

**Company No: 08140760**

**THE COMPANIES ACT 2006**

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**PRIVATE COMPANY LIMITED BY SHARES**

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**ARTICLES OF ASSOCIATION**

-of-

**EYKONA LIMITED**

(Adopted by written special resolution passed on 18<sup>th</sup> December 2012)

**THE COMPANIES ACT 2006**

**COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

- of -

**EYKONA LIMITED**

**PRELIMINARY**

1.1 In these Articles the following expressions shall have the following meanings unless inconsistent with the context -

"A Ordinary Share" means an A ordinary share of £0.01 in the capital of the Company;

"Acquirer" has the meaning ascribed to it in the definition of "Majority Change of Control" or "Special Change of Control";

"the Act" means the Companies Act 2006 in force from time to time,

"Board" means the board of directors of the Company from time to time,

"Bridge Financing" means the financing proposed to be raised by the Company pursuant to: (i) the issue of Convertible Loan Notes; and (ii) the EIS Capital Facility;

"Business Day" means a day (excluding a Saturday or Sunday) on which clearing banks in London are open for normal business;

"Compulsory Purchase Notice" means a notice served by the directors pursuant to Article 11.11 or Article 11.16 requiring that the Shares specified therein be sold to the Company at the Transfer Price;

"Compulsory Transfer Notice" means a notice served by the directors pursuant to Article 11.11 or Article 11.16 requiring that the Shares specified therein be sold to the person or persons nominated by the directors and specified therein at the Transfer Price;

"Convertible Loan Note Instrument" means the secured convertible loan instrument proposed to be entered into by the Company as soon as reasonably practicable after the date of adoption of these Articles;

"Convertible Loan Note Instrument" means the secured convertible loan instrument constituting up to £500,000 principal amount of secured convertible loan notes 2012 proposed to be entered into by the Company and thereafter such instrument as amended from time to time;

"Crowther St Holdings" means Crowther St Holdings Limited, a limited liability company, registered in the British Virgin Islands under number 1534498 and whose registered office is Kingston Chambers, PO Box 173, Road Town, Tortola,

British Virgin Islands;

"Deemed Transfer Notice" shall have the meaning given to it in Article 12.7;

"EIS Capital Facility" means the advanced subscription monies received by the Company on or around the date of adoption of these Articles in respect of subscriptions for A Ordinary Shares, as described in the circular sent by Eykona Technologies Limited to its shareholders dated on or around 12 July 2012;

"Fair Value" means as agreed between the Board (with Qualified Party Consent) and the transferor or, in the absence of agreement within 21 days of the date the Deemed Transfer Notice has been given as a consequence of a Transfer Event, by the auditors in accordance with Article 11.6;

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

"Founder" means either one of Professor Ronald Daniel and Dr James Paterson,

"Founder Warrants" means any and all warrants and/or options over or to subscribe for Shares issued or granted, or proposed to be issued or granted, by the Company to Professor Ronald Daniel on or after the date of adoption of these articles of association, as set out on page 1 (as amended from time and including any successor or replacement warrants or options issued or granted to Professor Ronald Daniel),

"Fully Diluted Share Capital" means the issued share capital of the Company as it would be if: (i) all options and warrants to subscribe for Shares then granted had been exercised in full; (ii) all securities convertible into Shares then in existence had been so converted (and for the purposes of this definition the Convertible Loan Notes shall be deemed to convert into the maximum number of shares capable of being specifically determined on the relevant date); and (iii) all advanced subscription monies received by the Company pursuant to the EIS Capital Facility had been applied by the Company in paying up and issuing the maximum number of A Ordinary Shares issuable in respect of such advance subscription monies;

"Fund" means a limited partnership or limited liability partnership formed for the purpose of investment or any similar investment vehicle;

"H2O" means H2O Venture Partners (Private Equity) LLP, a limited liability partnership, registered in England and Wales under number OC321953 and whose registered office is 33-35 George Street, Oxford OX1 2AY or its Permitted Transferee;

"H2O Manager" means H2O Venture Partners (Manager) LLP, a limited liability

partnership, registered in England and Wales under number OC354840 and whose registered office is 33-35 George Street, Oxford OX1 2AY;

"Investment Agreement" means the investment agreement dated on or shortly after the date of adoption of these articles, as set out on page 1, and made between the University (1) H2O (2) Technikos (3), Ronald Daniel and James Paterson (4), Mark Kirby (5), Hygea VCT plc (6), the Company (7) and other parties,

"Investor Director" shall have the meaning given to it in the Investment Agreement;

"Key Investors" means the University, H2O, Technikos and UPF;

"Leaver" means any individual (other than a Founder) whose contract of employment with the Company or with any subsidiary of the Company terminates, for any reason, or any individual (other than a Founder) whose consultancy agreement or contract for services with the Company or any subsidiary of the Company terminates, for any reason;

"Majority Change of Control" means the acquisition (whether by purchase, transfer or otherwise but excluding a subscription or a transfer of Shares made in accordance with Article 10 (Permitted Transfers) by any person, including a member of the Company, (an "Acquirer") of any interest in any Shares if, upon completion of that acquisition, the Acquirer, together with persons acting in concert (as defined in section 993 of the Income Tax Act 2007 and section 1122 of the Corporation Tax Act 2010) or connected with him (as defined in the City Code on Takeovers and Mergers), would hold or beneficially own more than 50 per cent of the Shares,

"a Member of the same Group" as regards any corporate body, means a corporate body which is for the time being a holding corporate body or a subsidiary of that corporate body or of any such holding corporate body;

"MTI Investor Director" has the meaning given in the Investment Agreement,

"Ordinary Share" means an ordinary share of £0.01 in the capital of the Company and not being an A Ordinary Share,

"Parkwalk" means Parkwalk Advisors Limited for and on behalf of the Parkwalk EIS Funds;

"Parkwalk EIS Funds" means each of Parkwalk UK Technology EIS Fund 1, The Parkwalk Opportunities EIS Fund and The Parkwalk Eykona Syndicate;

"Permitted Transfer" means a transfer of Shares permitted by Article 10,

"Permitted Transferee" means a person to whom Shares are transferred under Article 10.1,

"Privileged Relation" in relation to an individual member or deceased or former individual member, means the husband or wife or the widower or widow of such member and all the lineal descendants and ascendants in direct line of such member and the brothers and sisters of such member and their lineal descendants and a husband or wife or widower or widow of any of the above persons and for the purposes aforesaid a step-child or adopted child or illegitimate child of any person shall be deemed to be his or her lineal descendant;

"Qualified Party" means:

- (i) UPF, for so long as UPF together with any transferees of UPF under Article 10.1.7 or 10.1.11, holds not less than ten per cent (10%) of the issued Shares, and
- (ii) Parkwalk Advisors. (i) from the date of the Investment Agreement until completion of a Qualifying Equity Financing; and (ii) following completion of a Qualifying Equity Financing, for so long as it together with any of the Parkwalk EIS Funds or their nominees and any transferees of Parkwalk Advisors or their nominees under Article 10.1.11, holds not less than ten per cent (10%) of the issued Shares,

"Qualified Party Consent" means the prior written consent of each of the Qualified Parties;

"Qualifying Equity Financing" means the issue of equity securities by the Company which together with the principal amount advanced pursuant to the Bridge Financing raises an aggregate amount of at least £1,250,000 (whether in one or more transactions),

"Relevant Executive" means an employee or director of, or a consultant to, the Company or any subsidiary of the Company,

"Relevant Member" means a member who is a Relevant Executive, or a member who shall have acquired Shares directly or indirectly from a Relevant Executive pursuant to one or more Permitted Transfers under Article 10.1.1 or 10.1.2 (including where such Shares were subscribed by such member and that member would have been entitled to receive a Permitted Transfer from the Relevant Executive under Article 10.1.2),

