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THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

of

GUY'S AND ST THOMAS' ENTERPRISES LIMITED

(Adopted by Special Resolution passed on .....

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**1 Defined terms and exclusion of default articles**

**1 1** In these articles, unless the context requires otherwise

**“alternate” or “alternate director”** has the meaning given in article 23,

**“appointor”** has the meaning given in article 23;

**“articles”** means these articles of association of the company,

**“bankruptcy”** includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;

**“Business Plan”** means the business plan of the Company current at the relevant time.

**“CA 2006”** means the Companies Act 2006;

**“chairman”** has the meaning given in article 13,

**“chairman of the meeting”** has the meaning given in article 41,

**“company”** Guy’s and St Thomas’ Enterprises Limited

**“Companies Acts”** means the Companies Acts (as defined in section 2 CA 2006), in so far as they apply to the company,

**“connected persons”** in relation to a director means persons connected with that director for the purposes of section 252 CA 2006;

**“director”** means a director of the company, and includes any person occupying the position of director, by whatever name called;

**“document”** includes, unless otherwise specified, any document sent or supplied in electronic form;

**“electronic form”** has the meaning given in section 1168 CA 2006;

**“eligible director”** means, in relation to a matter or decision, a director who is or would be entitled to count in the quorum and vote on the matter or decision at a meeting of directors (but excluding any director whose vote is not to be counted in respect of the particular matter or decision);

**“Encumbrance”** means any mortgage, charge (fixed or floating), pledge, lien, hypothecation, guarantee, trust, right or set-off or other third party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind, howsoever created or arising, or any other agreement or arrangement having similar effect;

**“fully paid”** in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;

**“Group Company”** means a body corporate which is at the relevant time:

(a) a subsidiary of the company; or

(b) the company's holding company or a subsidiary of that holding company,  
and for these purposes "holding company" has the meaning given to that expression in section 1159 CA 2006;

"GSTFT" means Guy's and St Thomas' NHS Foundation Trust, whose principal address is at St Thomas' Hospital, Lambeth Palace Road, London SE1 7EH,

"hard copy form" has the meaning given in section 1168 CA 2006,

"holder" in relation to shares means the person whose name is entered in the register of members as the holder of the shares,

"instrument" means a document in hard copy form;

"member" has the meaning given in section 112 CA 2006,

"Model Articles" means the regulations contained in Schedule 1 to the Companies (Model Articles) Regulations 2008;

"ordinary resolution" has the meaning given in section 282 CA 2006 and includes a written resolution;

"paid" means paid or credited as paid;

"participate", in relation to a directors' meeting, has the meaning given in article 11;

"partly paid" in relation to a share means that part of that share's nominal value or any premium at which it was issued has not been paid to the company;

"proxy notice" has the meaning given in article 47;

"shareholder" means a person who is the holder of a share;

"shares" means shares in the company,

"special resolution" has the meaning given in section 283 CA 2006;

"subsidiary" has the meaning given in section 1159 CA 2006;

"transmittee" means a person entitled to a share by reason of the death or bankruptcy of a shareholder or otherwise by operation of law; and

"writing" means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

1.2 The Model Articles do not apply to the company.

1.3 For the purposes of these articles a corporation shall be deemed to be present in person if its representative duly authorised in accordance with the Companies Acts is present in person.

1.4 Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in CA 2006, as in force on the date when these articles become binding on the company.

- 1.5 Headings in these articles are used for convenience only and shall not affect the construction or interpretation of these articles.
- 1.6 A reference in these articles to an “article” is a reference to the relevant article of these articles unless expressly provided otherwise.
- 1.7 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:
- (a) any subordinate legislation from time to time made under it; and
  - (b) any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.8 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.
- 2 Liability of members**
- 2.1 The liability of the members is limited to the amount, if any, unpaid on the shares held by them.
- 3 Directors’ general authority**
- 3.1 Subject to these articles, the directors are responsible for the management of the company’s business, for which purpose they may exercise all the powers of the company.
- 4 Shareholders’ reserve power**
- 4.1 The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.
- 4.2 No such special resolution invalidates anything which the directors have done before the passing of the resolution.
- 5 Matters requiring shareholder’s approval**
- 5.1 Whenever GSTFT holds directly or indirectly not less than 75% of the issued share capital of the company conferring the right to attend and vote at all general meetings of the Company, the written approval of GSTFT shall be required for any of the matters listed in Schedule 1 (Matters Requiring Guy’s and St Thomas’ NHS Foundation Trust Approval).
- 6 Directors may delegate**
- 6.1 Subject to these articles, the directors may delegate any of the powers which are conferred on them under these articles:
- (a) to such person or committee (whether or not that person or any member of that committee is a director);
  - (b) by such means (including by power of attorney);

- (c) to such an extent,
- (d) in relation to such matters or territories; and
- (e) on such terms and conditions;

as they think fit.

