business as a going concern, on the assumption that it shall continue to do so,

21 2 5 the shares are sold free of all Encumbrances, and

21 2 6 to take account of any other factors that the Expert reasonably believes should be taken into account

21 3 If any problem arises in applying any of the assumptions set out in clause 21 2, the Expert shall resolve the problem in whatever manner he shall, in his absolute discretion, think fit

21 4 The Expert shall be requested to determine the Fair Value of the Sale Shares within 20 Business Days of his appointment and to notify the Company in writing of his determination

## **Decision making by shareholders**

### **22. Poll Votes**

22 1 A poll may be demanded at any general meeting by any qualifying person (as defined in section 318 of the Act) present and entitled to vote at the meeting

22 2 Article 44(3) of the Model articles shall be amended by the insertion of the words "A demand so withdrawn shall not invalidate the result of a show of hands declared before the demand was made" as a new paragraph at the end of that article

## **23. Proxies**

- 23 1 Article 45(1)(d) of the Model articles shall be deleted and replaced with the words "is delivered to the company in accordance with the articles not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in accordance with any instructions contained in the notice of the general meeting (or adjourned meeting) to which they relate"
- 23 2 Article 45(1) of the Model articles shall be amended by the insertion of the words "and a proxy notice which is not delivered in such manner shall be invalid, unless the directors, in their discretion, accept the notice at any time before the meeting" as a new paragraph at the end of that article

## **Administrative arrangements**

### **24. Means of Communication to be Used**

- 24 1 Any notice, document or other information shall be deemed served on or delivered to the intended recipient
- 24 1 1 if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted (or five business days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five business days was guaranteed at the time of sending),
- 24 1 2 if properly addressed and delivered by hand, when it was given or left at the appropriate address,
- 24 1 3 if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied, and
- 24 1 4 if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website

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

- 24 2 In proving that any notice, document or other information was properly addressed, it shall be sufficient to show that the notice, document or other information was delivered to an address permitted for the purpose by the Act

### **25 Indemnity**

- 25 1 Subject to article 25 2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled

25 1 1 each relevant officer shall be indemnified out of the company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer

25 1 1 1 in the actual or purported execution and/or discharge of his duties, or in relation to them, and

25 1 1 2 in relation to the company's (or any associated company's) activities as trustee of an occupational pension scheme (as defined in section 235(6) of the Act),

including (in each case) any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the company's (or any associated company's) affairs, and

25 1 2 the Company may provide any relevant officer with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings or application referred to in article 25 1 1 and otherwise may take any action to enable any such relevant officer to avoid incurring such expenditure

25 2 This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law

25 3 In this article

25 3 1 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and

25 3 2 a "relevant officer" means any director or other officer or former director or other officer of the company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Act), but excluding in each case any person engaged by the company (or associated company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor)

## 26. Insurance

26 1 The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant officer in respect of any relevant loss

26 2 In this article

26 2 1 a "relevant officer" means any director or other officer or former director or other officer of the company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Act), but excluding in each case any person engaged by the company (or associated company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor),

26 2 2 a "relevant loss" means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer's duties or powers in relation to the company, any associated company or any pension fund or employees' share scheme of the company or associated company, and

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