"Relevant Shares" (so far as the same remain for the time being held by the trustees of any Family Trust or by any Transferee Company) means the Shares originally acquired by such trustees or Transferee Company and any additional Shares issued to such trustees or Transferee Company by way of capitalisation or acquired by such trustees or Transferee Company in exercise of any right or option granted or arising by virtue of the holding of such Shares or any of them or the membership thereby conferred,

"Roundtable Fund '09" means The London Business Angels EIS Roundtable Fund (2009) whose address is c/o London Business Angels Limited, 100 Pall Mall, London SW1Y 5NQ;

"Sale" means the transfer or other disposal (whether through a single transaction or a series of transactions) of the legal and/or beneficial interest or title to a majority or more of the Shares to a person (and/or any connected person as defined in section 993 of the Income Tax Act 2007 and section 1122 of the Corporation Tax Act 2010 and/or any other person acting in concert with that person as defined in the City Code on Takeovers and Mergers);

"Serious Ill Health" for the purpose of these Articles means an illness or disability certified by a general medical practitioner (nominated or approved by the Board) as rendering the departing director, employee or consultant permanently incapable of carrying out his role as a director, employee or consultant for the foreseeable future,

"Share" means a share in the capital of the Company for the time being in

issue (whether an Ordinary Share or an A Ordinary Share);

"Share Option Scheme" has the meaning given in Article 6 4(iv);

"Shareholder" means a holder of Shares;

"Special Change of Control" means the acquisition (whether by purchase, transfer or otherwise but excluding a subscription or a transfer of Shares made in accordance with Article 10 (Permitted Transfers)) by any person, including a member of the Company, (an "Acquirer") of any interest in any Shares if, upon completion of that acquisition, the Acquirer, together with persons acting in concert (as defined in the City Code on Takeovers and Mergers) or connected with him (as defined in section 993 of the Income Tax Act 2007 and section 1122 of the Corporation Tax Act 2010), would hold or beneficially own more than 75 per cent of the Shares,

"Subscription Price" means in relation to any Share the amount paid up or credited as paid upon it (including the full amount of any premium at which the Share was paid for);

"Table A" means Table A in the Companies (Tables A-F) Regulations 1985 as amended by the Companies (Tables A-F) (Amendment) Regulations 2007 (SI 2007/2541) and the Companies (Tables A-F) (Amendment) (No. 2) Regulations 2007 (SI 2007/2826),

"Technikos" means Technikos LLP, a limited liability partnership, registered in England and Wales under number OC319725 and whose registered office is Second Floor, 20 Dunstan's Hill, London, EC3R 8ND or its Permitted Transferee;

"Transferee Company" means a company for the time being holding Shares in consequence, directly or indirectly, of a transfer or series of transfers of Shares between Members of the same Group (the relevant Transferor Company in the case of a series of such transfers being the first transferor in such series);

"Transferor Company" means a company (other than a Transferee Company) which has transferred or proposes to transfer Shares to a Member of the same Group;

"Transfer Event" shall have the meaning given to it in Article 12.8;

"transfer notice" means a notice in accordance with Article 11 that a member desires to transfer his Shares,

"UPF" means The UMIP Premier Fund Limited Partnership, a limited partnership, registered in England and Wales under number LP012844 and whose registered office is at Fountain Court, 2 Victoria Square, Victoria Street, St Albans, AL1 3TF or its Permitted Transferee;

"UPF Manager" means the duly authorised manager of UPF from time to time and which at the time of the adoption of these Articles is MTI Partners Limited and MTI Partnership LLP (collectively the UPF Managers and each a UPF Manager),

"University" means the Chancellor, Masters and Scholars of the University of Oxford or its Permitted Transferee.

1.2 References to statutory provisions in these Articles shall be deemed also to refer to any statutory provisions amending or replacing the same.

- 2.1 The regulations contained in or incorporated in Table A shall apply to the Company save insofar as they are excluded or varied hereby or are inconsistent herewith and such regulations (save as so excluded, varied or inconsistent) and the Articles hereinafter contained shall be the regulations of the Company.
- 2.2 Regulations 54, 76-79 (inclusive), 94-98 (inclusive) and 118 of Table A shall not apply to the Company.

### **SHARE CAPITAL**

- 3.1 The Ordinary Shares and A Ordinary Shares shall constitute separate classes of Shares but save as expressly provided in these Articles, shall rank *pari passu* in all respects.

### **SHARE CERTIFICATES**

- 3A. In Regulation 6 of Table A the words "shall be sealed with the seal" shall be omitted. A certificate in respect of any Shares or other securities in the Company shall be validly issued if it is executed as a deed under the signature of any two directors or of one director and the secretary in accordance with Article 20A.1

### **DISTRIBUTION OF PROCEEDS ON A SALE**

- 3A.1 In the event of a Sale (including, without limitation, a Sale arising pursuant to Articles 13 or 14) the net proceeds of such Sale ("Net Proceeds") (after payment to the holders of Shares an amount equal to all arrears of the dividends on such Shares) shall be distributed between the members as follows:
- (a) first to the holders of the A Ordinary Shares, in respect of their A Ordinary Shares, and in priority to all other Shareholders, an amount equal to the Subscription Price for all such Shares (or in the event of the conversion, sub-division and/or redesignation of the A Ordinary Shares, the relevant proportion of the Subscription Price in respect of each A Ordinary Share from which the Shares arising on such conversion, sub-division and/or redesignation derive) provided that if there is a shortfall the Net Proceeds shall be distributed to the holders of the A Ordinary Shares *pro rata* to the aggregate amounts due under this clause 3A.1(a) to each A Ordinary Share held;
  - (b) secondly to the holders of the Ordinary Shares, in respect of their Ordinary Shares, an amount equal to the Subscription Price for all such Shares (or in the event of the conversion, sub-division and/or redesignation of the Ordinary Shares, the relevant proportion of the Subscription Price in respect of each Ordinary Share from which the Shares arising on such conversion, sub-division and/or redesignation derive) provided that if there is a shortfall the Net Proceeds shall be distributed to the holders of the Ordinary Shares *pro rata* to the aggregate amounts due under this clause 3A.1(b) to each Ordinary Share held; and
  - (d) thereafter the balance of the proceeds, if any, shall be distributed to each of the holders of the 'A' Ordinary Shares and the holders of the Ordinary Shares in proportion to the number of Shares held by them respectively (*pari passu* as if they were all Shares of the same class).

- 3A 2 On a return of assets on a liquidation, reduction of capital, or otherwise the assets of the Company shall be distributed to each of the holders of the A Ordinary Shares and the holders of the Ordinary Shares in proportion to the number of Shares held by them respectively (pari passu as if they were all Shares of the same class).

### **CONVERSION OF A ORDINARY SHARES**

- 3B. Any holder of A Ordinary Shares shall be entitled, by notice in writing to the Company, to require conversion into Ordinary Shares of all or any A Ordinary Shares held by them at any time at the rate of one Ordinary Share for each one A Ordinary Share.

### **LIEN**

4. The lien conferred by regulation 8 of Table A shall apply to all Shares whether fully paid or not and to all Shares registered in the name of any person indebted or under liability to the Company whether he be the sole registered holder thereof or one of several joint holders

### **CALLS**

5. The liability of any member in default in respect of a call shall be increased by the addition at the end of the first sentence of Regulation 18 in Table A of the words "and all expenses that may have been incurred by the Company by reason of such non-payment".

### **ISSUE OF SHARES**

- 6 1 Subject to the remaining provisions of this Article 6, the directors are generally and unconditionally authorised, for the purposes of section 551 of the Act, to exercise any power of the Company to:

- (a) offer or allot,
- (b) grant rights to subscribe for or to convert any security into, and
- (c) otherwise deal in, or dispose of,

any Shares (or any options, warrants, conversion rights and all other rights to acquire or subscribe for Shares) to any person, at any time and subject to any terms and conditions as the directors think proper.