6.2 If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.

6.3 The directors may revoke any delegation in whole or part, or alter its terms and conditions

## **7 Committees**

7.1 Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of these articles which govern the taking of decisions by directors.

7.2 The directors may make rules of procedure for all or any committees, which do not prevail over rules derived from these articles if they are not consistent with them.

## **8 [NOT USED]**

## **9 Directors' decisions**

9.1 Subject to article 9.2, a decision of the directors is taken in accordance with this article when either:

- (a) all eligible directors indicate to each other by any means that they share a common view on a matter (and such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing, or may be in electronic form); or
- (b) a proposed decision has been notified (by any means permitted by these articles) to all eligible directors and a majority of eligible directors indicate to each other by any means that they agree on that decision (and such a decision may take the form of a resolution in writing, copies of which have been signed by a majority of the eligible directors or to which a majority of eligible directors has otherwise indicated agreement in writing, or may be in electronic form).

9.2 A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at a directors' meeting.

## **10 Frequency of meetings and reporting**

10.1 Any director may call a directors' meeting by giving reasonable notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.

10.2 Notice of any directors' meeting must indicate.

- (a) its proposed date and time,
- (b) where it is to take place, and
- (c) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting

10.3 Notice of a directors' meeting must be given to each director, but need not be in writing and may be waived by a director due to receive such notice.

## **11 Participation in directors' meetings**

11.1 Subject to these articles, directors participate in a directors' meeting, or part of a directors' meeting, when:

- (a) the meeting has been called and takes place in accordance with these articles; and
- (b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting

11.2 In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.

11.3 If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them are.

## **12 Quorum for directors' meetings**

12.1 At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

12.2 Subject to 12.3 and 12.4, the quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must never be less than two, and unless otherwise fixed it is two eligible directors.

12.3 For the purposes of:

- (a) any meeting (or part of a meeting) held to authorise a director's conflict in accordance with article 15, or
- (b) any determination in accordance with article 17.1(a)(iii) or 17(b)(iii),

if there is only one director present who is not a conflicted director (as defined in article 15), the quorum for that meeting (or part of a meeting) is one eligible director

12.4 For the purposes of:

- (a) any informal directors' resolution in accordance with article 9 to authorise a director's conflict for the purposes of article 15; or
- (b) any determination in accordance with article 17.5 other than in a meeting,



if there is only one director in office who is not a conflicted director (as defined in article 15), the quorum for the purpose of signing or passing that resolution or determination is one eligible director.

12.5 If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision:

- (a) to appoint further directors, or
- (b) to call a general meeting so as to enable the shareholders to appoint further directors.

12.6 If a quorum is not present 30 minutes after the scheduled start time for a meeting called and notified to the directors in accordance with article 10, that meeting shall be adjourned to be reconvened at the same location and at the same time 7 days after the initial meeting was due to commence. If, upon the meeting being reconvened, a quorum is still not present then that meeting shall be abandoned.

### **13 Chairing of directors' meetings**

13.1 Subject to the prior approval of GSTFT, the directors shall appoint a director to chair their meetings who shall be a non-executive director of the company and this may include such person who is also a non-exclusive director of GSTFT.

13.2 The person so appointed for the time being is known as the chairman

13.3 Subject to the prior approval of GSTFT, the directors may terminate the chairman's appointment at any time.

### **14 Casting vote**

14.1 If the numbers of votes for and against a proposal are equal, the chairman has a casting vote

14.2 But this does not apply if, in accordance with these articles, the chairman is not to be counted as participating in the decision-making process for quorum or voting purposes

### **15 Conflicts of interest**

15.1 In this article and articles 16 and 17:

"authorise" means to authorise in accordance with section 175(5)(a) CA 2006 and "authorisation", "authorised" and related expressions shall be construed accordingly;

a "conflict of interest" includes a conflict of interest and duty and a conflict of duties;

"conflicted director" means a director in relation to whom there is a conflicting matter;

"conflicting matter" means a matter which would or might (if not authorised or if not permitted under article 16) constitute or give rise to a breach of the duty of a director under section 175(1) CA 2006 to avoid a conflict situation;