- 6 2 The authority referred to in Article 6.1:

- (a) shall be limited to a maximum nominal amount of £258.52 of Ordinary Shares and £934.28 of A Ordinary Shares;
- (b) shall only apply insofar as the Company has not, subject to these Articles, renewed, waived or revoked it by ordinary resolution,
- (c) may only be exercised for a period of five years from the date of adoption of these Articles save that, subject to these Articles, the directors may make an offer or agreement which would, or might, require any Shares to be allotted after the expiry of such authority (and the directors may allot Shares in pursuance of an offer or agreement as



if such authority had not expired); and

(d) shall be subject to the terms of the Investment Agreement

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

6.4 Save with: (i) the prior written consent of shareholders who together hold 60% or more of the Shares; and (ii) Qualified Party Consent, any unissued shares or other equity securities or shares proposed to be issued by the Company OTHER THAN:

- (i) any and all equity securities to be issued pursuant to or in connection with the Bridge Financing;
- (ii) any Founder Warrants,
- (iii) any equity securities to be issued upon the conversion, exercise or exchange of any Founder Warrants;
- (iv) any equity securities to be issued pursuant to a company share option scheme up to a maximum of 15% of the Fully Diluted Share Capital from time to time, or such other number as the Board acting with Qualified Party Consent may approve from time to time (a "Share Option Scheme");
- (v) any equity securities to be issued upon the exercise or conversion of options or other equity securities issued or granted pursuant to any Share Option Scheme;
- (vi) any equity securities to be issued as consideration for the purchase of any shares or assets of another company,
- (vii) any equity securities to be issued upon the conversion, exchange or application of funds received by the Company pursuant to the EIS Capital Facility,
- (viii) any equity securities to be issued upon the conversion of any Convertible Loan Notes,

("New Shares") shall not be allotted to any person unless the Company has, in the first instance offered such New Shares to all members of the Company on the same terms and at the same price as such New Shares are being offered to such other person on a pari passu and pro rata basis to the number of Shares held by such persons on the terms that in the case of competition the New Shares shall be allotted to the acceptors of any such offer in proportion (as nearly as may be without involving fractions or increasing the number allotted to any member beyond that applied for by him) to their existing holdings of Shares. Such offer(s):

- (a) shall stipulate a time, being not less than 3 Business Days nor more than 20 Business Days, within which it must be accepted or in default will lapse; and
- (b) may stipulate that any members who desire to subscribe for a number of New Shares in excess of the proportion to which each is entitled shall

in their acceptance state how many excess New Shares they wish to subscribe for and any shares not accepted by other members shall be used for satisfying such requests for excess New Shares at each stage pro rata to the number of existing shares held by such members at the time of such acceptance making such requests and thereafter, any excess New Shares shall be offered to any other person at the same price and on the same terms as the offer to members.

Any New Shares shall rank pari passu with existing shares in the same class then in issue. However:

- (a) no New Shares will be issued at a discount; and
- (b) no New Shares will be allotted or issued on terms which are more favourable than those on which they were offered to the Shareholders

6.5 An offer of Shares made to the University pursuant to Article 6.4 shall, as the University directs, entitle either.

- (a) the University,
- (b) any Fund in which the University and/or any colleges of the University are the majority participants or a nominee appointed by such a Fund where such Fund retains the entire beneficial interest in such Shares; or
- (c) with the written consent of members holding 75% or more of the issued Shares, any Fund in which the University and/or any colleges of the University are participants;

to subscribe for such Shares.

6.6 An offer of Shares made to UPF pursuant to Article 6.4 shall, as UPF directs, entitle either:

- (a) UPF, or
- (b) any Member of the same Group; or
- (c) any nominee of UPF; or
- (d) any partner in UPF, or
- (e) any other Fund of which the UPF Managers are the fund manager at the relevant time,

(each a "UPF Associate") to subscribe for such Shares

6.7 An offer of Shares made to H2O pursuant to Article 6.4 shall, as H2O directs, entitle either:

- (a) H2O, or
  - (b) any Member of the same Group, or
  - (c) any nominee of H2O; or
  - (d) any partner in H2O, or
  - (e) any other Fund of which H2O is fund manager at the relevant time;
- (each a "H2O Associate") to subscribe for such Shares

6.8 An offer of Shares made to Technikos pursuant to Article 6.4 shall, as Technikos directs, entitle either:

- (a) Technikos; or
- (b) any Member of the same Group, or
- (c) any nominee of Technikos; or
- (d) any partner in Technikos; or
- (e) any other Fund of which Technikos is fund manager at the relevant time;

(each a "Technikos Associate") to subscribe for such Shares.

6.9 An offer of Shares made to any Fund (including without limitation UPF) pursuant to Article 6 4 shall, as the Fund directs, entitle either:

- (a) any Member of the same Group; or
- (b) any nominee of the Fund or
- (c) any partner or participant in the Fund (including, but not limited to, any unit holder in an unauthorised unit trust established for the purpose of investing funds in the Fund); or
- (d) any other Fund which is managed or advised by the manager of the Fund or any of its subsidiary or holding companies; or
- (e) any person, company or fund whose business consists of holding securities for investment purposes;

(each a "Fund Associate") to subscribe for such Shares

6.10 An offer of Shares made to Crowther St Holdings pursuant to Article 6 4 shall, as Crowther St Holdings directs, entitle either

- (a) any Fund managed or advised by the H2O Manager; or
- (b) any Fund managed or advised by a Member of the same Group as the H2O Manager; or
- (c) any nominee of any such Fund,

(each a "H2O Manager Associate") to subscribe for such Shares.

- 6.11 If, due to any inequality between the number of New Shares to be issued and the number of Shares held by the Shareholders entitled to have the offer of New Shares made to them, any difficulty arises in the appointment of any such New Shares amongst the Shareholders, such difficulties will be determined by the Board with Qualified Party Consent.

### **TRANSFER OF SHARES**

- 7.1 No person shall dispose of any interest in, or right attaching to, or renounce or assign any right to receive or subscribe for any Share (save as may be required in pursuance of his obligations under these Articles) or create or permit to exist any charge, lien, encumbrance or trust over any Share or agree to do any of such things except as permitted by Articles 10 or 11.
- 7.2 If a person at any time attempts to deal with or dispose of a Share or any interest therein or right attaching thereto otherwise than as permitted by these Articles he (or the person holding such Shares as his nominee) shall be deemed immediately prior to such attempt to have given a transfer notice in respect of such Share
- 7.3 A transfer notice which is given or is deemed to have been given under Article 7.2, 10.3, 10.4, 10.5 or 12 shall be deemed not to contain a Total Transfer Condition (as defined in Article 11) and shall not be revocable.
8. The directors shall refuse to register any transfer of Shares made in contravention of the provisions of these Articles but (subject to Regulation 24 of Table A) shall not otherwise, save as provided to the contrary in these Articles, be entitled to refuse to register any transfer of Shares. For the purpose of ensuring that a particular transfer of Shares is permitted under the provisions of these Articles, the directors may request the transferor, or the person named as transferee in any transfer lodged for registration, to furnish the Company with such information and evidence as the directors may reasonably think necessary or relevant. Failing such information or evidence being furnished to the satisfaction of the directors within a period of 28 days after such request the directors shall be entitled to refuse to register the transfer in question
9. Where a transfer notice (as hereinafter defined) in respect of any Share is deemed to have been given under any provision of these Articles and the circumstances are such that the directors (as a whole) are unaware of the facts giving rise to the same such transfer notice shall be deemed to have been received by the directors on the date on which the directors (as a whole) actually become aware of such facts and the provisions of Article 11 shall apply accordingly.

### **PERMITTED TRANSFERS**

- 10.1 Any Shares (other than any Shares in respect of which the holder shall have been required by the directors under these Articles to give a transfer notice or shall have been deemed to have given a transfer notice) may at any time be transferred (without restriction as to price or otherwise and without the transferor being required to serve a transfer notice pursuant to Article 11.2).
- 10.1.1 by any individual member (not being in relation to the Shares concerned a holder thereof as a trustee of any Family Trust) to a Privileged Relation of such member, or

- 10 1.2 by any such individual member to trustees to be held upon a Family Trust related to such individual member; or
  - 10.1.3 by any member being a company (not being in relation to the Shares concerned a holder thereof as a trustee of any Family Trust) to a Member of the same Group as the Transferor Company;
  - 10.1.4 by any member pursuant to a Come Along Notice validly given in accordance with Article 14;
  - 10 1 5 by the University to:-
    - 10.1.5.1 any Fund in which the University and/or any colleges of the University are the majority participants or a nominee appointed by such a Fund where such Fund retains the entire beneficial interest in such Shares, or
    - 10.1.5.2 with the written consent of members holding 75% or more of the issued Shares, any Fund in which the University and/or any colleges of the University are participants;
  - 10 1 6 by a Fund or a nominee appointed by a Fund to the University;
  - 10.1.7 by UPF or their nominees to a UPF Associate, or
  - 10.1.8 by H2O to a H2O Associate, or
  - 10 1 9 by Technikos to a Technikos Associate; or
  - 10.1.10 by the Roundtable Fund '09 or its nominee to any individual investor in the Roundtable Fund '09 at any time after the expiry of three years from the date of issue of such Shares; or
  - 10 1 11 by any Fund (including without limitation UPF) or its nominees to a Fund Associate; or
  - 10 1 12 by Crowther St Holdings to a H2O Manager Associate.
- 10.2 Where Shares have been issued to the trustees of a Family Trust or transferred under Article 10 1 or under Article 10.2 1 or Article 10.2.2 to the trustees of a Family Trust, the trustees and their successors in office may (subject to the provisions of Article 10 1) transfer all or any of the Relevant Shares
- 10.2.1 to the trustees for the time being of the Family Trust concerned on any change of trustees;
  - 10.2.2 to the trustees for the time being of any other trust being a Family Trust in relation to the same individual member or deceased or former member pursuant to the terms of such Family Trusts or to any discretion vested in the trustees thereof or any other person; or
  - 10.2.3 to any beneficiary of the Family Trust concerned.
- 10.3 If and whenever any of the Relevant Shares come to be held otherwise than upon a Family Trust, except in circumstances where a transfer thereof is authorised pursuant to Article 10 2 to be and is to be made to the person or persons entitled thereto, it shall be the duty of the trustees holding such Shares to notify the

directors in writing that such event has occurred and the trustees shall be bound, if and when required in writing by the directors so to do, to give a transfer notice in respect of the Shares concerned

- 10.4 If a person to whom Shares have been transferred pursuant to Article 10.1.1 shall cease to be a Privileged Relation, such person shall be bound, if and when required in writing by the directors so to do, to give a transfer notice in respect of the Shares concerned.
- 10.5 If a Transferee Company ceases to be a Member of the same Group as the Transferor Company from which (whether directly or by a series of transfers under Article 10.1.3) the Relevant Shares derived, then, unless the Transferee Company is a Permitted Transferee by virtue of any provision of Article 10.1 other than 10.1.3, it shall be the duty of the Transferee Company to notify the directors in writing that such event has occurred and (unless the Relevant Shares are transferred to the Transferor Company or a Member of the same Group as the Transferor Company within 14 days of such event, any such transfer being deemed to be authorised under the foregoing provisions of this Article) the Transferee Company shall be bound, if and when required in writing by the directors so to do, to give a transfer notice in respect of the Relevant Shares.

### **PRE-EMPTION RIGHTS**

- 11.1 Except in the case of a Permitted Transfer or where Article 11.20 applies, no Share shall be transferred until the following conditions of this Article 11 are complied with.
- 11.2 Any member proposing to transfer a Share ("the proposing transferor") shall give notice in writing ("transfer notice") to the directors that the proposing transferor desires to transfer such Share at the Transfer Price (as hereinafter defined) and shall state in the transfer notice the identity of the person (if known) to whom the proposing transferor desires to transfer such Shares and (if known) the price which such person is prepared to pay for such Shares. All such Shares comprised in such transfer notice are in these Articles referred to as "Transfer Shares".
- 11.3 A transfer notice shall state whether the proposing transferor wishes to impose a Total Transfer Condition (meaning a condition that unless all of the Transfer Shares are sold pursuant to the following provisions of this Article none shall be so sold), but in the absence of such a statement the transfer notice shall be deemed not to contain a Total Transfer Condition.
- 11.4 The transfer notice shall constitute the Company (by its board of directors) as the agent of the proposing transferor empowered to sell the Transfer Shares (together with all rights attaching thereto at the date of the transfer notice or at any time thereafter) at the Transfer Price (as hereinafter defined) on the terms of this Article. Once given a transfer notice may not be revoked save with the prior written consent of all the other members or as provided in Article 11.6.2
- 11.5 Within seven days after the receipt of any transfer notice the directors shall serve a copy of that transfer notice on all the members other than the proposing transferor. In the case of a deemed transfer notice the directors shall similarly serve notice on all the members (including the proposing transferor), notifying them that the same has been deemed to have been given, within one month after (i) the date of the event giving rise to the deemed transfer notice or (ii) (if later) the date on which the directors (as a whole) actually became aware of such event

- 11.6 Subject as provided otherwise in these Articles the Transfer Shares shall be offered for purchase (as hereinafter provided) at a price per Transfer Share ("the Transfer Price") determined in accordance with Article 11.6.
- 11.6.1 The Transfer Price shall be such price as shall be agreed in writing between the proposing transferor and the directors (with Qualified Party Consent) or in the absence of such agreement (whether by reason of disagreement, absence, death or otherwise) within twenty one days after the service of notices pursuant to Article 11.5 the Transfer Price will be determined by the auditors of the Company (acting as experts and not as arbitrators) who shall certify in writing their opinion of the fair value thereof on a going concern basis as between a willing seller and a willing buyer ignoring any effect upon value attributable to the fact that the Transfer Shares represent a minority or majority interest but taking into account the restrictions on transfer herein contained (and shall assume that the entire issued share capital of the Company is being sold)
- 11.6.2 If the auditors are asked to certify the fair value as aforesaid their certificate shall be delivered to the Company and as soon as the Company receives the certificate it shall furnish a certified copy thereof to the proposing transferor. Following the service upon him of the certified copy of the certificate the proposing transferor shall, subject to Article 7.3, have ten days in which to revoke the transfer notice and cancel the authority of the Company to sell the Transfer Shares. The cost of obtaining the certificate shall be borne by the Company unless the proposing transferor shall give notice of cancellation as aforesaid in which case he shall bear the said cost.
- 11.6.3 The Transfer Price shall be a sum equal to the fair value of the Transfer Shares determined as aforesaid divided by the number of Transfer Shares. The Company will use its reasonable endeavours to procure that the auditors determine the Transfer Price within twenty one days of being requested so to do.
- 11.7 If the determination of the Transfer Price is referred to the auditors the date of determination of the Transfer Price ("the Determination Date") shall be the date on which the directors receive the auditors' determination of the Transfer Price in writing. If the Transfer Price is determined by agreement between the proposing transferor and the directors (with Qualified Party Consent) as aforesaid then the Determination Date shall be the date on which such agreement is made.
- 11.8 Within seven days after the Determination Date the Transfer Shares shall be offered for purchase at the Transfer Price by the directors to all members (other than the proposing transferor) in proportion to the number of Shares then held by them respectively. Every such offer shall be made in writing and shall specify (a) the total number of Transfer Shares, (b) the number of Transfer Shares offered to the member ("Pro Rata Entitlement"); (c) whether or not the transfer notice contained a Total Transfer Condition and (d) a period (being not less than fourteen days and not more than twenty one days) within which the offer must be accepted or shall lapse, and shall be accompanied by a form of application for use by the member in applying for his Pro Rata Entitlement and for any Shares in excess of such entitlement which he wishes to purchase. Upon the expiry of the said offer period, the Directors shall allocate the Transfer Shares in the following manner:

11.8.1 to each member who has agreed to purchase Shares, his Pro Rata Entitlement or such lesser number of Transfer Shares for which he may have applied,

11.8.2 if any member has applied for less than his Pro Rata Entitlement, the excess shall be allocated to the members who have applied for any part of such excess in proportion to the number of Shares then held by them respectively (but without allocating to any member a greater number of Transfer Shares than the maximum number applied for by him) and any remaining excess shall be apportioned by applying this Article 11.8.2 without taking account of any member whose application has already been satisfied in full

11.9 If any of the Transfer Shares shall not be capable of being offered or allocated as aforesaid without involving fractions, the same shall be offered to or allocated amongst the members, or some of them, in such proportions as may be determined by lots drawn in respect thereof, and the lots shall be drawn in such manner as the directors shall think fit.