**“conflict situation”** means a situation in which a director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company (including a conflict of interest),

**“conflict of interest protocol”** means the protocol on conflicts of interests issued by the Board of Directors from time to time currently in force (if any);

**“interested director”** means a director who has, in any way, a material direct or indirect interest in a matter or decision,

a conflicting matter, conflict situation or interest is **“material”** unless it cannot reasonably be regarded as likely to give rise to a conflict of interest; and

**“other directors”** means, in relation to a particular conflicting matter, directors who are not interested directors in relation to that conflicting matter

15.2 Exercise of the power of the directors to authorise a conflicting matter shall be subject to the provisions of this article.

15.3 The provisions of this article apply:

- (a) subject to article 16; and
- (b) without prejudice (and subject) to the provisions of section 175(6) CA 2006.

Nothing in these articles shall invalidate an authorisation.

15.4 A conflicted director seeking authorisation of any conflicting matter shall, disclose to the other directors the nature and extent of the conflicting matter as soon as is reasonably practicable and shall provide the other directors with such details of the conflicting matter as are necessary for the other directors to decide how to address the conflicting matter, together with such additional information as may be requested by the other directors

15.5 Any director (including the conflicted director) may propose that a conflicted director's conflicting matter be authorised. Any such proposal, and any authorisation given by the directors, shall be effected in the same way as any other matter may be proposed to and resolved on by the directors under the provisions of these articles, except that:

- (a) the conflicted director and any other interested director shall not count towards the quorum nor vote on any resolution giving that authorisation; and
- (b) the conflicted director and any other interested director may, if the other directors so decide, be excluded from any meeting of the directors while the conflicting matter and the giving of that authorisation are under consideration.

15.6 Where the directors authorise a conflicted director's conflicting matter:

- (a) the directors may (whether at the time of giving the authorisation or subsequently):
  - (i) require that the conflicted director is excluded from the receipt of information, the participation in discussions and/or the making of

decisions (whether at meetings of the directors or otherwise) in relation to which any actual or potential conflict of interest may arise from the conflicting matter, and

- (ii) impose on the conflicted director such other terms or conditions for the purpose of dealing with any actual or potential conflict of interest which may arise from the conflicting matter as they may determine;
- (b) the conflicted director shall conduct himself in accordance with any terms or conditions imposed by the directors (whether at the time of giving that authorisation or subsequently) and, subject thereto, with the company's conflict of interest protocol;
- (c) the directors may provide that, where the conflicted director obtains, otherwise than through his position as a director, information that is confidential to a third party, the conflicted director will not be obliged to disclose the information to the company, or to use or apply the information in relation to the company's affairs, where to do so would amount to a breach of that confidence;
- (d) the terms of the authorisation shall be recorded in writing (but the authorisation shall be effective whether or not the terms are so recorded); and
- (e) the directors may revoke or vary the authorisation at any time but no such action will affect anything done by the conflicted director prior to that action in accordance with the terms of the authorisation.

## **16 Permitted conflict situations**

### **16.1 If:**

- (a) a director or a connected person of a director acquires or holds shares in the capital of any other body corporate, wherever incorporated, provided that the shares held by the director and his connected persons do not exceed 3% of the nominal value of the issued share capital of that body corporate; or
- (b) a director or a connected person of a director is appointed or acts as a member, director, manager or employee of GSTFT or any other Group Company or any other entity within the company's group,

and so long as the conditions specified in article 16 2 are satisfied in relation to the director (the "**relevant conflicted director**"), any conflict situation which arises only by reason of such a conflicting matter is permitted by this article and the relevant conflicting matter does not require disclosure and authorisation in accordance with article 15.

### **16.2 The conditions referred to in article 16.1 are as follows:**

- (a) the relevant conflicted director must:
  - (i) disclose to the other directors the nature and extent of the relevant conflicting matter as soon as is reasonably practicable;

- (ii) whenever required by the other directors, either confirm that there has been no material change in the nature and extent of the relevant conflicting matter or provide details of any such material change that may have occurred, and
- (iii) whether or not requested to do so, promptly inform the other directors regarding any material change in the nature and extent of the relevant conflicting matter,

and, in each case, provide the other directors with such details of the relevant conflicting matter as they may require (but so that the relevant conflicted director shall not be obliged to breach any legal obligation as to confidentiality owed to a third party);