11.10 An offer of Shares made to the University pursuant to Article 11.8 shall, as the University directs, entitle either:

(a) the University, or

(b) any Fund in which the University and/or any colleges of the University are the majority participants or a nominee appointed by such a Fund where such Fund retains the entire beneficial interest in such Shares, or

(c) with the written consent of members holding 75% or more of the issued Shares, any Fund in which the University and/or any colleges of the University are participants,

to accept such offer and in Articles 11.8 to 11.15 the expression "members" shall be deemed to include any person who has accepted an offer of Shares made to the University in accordance with this Article 11.10

11.10(A) An offer of Shares made to UPF pursuant to Article 11.8 shall, as UPF directs, entitle any UPF Associate to accept such offer and in Articles 11.8 to 11.15 the expression "members" shall be deemed to include any person who has accepted an offer of Shares made to UPF in accordance with this Article 11.10(A).

11.10(B) An offer of Shares made to H2O pursuant to Article 11.8 shall, as H2O directs, entitle any H2O Associate to accept such offer and in Articles 11.8 to 11.15 the expression "members" shall be deemed to include any person who has accepted an offer of Shares made to H2O in accordance with this Article 11.10(B).

11.10(C) An offer of Shares made to Technikos pursuant to Article 11.8 shall, as Technikos directs, entitle any Technikos Associate to accept such offer and in Articles 11.8 to 11.15 the expression "members" shall be deemed to include any person who has accepted an offer of Shares made to Technikos in accordance with this Article 11.10(C).

11.10(D) An offer of Shares made to any Fund (including without limitation UPF) pursuant to Article 11.8 shall, as the Fund directs, entitle any Fund Associate to accept such offer and in Articles 11.8 to 11.15 the expression "members" shall



be deemed to include any person who has accepted an offer of Shares made to that Fund in accordance with this Article 11.10(D).

11.10(E) An offer of Shares made to Crowther St Holdings pursuant to Article 11.8 shall, as Crowther St directs, entitle any H2O Manager Associate to accept such offer and in Articles 11.8 to 11.15 the expression "members" shall be deemed to include any person who has accepted an offer of Shares made to Crowther St Holdings in accordance with this Article 11.10(E).

11.11 If by the foregoing procedure the directors shall not receive acceptances in respect of all the Transfer Shares within the period(s) of the aforesaid offer(s) they shall forthwith give notice in writing of that fact to the proposing transferor. The directors (with Qualified Party Consent) shall then be entitled within fourteen days of the date of service of that notice to serve upon the proposing transferor a Compulsory Transfer Notice and/or a Compulsory Purchase Notice.

11.12 If the directors shall serve a Compulsory Purchase Notice upon the proposing transferor pursuant to Article 11.11 or Article 11.16 they shall -

11.12.1 draw up a draft contract of purchase which provides for completion at the Company's registered office of the purchase of the relevant Transfer Shares on the expiration of seven days after the passing of the special resolution hereinafter mentioned;

11.12.2 convene a meeting to consider a special resolution to authorise such contract of purchase, such meeting to be held not later than 30 days after the date on which the Compulsory Purchase Notice was served, and

11.12.3 procure that the relevant requirements of Sections 691 to 723 of the Act relating to the purchase by the Company of its own shares are complied with

11.13 The proposing transferor is deemed, by virtue of his having become a member of the Company, to have agreed:-

11.13.1 to any contract which is drawn up by the directors following the service upon him of a Compulsory Purchase Notice;

11.13.2 to have appointed any person nominated by the directors to execute such contract on his behalf, and

11.13.3 that, subject to the provisions of Article 11.14, he shall transfer the relevant Transfer Shares to the Company at completion. If he makes default in so doing a director or some other person duly nominated by a resolution of the directors for that purpose, shall forthwith be deemed to be the duly appointed agent of the proposing transferor with full power to execute complete and deliver in the name and on behalf of the proposing transferor a transfer of the relevant Transfer Shares to the Company. The directors shall forthwith pay the purchase money into a separate bank account in the Company's name and shall hold such money in trust for the proposing transferor until he shall deliver up his certificates for the relevant Transfer Shares to the Company when he shall thereupon be paid the purchase money

- 11.14 If by the foregoing procedure the directors shall not have received acceptances in respect of all the Transfer Shares and shall not have served a Compulsory Transfer Notice or a Compulsory Purchase Notice in respect of all of the Transfer Shares not accepted by the members or if the requirements of Sections 691 to 723 of the Act have not been complied with in relation to the purchase by the Company of the relevant Transfer Shares pursuant to a Compulsory Purchase Notice and the transfer notice in question did contain a Total Transfer Condition then none of the Transfer Shares shall be sold to the members or to any person nominated by the directors pursuant to a Compulsory Transfer Notice or to the Company pursuant to a Compulsory Purchase Notice. The proposing transferor may then within a period of four months after the expiry of the fourteen day period referred to in Article 11.11 sell all (but not some only) of the Transfer Shares to any person or persons at any price which is not less than the Transfer Price provided that.
- 11.14.1 the Board shall refuse registration of the proposed transferee unless approved by Qualified Party Consent; and
- 11 14.2 the Board shall refuse registration of the proposed transferee if such transfer obliges the Acquirer to procure the making of an offer in accordance with Article 13, until such time as such offer has been made and, if accepted, completed
- 11.15 If the directors shall receive acceptances pursuant to the provisions of this Article in respect of all the Transfer Shares (or all of the Transfer Shares other than those which the Company is obliged to purchase following the service of a Compulsory Purchase Notice) either from the members or from any person or persons nominated by the directors pursuant to a Compulsory Transfer Notice they shall forthwith give notice in writing as hereinafter mentioned to the proposing transferor and to the person or persons who have agreed to purchase the same ("Purchaser" or "Purchasers") and the proposing transferor shall thereupon become bound upon payment of the Transfer Price to the proposing transferor (whose receipt shall be a good discharge to the Purchaser, the Company and the directors therefor none of whom shall be bound to see to the application thereof) to transfer to each Purchaser those Transfer Shares accepted by him. Every such notice shall state the name and address of each Purchaser, the number of Transfer Shares agreed to be purchased by him and the place and time appointed by the directors for the completion of the purchase (being not less than seven days nor more than twenty-eight days after the date of the said notice and not being at a place outside England) Subject to the giving of such notice the purchase shall be completed at the time and place appointed by the directors.
- 11.16 If the transfer notice in question did not contain a Total Transfer Condition and if by the foregoing procedure the Directors shall receive acceptances in respect of none or part only of the Transfer Shares within the period(s) of the aforesaid offer(s) they shall forthwith give notice in writing of the fact to the proposing transferor. The directors shall then be entitled within 14 days of the date of service of that notice to serve upon the proposing transferor a Compulsory Transfer Notice and/or a Compulsory Purchase Notice and the provisions of Article 11.15 shall apply (mutatis mutandis) in respect of any Compulsory Transfer Notice so served.
- 11.17 The proposing transferor may, within the period of four months after the expiry of the fourteen day period referred to in Article 11.16 sell any of the Transfer Shares which have not been accepted by members pursuant to Article 11 8 and which are not the subject of a Compulsory Purchase Notice or Compulsory Transfer Notice served within such fourteen day period, to any person or

persons at any price which is not less than the Transfer Price, subject to the proviso in Article 11 14.

- 11.18 If a proposing transferor, having become bound to transfer any Transfer Shares pursuant to this Article, makes default in transferring the same the directors may authorise some person (who is, as security for the performance of the proposing transferor's obligations, hereby irrevocably and unconditionally appointed as the agent of the proposing transferor for the purpose) to execute the necessary instrument of transfer of such Transfer Shares and may deliver it on his behalf and the Company may receive the purchase money and shall thereupon (subject to such instrument being duly stamped) cause the transferee to be registered as the holder of such Transfer Shares and shall hold such purchase money on behalf of the proposing transferor. The Company shall not be bound to earn or pay interest on any money so held and shall not pay such money to the proposing transferor until he shall have delivered his share certificates (or an appropriate indemnity in respect of any lost certificates) to the Company. The receipt of the Company for such purchase money shall be a good discharge to the transferee who shall not be bound to see to the application thereof, and after the name of the transferee has been entered in the register of members in purported exercise of the aforesaid power the validity of the proceedings shall not be questioned by any person.
- 11.19 The directors (acting reasonably) may require to be satisfied that any Shares being transferred by the proposing transferor pursuant to either Article 11 14 or Article 11.17 are being transferred in pursuance of a bona fide sale for the consideration stated in the transfer and for not less than the Transfer Price and without any deduction, rebate or allowance whatsoever to the purchaser and if not so satisfied may refuse to register the instrument of transfer.
- 11 20 Notwithstanding the preceding provisions of this Article the directors shall register any transfer of Shares to which all of the Shareholders shall have given their prior written consent

### **COMPULSORY TRANSFERS**

- 12.1 If a member is adjudicated bankrupt he shall be deemed immediately to have given a transfer notice in respect of all Shares then registered in his name.
- 12.2 If a Share remains registered in the name of a deceased member for longer than one year after the date of his death the directors may require the legal personal representatives of such deceased member either to effect a transfer of such Shares (including for such purpose an election to be registered in respect thereof) being a Permitted Transfer or to show to the satisfaction of the directors that a Permitted Transfer will be effected before or promptly upon the completion of the administration of the estate of the deceased member or (failing compliance with either of the foregoing within one month or such longer period as the Directors may allow for the purpose) to give a transfer notice in respect of such Share
- 12.3 If a member which is a company (or other corporate entity) or a Permitted Transferee of such member (save in the case of UPF), either suffers or resolves for the appointment of a liquidator, administrator or administrative receiver over it or any material part of its assets, such member or Permitted Transferee shall be deemed immediately to have given a transfer notice in respect of all of the Shares held by such member and/or such Permitted Transferee
- 12.4 In the case of a Relevant Member, or the Relevant Executive in relation to a Relevant Member, who becomes a Leaver at any time then such Relevant

Member shall, unless the directors (with Qualified Party Consent) resolve otherwise, be deemed to have given, on the date on which he or the Relevant Executive concerned became a Leaver (or such later date as the Directors shall specify), a transfer notice in respect of all of the Shares held by such Relevant Member.

- 12.5 If a person who is not (or has ceased to be) a consultant or director or employee of or to the Company or any subsidiary of the Company at the date of acquisition acquires Shares in pursuance of a right or interest obtained by such an employee or consultant or director (including but not limited to his right or interest as a beneficiary under a trust and any option granted under any share option scheme established by the Company), he shall, upon being registered as the holder of such Shares, unless the directors (with Qualified Party Consent) resolve otherwise, be deemed to have given a transfer notice in respect of all of the Shares registered in his name.
- 12.6 If a member attempts to deal with or dispose of any Share or any interest in it otherwise than in accordance with these Articles, he shall be deemed immediately to have given a transfer notice in respect of all of the Shares held by such member.
- 12.7 Notwithstanding any other provision of these Articles any member holding Shares in respect of which a transfer notice is deemed given (in accordance with Articles 12.1 to 12.6) (the "Deemed Transfer Notice") shall, as from the date of the relevant Deemed Transfer Notice unless or until such time as the Board (with Qualified Party Consent) shall agree otherwise, not be entitled to:
- 12.7.1 exercise any voting rights (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, at general meetings of the Company in respect of those Shares; or
- 12.7.2 to participate in any future issue of Shares.
- 12.8 The transfer price for any Shares which are the subject of a Deemed Transfer Notice given as a consequence of a transfer event falling within Article 12.1 to 12.6 (a "Transfer Event") shall be
- 12.8.1 in relation to any member who is a Good Leaver (as defined in Article 12.9) their Fair Value, and
- 12.8.2 in relation to any member who is who is a Bad Leaver (as defined in Article 12.9), their Fair Value or, if less, their Subscription Price.
- 12.9 In Article 12.8,
- 12.9.1 A member shall be a "Good Leaver" where the Transfer Event occurs as a result of his:
- (a) contract of employment or engagement having been terminated by the Company or its subsidiary in circumstances where such termination is determined by an employment tribunal or a court of competent jurisdiction (from which there is no right to appeal) to be unfair or constructively unfair;
- (b) death,

- (c) bankruptcy or (in the case of a company or other corporate entity or its Permitted Transferee) where the Transfer Event falls within Article 12 3 (save in the case of UPF);
- (d) retirement in accordance with terms of that member's contract of employment with the Company;
- (e) Serious Ill Health; or
- (f) redundancy,

or where:

- (f) he is no longer employed or engaged by a subsidiary as a result of the subsidiary ceasing to be a subsidiary of the Company, or
- (g) the Board (with Qualified Party Consent) determines he is a Good Leaver.

12.9.2 "Bad Leaver" refers to any member who is not a Good Leaver.

12 10 The Shares the subject of any Deemed Transfer Notice shall be offered for sale in accordance with Article 11 as if they were Transfer Shares in respect of which a transfer notice had been given save that:

12.10.1 a Deemed Transfer Notice shall be deemed to have been given on the date of the Transfer Event;

12.10.2 the transfer price shall be determined in accordance with Article 12 8,

12.10.3 a Deemed Transfer Notice shall be deemed not to contain a Total Transfer Condition (as defined in Article 11) and shall be irrevocable.

### **MAJORITY CHANGE OF CONTROL**

13.1 Notwithstanding any other provision in these Articles no sale or transfer or other disposition of any interest in any Share shall have any effect, if it would result in a Majority Change of Control, unless before the transfer is lodged for registration the Acquirer has made a bona fide offer in accordance with this Article 13 to purchase at the Transfer Price in relation to the Share mentioned above all the Shares held by the Shareholders (except any Shareholder which has expressly waived its right to receive such an offer for the purpose of this Article 13).

13.2 An offer made under Article 13.1 shall be in writing open for acceptance for at least 21 days after full implementation of the pre-emption rights and procedures set out in Article 11, shall be recirculated with a reminder in writing to all the Shareholders at least 7 days before the date for acceptance set out in the offer and shall be deemed to be rejected by any Shareholder who has not accepted it in accordance with its terms within the period set out in the offer.

13.3 The Acquirer shall complete the purchase of all Shares in respect of which the offer is accepted at the same time as he completes the purchase of the Shares whose proposed purchase gave rise to such offer. The acceptance by any Shareholder of such offer shall not require the accepting Shareholder to give a

transfer notice in accordance with Article 11 2.