- (b) unless the other directors decide that, in their opinion:
  - (i) the conflict situation arising by reason of the relevant conflicting matter is not material; or
  - (ii) it is reasonable to expect the relevant conflicted director to resolve the relevant conflict situation in favour of the company,

the relevant conflicted director must also be excluded from the receipt of information, the participation in discussions and/or the making of decisions (whether at meetings of the other directors or otherwise) in relation to which a conflict situation arises by reason of the relevant conflicting matter; and

- (c) the relevant conflicted director must also comply with any other terms or conditions for the purpose of dealing with any actual or potential conflict of interest which may arise from the relevant conflicting matter as the other directors may determine including (but not limited to) confidentiality, and
  - (i) any such terms or conditions shall be recorded in writing (but the authorisation conferred by this article shall be effective whether or not the terms are so recorded); and
  - (ii) the other directors may vary any such terms or conditions at any time, but no such variation will affect anything done by the relevant conflicted director prior to that variation in accordance with the terms or conditions in effect at the relevant time.

16.3 A director shall not, by reason of his office or of the resulting fiduciary relationship, be liable to account to the company for any benefit which he (or a person connected with him) derives from:

- (a) a conflicting matter authorised by the directors;
- (b) a conflicting matter to which article 16.1 or article 16.2 applies; or
- (c) a decision of the directors in relation to which, in accordance with article 16.2, the director was an eligible director, notwithstanding his relevant conflicting interest,

and no transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit.

## **17 Directors' interests and decision making**

17.1 A director who has a direct or indirect interest or duty that conflicts with the interests of the company in relation to a proposed decision of the directors is not an eligible director in relation to that decision unless article 17.2 applies to him.

17.2 A director who has a direct or indirect interest that conflicts with the interests of the company in relation to a proposed decision of the directors (a “**relevant conflicting interest**”) shall be an eligible director in relation to that decision, provided that:

(a) in a case where the relevant conflicting interest is in an actual or proposed transaction or arrangement with the company

(i) the nature and extent of the relevant conflicting interest either.

(A) has been duly declared to the other directors in accordance with section 177 or section 182 CA 2006, as the case may require; or

(B) is not required by the terms of either of those sections to be declared; and

(ii) where the relevant conflicting interest is constituted by, or arises from, a conflicting matter of the director and.

(A) that conflicting matter (or any breach of the relevant director's duty under section 175(1) CA 2006 by reason of that conflicting matter) is or has been authorised, permitted, approved or ratified, either in accordance with article 15 or article 16 or by the members (and that authorisation, permission, approval or ratification has not been revoked, withdrawn or reversed), and

(B) the relevant director has not been required to be excluded from participation in discussions and/or the making of decisions in relation to which the director has the relevant conflicting interest; or

(iii) where the relevant conflicting interest is constituted by, or arises from, a conflicting matter of the director and that conflicting matter (or any breach of the relevant director's duty under section 175(1) CA 2006 by reason of that conflicting matter) is not or has not been authorised, permitted, approved or ratified, either in accordance with article 15 or article 16 or by the members:

(A) the conflict situation arising by reason of that conflicting matter is not material; or

(B) the other directors are aware of the relevant conflicting interest and have determined that the director shall be an eligible director in relation to that decision, and

(b) in any other case:

(i) the director has disclosed the nature and extent of the relevant

conflicting interest, or has not done so where:

- (A) it cannot reasonably be regarded as likely to give rise to a conflict of interest; or
  - (B) the other directors are already aware of it, and
- (ii) where the relevant conflicting interest is constituted by, or arises from, a conflicting matter of the director and
- (A) that conflicting matter (or any breach of the relevant director's duty under section 175(1) CA 2006 by reason of that conflicting matter) is or has been authorised, permitted, approved or ratified, either in accordance with article 15 or article 16 or by the members (and that authorisation, permission, approval or ratification has not been revoked, withdrawn or reversed); and
  - (B) the relevant director has not been required to be excluded from participation in discussions and/or the making of decisions in relation to which the director has the relevant conflicting interest; or
- (iii) where the relevant conflicting interest is constituted by, or arises from, a conflicting matter of the director and that conflicting matter (or any breach of the relevant director's duty under section 175(1) CA 2006 by reason of that conflicting matter) is not or has not been authorised, permitted, approved or ratified, either in accordance with article 15 or article 16 or by the members:
- (A) the conflict situation arising by reason of that conflicting matter is not material; or
  - (B) the other directors are aware of the relevant conflicting interest and have determined that the director shall be an eligible director in relation to that decision; but
- (c) the provisions of this article do not apply in relation to a decision under article 15.5.

For the purposes of this article, the other directors are to be treated as aware of anything of which they ought reasonably to be aware

17.3 A director that is neither an eligible director nor a director to which article 17.2 applies is not entitled to count in the quorum and vote on the matter or decision at a meeting of directors in respect of the matter in which he has a relevant conflicting interest.

17.4 If a question arises at a meeting of the directors about whether or not a director (other than the chairman of the meeting).

- (a) has a material conflict situation for the purposes of articles 15 or 16;
- (b) can vote (where that director does not agree to abstain from voting) on the issue in relation to which the conflict situation arises; or

- (c) can be counted in the quorum (where that director does not agree not to be counted in the quorum) for the purpose of voting on the issue in relation to which the conflict arises,

the question must (unless article 17.5 applies) be referred to the chairman of the meeting. The ruling of the chairman of the meeting in accordance with this article 17.4 about any director other than himself is final and conclusive, unless the nature or extent of the director's conflict situation (so far as it is known to him) has not been fairly disclosed to the other directors

- 17.5 If in relation to a question of the kind referred to in article 17.4 the chairman of the meeting is an interested director, the question must be referred to the other directors in accordance with article 17.6 as if it were a question about the chairman of the meeting
- 17.6 If a question of the kind referred to in article 17.4 arises about the chairman of the meeting (or if article 17.5 applies), the question shall be decided by a resolution of the other directors. The chairman of the meeting (or conflicted director) cannot vote on the question but can be counted in the quorum. The other directors' resolution about the chairman of the meeting (or conflicted director) is conclusive, unless the nature and extent of the chairman's (or conflicted director's) conflict situation (so far as it is known to him) has not been fairly disclosed to the other directors.
- 17.7 For the purpose of a determination of the kind referred to in article 17.5 or 17.6.
- (a) if there is only one director who is not an interested director for the purpose of that determination, the quorum for that determination is one director; and
- (b) if all the directors are interested, the matter must be referred to the members for authorisation or ratification.
- 17.8 Nothing in this article 17 shall be taken as absolving any director from any of the obligations set out in article 15. A determination by the directors in accordance with article 17.2(a)(iii)(B) or 17.2(b)(iii)(B) that a conflicted director may be an eligible director in relation to a decision of the directors does not amount to authorisation of the relevant conflict situation.
- 17.9 The company may, by ordinary resolution, ratify any transaction, arrangement or other matter which has not been properly authorised by reason of a contravention of these articles.
- 17.10 Any reference in this article or articles 15 and 16 to meetings of the directors and voting shall include decision-making by resolution in writing or by other informal means in accordance with article 9.

## **18 Records of decisions to be kept**

- 18.1 The directors must ensure that the company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors

## **19 Directors' discretion to make further rules**

- 19.1 Subject to these articles, the directors may make any rule which they think fit

about how they take decisions and about how such decisions are to be recorded or communicated to directors.

## **20 Methods of appointing directors**

- 20.1 Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director by a decision of the directors with the prior approval of GSTFT.

## **21 Termination of director's appointment**

- 21.1 A person ceases to be a director as soon as

- (a) that person ceases to be an employee of the company, GSTFT, any Group Company or any other entity within the company's group or if the letter of appointment, consultancy agreement or other form of appointment under which that director is engaged by or through which that director provides services to the company, GSTFT, any Group Company or any other entity within the company's group is terminated;
- (b) that person ceases to be a director by virtue of any provision of CA 2006 or is prohibited from being a director by law,
- (c) a bankruptcy order is made against that person,
- (d) a composition is made with that person's creditors generally in satisfaction of that person's debts;
- (e) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have; or
- (f) notification is received by the company from the director that the director is resigning and such resignation has taken effect in accordance with its terms.

## **22 Removal of directors**

- 22.1 In addition and without prejudice to the provisions of sections 168 and 169 CA 2006, the company may by ordinary resolution remove any director before the expiry of his period of office and may, if thought fit, by ordinary resolution appoint another person in his place. Removal of a director in accordance with this article shall be without prejudice to any claim that a director may have for damages for breach of any contract between him and the company.

## **23 Appointment and removal of alternate directors**

- 23.1 Any director (the "appointor") may appoint as an alternate any other director, or any other person approved by resolution of the directors, save in respect of non-executive directors who may only appoint either another non-executive director of the company or a person who has also been approved by GSTFT, to:
- (a) exercise that director's powers, and
  - (b) carry out that director's responsibilities,



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

23.2 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.