### **COME ALONG OPTION**

- 14.1 If any one or more Shareholders (together the "Selling Shareholders") wish to transfer any Shares which would result in a Special Change of Control, the Selling Shareholders or, after the transfer by them of their Shares to the Acquirer resulting in the Special Change of Control, the Acquirer shall have the option (the "Come Along Option") to require all the other holders of Shares to transfer all their Shares to the Acquirer or as the Acquirer shall direct in accordance with this Article 14.
- 14.2 The Selling Shareholders or the Acquirer may exercise the Come Along Option by giving notice to that effect (a "Come Along Notice") to all such other Shareholders (the "Called Shareholders") at any time after the Selling Shareholders have agreed to transfer the Shares held by them giving rise to the Special Change of Control. A Come Along Notice shall specify that the Called Shareholders are required to transfer all their Shares (the "Called Shares") pursuant to Article 14.1, at the price at which the Called Shares are to be transferred (calculated in accordance with Article 14.4) and the proposed date of transfer.
- 14.3 A Come Along Notice is irrevocable but the Come Along Notice and all obligations thereunder will lapse if the Come Along Notice is given before the transfer of Shares resulting in the Special Change of Control and for any reason there is not a Special Change of Control caused by a transfer of Shares by the Selling Shareholders to the Acquirer within 6 months of the date of the Come Along Notice.
- 14.4 The Called Shareholders shall be obliged to sell the Called Shares at the price per Share at which the relevant transfer of Shares referred to in Article 14.1 takes place or took place.
- 14.5 Completion of the sale of the Called Shares shall take place on the date specified for that purpose by the Selling Shareholders or the Acquirer except that:
- 14.5.1 such person may not specify a date that is less than 14 days after the date of the Come Along Notice, and
- 14.5.2 if the Come Along Notice is given by the Selling Shareholders, the date so specified by the Selling Shareholders shall be the same date as the date proposed for completion of the sale of the Shares giving rise to the Special Change of Control;
- unless all of the Called Shareholders, the Selling Shareholders and the Acquirer agree otherwise.
- 14.6 If any of the Called Shareholders shall make default in selling its Shares in accordance with this Article 14, any director of the Acquirer or other person duly nominated by resolution of the directors for that purpose shall forthwith be deemed to be the duly appointed agent of such Called Shareholder with such power to execute, complete and deliver in the name and on behalf of such Called Shareholder a transfer of the relevant Called Shares and any such director may receive and give a good discharge of the purchase money on behalf of such Called Shareholder and (subject to the transfer being duly stamped) the Company may enter the name of the Acquirer in the register of members as the holder or holders by transfer of the Called Shares so purchased

by him or them. The directors shall forthwith pay the purchase money into a separate bank account in the Company's name and shall hold such money on trust (but without interest) for such Called Shareholder until he shall deliver up a certificate or certificates for the relevant Shares to the Company and he shall thereupon be paid by the purchase money.

- 14.7 On any person, following the issue of a Come Along Notice, becoming a Shareholder pursuant to the exercise of a pre-existing option to acquire Shares in the Company or pursuant to the conversion of any convertible security of the Company (a "New Shareholder"), a Come Along Notice shall be deemed to have been served on the New Shareholder on the same terms as the previous Come Along Notice and the New Shareholder shall then be bound to sell and transfer all Shares so acquired to the Acquirer or as the Acquirer may direct and the provisions of this Article shall apply with the necessary changes to the New Shareholder except that completion of the sale of the Shares shall take place immediately on the Come Along Notice being deemed served on the New Shareholder.
- 14.8 The provisions of Article 13 and 14 shall not apply to or as a result of any transfer of Shares pursuant to Article 10.
- 14.9 For the purposes of Article 14 the following variations in the terms offered by the Acquirer to some or all of the Called Shareholders shall be permitted:
- 14.9.1 some or all of the Called Shareholders giving warranties and indemnities which are not to be given by the Key Investors,
  - 14.9.2 some or all of the Called Shareholders giving covenants and undertakings which are not given by the Key Investors,
  - 14.9.3 variations in the form of consideration (whether cash, loan notes, shares or other securities) offered to holders of any Shares (including such variations amongst holders of the same class) provided that the Board determine in their absolute discretion that the different forms of consideration offered have equivalent value and ignoring any restrictions on transfer or voting or otherwise on any loan notes, shares or other securities offered.

## **VOTING**

- 15.1 Subject to any special rights or restrictions as to voting attached to any Shares by or in accordance with these Articles, on a show of hands every member who (being an individual) is present in person or by proxy or (being a corporation) is present by a representative or by proxy, unless the proxy (in either case) or the representative is himself a member entitled to vote, shall have one vote, and on a poll every member who is present in person or by proxy or (being a corporation) is present by a representative or by proxy shall (except as hereinafter provided) have one vote for every Share of which he is the holder.
- 15.2 Each issued 'A' Ordinary Share shall rank *pari passu* with each issued Ordinary Share as regards the votes of the members.
- 15.3 In the event that there is a persistent or material breach of the Investment Agreement by the Company or any of the Founders or Mark Kirby then the Qualified Parties may (acting together and by unanimous consent) at any time serve notice in writing upon the Company that the Qualified Parties shall have ten votes for each Share held by them and that the provisions of Article 15.4

will apply.

- 15.4 In the event that Article 15.3 applies, the Qualified Parties shall (acting together and by unanimous consent) have power at anytime, and from time to time, to appoint any number of persons to be directors or to remove from office any such persons appointed. Any such appointment or removal shall be made by notice in writing to the Company
- 15.5 The enhanced voting rights attached to the Shares shall be exercisable at any time after any of the events referred to in Article 15.3 have occurred, providing that such enhanced voting rights shall continue only until the relevant breach is waived or otherwise remedied to the reasonable satisfaction (confirmed in writing) of the Qualified Parties (acting together and by unanimous consent).

#### **APPOINTMENT OF DIRECTORS**

16. Subject to the provisions of the Investment Agreement, the directors may appoint a person who is willing to act to be a director, either to fill a vacancy or as an additional director

#### **PROCEEDINGS OF DIRECTORS**

- 17.1 Subject to Article 17.2 the quorum for meetings of the Board shall be any two Directors, one of whom must be an MTI Investor Director and one of whom must be any other Director who is not an MTI Investor Director.
- 17.2 For the purposes of any meeting (or part of a meeting) held pursuant to Article 19 to authorise a Director's conflict, if there is only one Director in office other than the conflicted Director(s), the quorum for such meeting (or part of a meeting) to authorise a Director's conflict shall be one Director
- 17.3 Notice of every meeting of the directors shall be given to each director at any address supplied to him to the Company for that purpose whether or not he be present in the United Kingdom provided that any director may waive notice of any meeting either prospectively or retrospectively and if he shall do so it shall be no objection to the validity of such meeting that notice was not given to him.
- 17.4 The directors, or a committee of the directors, may hold meetings by telephone either by conference telephone connection(s) or by a series of telephone conversations. The views of the directors, or a committee of the directors, as ascertained by such telephone conversations and communicated to the chairman shall be treated as votes in favour of or against a particular resolution (as appropriate). A resolution passed at any meeting held in this manner and signed by the chairman shall be as valid and effectual as if it had been passed at a meeting of the directors (or, as the case may be of that committee) duly convened and held. Such a meeting shall be deemed to take place where the largest group of those participating is assembled, or, if there is no such group, where the chairman of the meeting is then present.
- 17.5 A Director may vote on any resolution concerning a matter in which he has, directly or indirectly, any kind of interest or duty whatsoever, provided he has disclosed such interest or dealing and subject to the provisions of Articles 19 and 20.