23.3 The notice must:

- (a) identify the proposed alternate; and
- (b) in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice.

**24 Rights and responsibilities of alternate directors**

24.1 An alternate director has the same rights, in relation to any directors' meeting or directors' written resolution, as the alternate's appointor.

24.2 Except as these articles specify otherwise, alternate directors:

- (a) are deemed for all purposes to be directors;
- (b) are liable for their own acts and omissions;
- (c) are subject to the same restrictions as their appointors; and
- (d) are not deemed to be agents of or for their appointors.

24.3 A person who is an alternate director but not a director.

- (a) may be counted as participating for the purposes of determining whether a quorum is participating (but only if that person's appointor is not participating); and
- (b) may sign a written resolution (but only if it is not signed or to be signed by that person's appointor).

No alternate may be counted as more than one director for the above purposes.

24.4 Subject to these articles, if a director has an interest in an actual or proposed transaction or arrangement with the company

- (a) that director's alternate may not vote on any proposal relating to it unless the interest has been duly declared (if so required by section 177 or section 182 CA 2006); but
- (b) this does not preclude the alternate from voting in relation to that transaction or arrangement on behalf of another appointor who does not have such an interest.

24.5 A director who is also an alternate director has an additional vote on behalf of each appointor who is:

- (a) not participating in a directors' meeting, and

- (b) would have been entitled to vote if they were participating in it.

24.6 An alternate director is not entitled to receive any remuneration from the company for serving as an alternate director except such part (if any) of the alternate's appointor's remuneration as the appointor may direct by notice in writing made to the company

## **25 Termination of alternate directorship**

25.1 An alternate director's appointment as an alternate terminates:

- (a) when the alternate's appointor revokes the appointment by notice to the company in writing specifying when it is to terminate;
- (b) on the occurrence in relation to the alternate 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;
- (c) on the death of the alternate's appointor; or
- (d) when the alternate's appointor's appointment as a director terminates

## **26 Directors' remuneration**

26.1 Subject to the approval of GSTFT:

- (a) directors may undertake any services for the company that the directors decide;
- (b) directors are entitled to such remuneration as the directors determine:
  - (i) for their services to the company as directors; and
  - (ii) for any other service which they undertake for the company;
- (c) a director's remuneration may:
  - (i) take the form of fees, salary and/or bonus; and
  - (ii) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director;
- (d) unless the directors decide otherwise, directors' remuneration accrues from day to day, and
- (e) unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested

## **27 Officers' expenses**

27.1 The company may pay any reasonable expenses which the directors (including alternate directors) and the secretary (if any) properly incur in connection with

their attendance at:

- (a) meetings of directors or committees of directors;
- (b) general meetings; or
- (c) separate meetings of the holders of any class of shares or of debentures of the company, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

## **28 Shares**

- 28.1 The maximum amount of the share capital of the Company is £500,000 divided into 500,000 ordinary shares of £1.00 each.
- 28.2 Subject to article 28.5 but otherwise without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, all shares shall be issued to the persons, on the terms and conditions and with the rights, priorities, privileges or restrictions in each case as provided in the resolution creating or issuing the relevant shares. In the absence of any such provision, all shares shall be at the disposal of the directors who may issue them, subject to section 549 CA 2006, to such persons at such times and generally on such terms and conditions and with such rights, priorities, privileges or restrictions as they may think fit. Accordingly, and in accordance with section 567 CA 2006, sections 561(1) and 562 CA 2006 shall not apply to the company.
- 28.3 No share shall be issued to any infant, bankrupt or person who, by reason of that person's mental health, is subject to a court order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have.
- 28.4 Subject to these articles, but without prejudice to the rights attached to any existing share, the company may issue shares with such rights or restrictions as may be determined by ordinary resolution.
- 28.5 No shares shall be issued to any person without the written consent of GSTFT.

## **29 Company not bound by less than absolute interests**

- 29.1 Except as required by law, no person is to be recognised by the company as holding any share upon any trust, and except as otherwise required by law or these articles, the company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

## **30 Share certificates**

- 30.1 The company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.
- 30.2 Every certificate must specify:
- (a) in respect of how many shares, of what class, it is issued,
  - (b) the nominal value of those shares;

- (c) that the shares are fully paid; and
- (d) any distinguishing numbers assigned to them.