## **ALTERNATE DIRECTORS**

- 18.1 The appointment by any Investor Director of an alternate Director shall not be subject to approval by a resolution of the Board and regulation 65 of Table A shall be modified accordingly. In regulation 67 of Table A the words "but, if" and the words following them (to the end of that regulation) shall be deleted
- 18.2 An alternate Director shall not be entitled (as such) to receive any remuneration from the Company, save that he may be paid by the Company such part (if any) of the remuneration otherwise payable to his appointor as such appointor may, by notice in writing to the Company from time to time, direct, and the first sentence of regulation 66 of Table A shall be modified accordingly.
- 18.3 A Director, or any such other person as is mentioned in regulation 65 of Table A, as modified by Article 18.1 may act as an alternate Director to represent more than one Director, and an alternate Director shall be entitled at any meeting of the Board (or of any committee of the Board) to one vote for every Director whom he represents (in addition to his own vote (if any) as a Director), but he shall count as only one for the purpose of determining whether a quorum is present at (and during) any such meeting

## **DIRECTORS' CONFLICTS OF INTERESTS**

- 19.1 The directors may, in accordance with the requirements set out in this Article 19, authorise any matter proposed to them by any director which would, if not authorised, involve a director breaching his duty under section 175 of the Act to avoid conflicts of interest ("Conflict").
- 19.2 Any authorisation under this Article will be effective only if:
- (a) the matter in question shall have been proposed by any director for consideration at a meeting of directors in the same way that any other matter may be proposed to the directors under the provisions of these Articles or in such other manner as the directors may determine;
  - (b) any requirement as to the quorum at the meeting of the directors at which the matter is considered is met without counting the director in question; and
  - (c) the matter was agreed to without his voting or would have been agreed to if his vote had not been counted
- 19.3 Any authorisation of a matter under this Article may (whether at the time of giving the authority or subsequently)
- (a) extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised,
  - (b) be subject to such terms and for such duration, or impose such limits or conditions as the directors may determine,
  - (c) be terminated or varied by the directors at any time.
- This will not affect anything done by the director prior to such termination or variation in accordance with the terms of the authorisation.
- 19.4 In authorising a Conflict the directors may decide (whether at the time of giving the authority 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:

(a) disclose such information to the directors or to any director or other officer or employee of the Company,

(b) 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.

19.5 Subject to Article 19 8, where the directors authorise a Conflict they may provide, without limitation (whether at the time of giving the authority or subsequently) that the director.

(a) is excluded from discussions (whether at meetings of directors or otherwise) related to the Conflict,

(b) is not given any documents or other information relating to the Conflict;

(c) may or may not vote (or may or may not be counted in the quorum) at any future meeting of directors in relation to any resolution relating to the Conflict

19.6 Where the directors authorise a Conflict:

(a) the director will be obliged to conduct himself in accordance with any terms imposed by the directors in relation to the Conflict,

(b) the director will not infringe any duty he owes to the Company by virtue of sections 171 to 177 of the Act provided he acts in accordance with such terms, limits and conditions (if any) as the directors impose in respect of its authorisation.

19 7 A director is not required, by reason of being a director (or because of the fiduciary relationship established by reason of being a director), to account to the Company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the directors 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

19 8 Notwithstanding the other provisions of this Article 19, it shall not (save with Qualified Party Consent) be made a condition of any authorisation of a matter in relation to an Investor Director in accordance with section 175(5) (a) of the Act, that he shall be restricted from voting or counting in the quorum at any meeting of, or of any committee of the directors or that he shall be required to disclose, use or apply any confidential information.

19.9 Subject to section 239 of the Act, the Company may by ordinary resolution ratify any contract, transaction or arrangement, or other proposal, not properly authorised by reason of a contravention of any provisions of this Article 19 or Article 20.

#### **DIRECTORS' DECLARATIONS OF INTEREST**

20.1 A director who is in any way, whether directly or indirectly, interested in a proposed transaction or arrangement with the Company shall declare the

nature and extent of his interest to the other directors before the Company enters into the transaction or arrangement in accordance with the Act

- 20 2 A director who is in any way, whether directly or indirectly, interested in a transaction or arrangement that has been entered into by the Company shall declare the nature and extent of his interest to the other directors as soon as is reasonably practicable in accordance with the Act, unless the interest has already been declared under Article 20 1
- 20 3 Subject, where applicable, to the disclosures required under Articles 20.1 and 20 2, and to any terms and conditions imposed by the directors in accordance with Article 19, a director shall be entitled to vote in respect of any proposed or existing transaction or arrangement with the Company in which he is interested and if he shall do so his vote shall be counted and he shall be taken into account in ascertaining whether a quorum is present.
- 20 4 A director need not declare an interest under Articles 20 1 and 20.2 as the case may be:
- (a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - (b) of which the director is not aware, although for this purpose a director is treated as being aware of matters of which he ought reasonably to be aware,
  - (c) if, or to the extent that, the other directors are already aware of it, and for this purpose the other directors are treated as aware of anything of which they ought reasonably to be aware; or
  - (d) if, or to the extent that, it concerns the terms of his service contract that have been, or are to be, considered at a board meeting

#### **EXECUTION OF DEEDS**

- 20A.1 Any instrument expressed to be executed by the Company and signed by two directors, or by one director and the secretary, by the authority of the directors or of a committee authorised by the directors shall (to the extent permitted by the Act) have effect as if executed under seal

#### **DIVIDENDS**

- 20B.1 Each 'A' Ordinary Share ranks pari passu with each issued Ordinary Share in the capital of the Company as regard the payment of any cash dividend or other distribution
- 20B.2 The Company will procure that the lawfully available profits of any Member of the same Group will be paid by way of dividend to the Company (or, as the case may be, the relevant Member of the same Group that is its immediate parent undertaking).
- 20B.3 Subject to the Act and these Articles, the Board may, with Qualified Party Consent, pay interim dividends if justified by the lawfully available profits in respect of the relevant financial year

#### **INDEMNITY**

- 21.1 Subject to the provisions of and so far as may be consistent with the Act, but

without prejudice to any indemnity to which a director may be otherwise entitled, every director, auditor, secretary or other officer of the Company shall be entitled to be indemnified by the Company against all costs, charges, losses, expenses and liabilities incurred by him in the execution and/or discharge of his duties and/or the exercise of his powers and/or otherwise properly in relation to or in connection with his duties, including (but without prejudice to the generality of the foregoing) any liability incurred by him in defending any proceedings, civil or criminal, which relate to anything done or omitted or alleged to have been done or omitted by him as an officer or employee of the Company and in which judgement is given in his favour (or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part) or in which he is acquitted or in connection with any application under any statute for relief from liability in respect of any such act or omission in which relief is granted to him by the Court.

- 21.2 Subject to the Act the Company may purchase and maintain for any director, auditor, secretary or other officer of the Company insurance cover against any liability which by virtue of any rule of law may attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the Company and against all costs, charges, losses and expenses and liabilities incurred by him and for which he is entitled to be indemnified by the Company by virtue of Article 21 1

#### **VARIATION OF RIGHTS**

- 22.1 If at any time the share capital of the Company is divided into different classes of Shares, the rights attached to any class may, subject to the Act, be modified, varied or abrogated with the consent in writing of the holders of at least 75% in nominal value of the Shares of that class
- 22 2 The rights attached to any class of Shares are not, unless otherwise expressly provided by the rights attaching to the Shares of that class, be deemed to be varied by the creation or issue of further Shares ranking equally with them.

#### **GENERAL MEETINGS**

- 23.1 No business shall be transacted at any general meeting unless a quorum of Shareholders is present at the time when the meeting proceeds to business and for its duration Two persons, being holders of Shares (and one of whom shall be a Qualified Party) present in person, by proxy or by duly authorised representative (if a body corporate), shall be the quorum at any general meeting If a meeting is adjourned under regulation 41 of Table A because a quorum is not present, and at the adjourned meeting a quorum is not present within half an hour from the time appointed for that adjourned meeting, the Shareholders then present shall form a quorum, and regulation 41 of Table A shall be modified accordingly
- 23.2 A poll may be demanded at a general meeting either by the chairman of the meeting or by any Shareholder who is present in person, by proxy or by duly authorised representative (if a body corporate) and who, in any such case, has the right to vote at the meeting, and regulation 46 of Table A shall be modified accordingly.

#### **LIMITATION OF LIABILITY**

24. The liability of a Shareholder is limited to the amount, if any, unpaid on the shares held by him.