30.3 No certificate may be issued in respect of shares of more than one class

30.4 If more than one person holds a share, only one certificate may be issued in respect of it.

30.5 Certificates must:

- (a) have affixed to them the company's common seal, or
- (b) be otherwise executed in accordance with the Companies Acts

### **31 Replacement share certificates**

31.1 If a certificate issued in respect of a shareholder's shares is:

- (a) damaged or defaced; or
- (b) said to be lost, stolen or destroyed,

that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.

31.2 A shareholder exercising the right to be issued with such a replacement certificate.

- (a) may at the same time exercise the right to be issued with a single certificate or separate certificates;
- (b) must return the certificate which is to be replaced to the company if it is damaged or defaced; and
- (c) must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide.

### **32 Share transfers**

32.1 Shares must be transferred by means of an instrument of transfer in any usual form or any other reasonable form approved by the directors which is executed by or on behalf of the transferor and accompanied by the transferor's share certificate (or an indemnity in respect thereof reasonably acceptable to the directors).

32.2 No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.

32.3 The company may retain any instrument of transfer which is registered.

32.4 The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.

32.5 The directors may refuse to register the transfer of a share if the transfer is presented otherwise than in accordance with article 32.1, and if they do so, the instrument of transfer must be returned to the transferee with the notice of refusal

unless they suspect that the proposed transfer may be fraudulent.

**33 Procedure for declaring dividends**

- 33.1 The company may by ordinary resolution declare dividends and the directors may decide to pay interim dividends.
- 33.2 A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors.
- 33.3 No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.
- 33.4 Unless the shareholders' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.
- 33.5 If the company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrears.
- 33.6 The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.
- 33.7 If the directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

**34 Payment of dividends and other distributions**

- 34.1 Except as otherwise provided by these articles or the rights attached to shares, all dividends must be:
- (a) declared and paid according to the amounts paid up on the shares on which the dividend is paid; and
  - (b) apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid.
- 34.2 If any share is issued on terms providing that it ranks for dividend as from a particular date, that share ranks for dividend accordingly.
- 34.3 For the purposes of calculating dividends, no account is to be taken of any amount which has been paid up on a share in advance of the due date for payment of that amount.

**35 No interest on distributions**

- 35.1 The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by:
- (a) the terms on which the share was issued, or

- (b) the provisions of another agreement between the holder of that share and the company.

### **36 Non-cash distributions**

36.1 Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company)

36.2 For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution:

- (a) fixing the value of any assets;
- (b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
- (c) vesting any assets in trustees

### **37 Authority to capitalise and appropriation of capitalised sums**

37.1 Subject to these articles, the directors may, if they are so authorised by an ordinary resolution:

- (a) decide to capitalise any profits of the company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and
- (b) appropriate any sum which they so decide to capitalise (a "capitalised sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the "persons entitled") and in the same proportions.

37.2 Capitalised sums must be applied:

- (a) on behalf of the persons entitled; and
- (b) in the same proportions as a dividend would have been distributed to them.

37.3 Any capitalised sum may be applied in paying up new shares of a nominal amount determined by the directors which are then allotted credited as fully paid or partly paid, as the directors may decide, to the persons entitled or as they may direct.

37.4 A capitalised sum which was appropriated from profits available for distribution may be applied in or towards paying up any amounts unpaid on existing shares held by the persons entitled or in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct.

37.5 Subject to these articles the directors may:

- (a) apply capitalised sums in accordance with articles 37.3 and 37.4 partly in

one way and partly in another;

- (b) make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments), and
- (c) authorise any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article

### **38 Written resolutions: voting rights**

- 38.1 No voting rights attached to a share may be exercised on any written resolution unless all amounts due and payable to the company in respect of that share have been paid.
- 38.2 Article 57 has effect in relation to the right to be sent copies of proposed written resolutions.

### **39 Attendance and speaking at general meetings**

- 39.1 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.
- 39.2 A person is able to exercise the right to vote at a general meeting when
  - (a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
  - (b) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- 39.3 The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- 39.4 In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.
- 39.5 Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are, or would be, able to exercise them.
- 39.6 Article 57 has effect in relation to the right to receive notices of general meetings.

### **40 Quorum for general meetings**

- 40.1 No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

**41     Chairing general meetings**

41.1   If the directors have appointed a chairman, the chairman shall chair general meetings if present and willing to do so

41.2   If the directors have not appointed a chairman or if the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start:

(a)     the directors present; or

(b)     if no directors are present, the meeting,

must appoint a director or shareholder to chair the meeting and the appointment of the chairman of the meeting must be the first business of the meeting.

41 3   A proxy or a representative appointed in accordance with section 323 CA 2006 may chair a general meeting if appointed to do so in accordance with article 41 2.

41.4   The person chairing a meeting in accordance with this article is referred to as the “chairman of the meeting”

**42     Attendance and speaking by directors and non-shareholders**

42 1   Directors may attend and speak at general meetings whether or not they are shareholders.

42 2   The chairman of the meeting may permit other persons who are not:

(a)     shareholders of the company; or

(b)     otherwise entitled to exercise the rights of shareholders in relation to general meetings,

to attend and speak at a general meeting.

**43     Adjournment**

43.1   If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting must adjourn it

43.2   The chairman of the meeting may adjourn a general meeting at which a quorum is present if.

(a)     the meeting consents to an adjournment; or

(b)     it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner

43 3   The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.

43.4   When adjourning a general meeting, the chairman of the meeting must:



- (a) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors; and
  - (b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- 43 5 If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given):
- (a) to the same persons to whom notice of the company's general meetings is required to be given; and
  - (b) containing the same information which such notice is required to contain.
- 43 6 No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

#### **44 Voting: general**

- 44.1 A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with these articles.
- 44.2 No voting rights attached to a share may be exercised, either:
- (a) at a general meeting; or
  - (b) on any written resolution,
- unless all amounts due and payable to the company in respect of that share have been paid

#### **45 Errors and disputes**

- 45.1 No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered and every vote not disallowed at the meeting is valid.
- 45.2 Any such objection must be referred to the chairman of the meeting, whose decision is final.

#### **46 Poll votes**

- 46 1 A poll on a resolution may be demanded
- (a) in advance of the general meeting where it is to be put to the vote; or
  - (b) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- 46.2 A poll may be demanded by:
- (a) the chairman of the meeting;

- (b) the directors,
- (c) two or more persons having the right to vote on the resolution; or
- (d) a person or persons representing not less than one tenth of the total voting rights of all the shareholders having the right to vote on the resolution

46.3 A demand for a poll may be withdrawn if.

- (a) the poll has not yet been taken, and
- (b) the chairman of the meeting consents to the withdrawal

A demand so withdrawn shall not invalidate the result of a show of hands declared before the demand was made.

46.4 Polls must be taken immediately and in such manner as the chairman of the meeting directs

#### **47 Content of proxy notices**

47.1 Proxies may only validly be appointed by a notice in writing (a “proxy notice”) which

- (a) states the name and address of the shareholder appointing the proxy;
- (b) identifies the person appointed to be that shareholder’s proxy and the general meeting in relation to which that person is appointed;
- (c) is signed by or on behalf of the shareholder appointing the proxy or is authenticated in such manner as the directors may determine; and
- (d) is delivered to the company in accordance with these articles and any instructions contained in the notice of the general meeting to which they relate,

and a proxy notice which is not delivered in that form and in that manner shall be invalid unless the directors, in their discretion, accept the notice at any time before the meeting.

47.2 The company may require proxy notices to be delivered in a particular form and may specify different forms for different purposes

47.3 Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

47.4 Unless a proxy notice indicates otherwise, it must be treated as:

- (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
- (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

#### **48     Delivery of proxy notices**

- 48.1 A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.
- 48.2 An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- 48.3 A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates
- 48.4 If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

#### **49     Amendments to resolutions**

- 49.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if
  - (a) notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine); and
  - (b) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.
- 49.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if
  - (a) the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and
  - (b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution
- 49.3 If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution

#### **50     Means of communication to be used**

- 50.1 Subject to these articles, anything sent or supplied by or to the company under these articles may be sent or supplied in any way in which the CA 2006 provides for documents or information which are authorised or required by any provision of CA 2006 to be sent or supplied by or to the company.
- 50.2 Subject to these articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.

- 50.3 A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent and for the specified time to be less than 48 hours.

## **51 Delivery of documents and information**

- 51.1 Any notice, document or other information shall be deemed served on or delivered to the intended recipient:

- (a) 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 and the sending party receives a confirmation of delivery from the courier service provider);
- (b) if properly addressed and delivered by hand, when it was given or left at the appropriate address; and
- (c) 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

- 51.2 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 CA 2006.
- 51.3 For the purposes of section 1147(3) CA 2006, where a document or information is sent or supplied by the company to any member by electronic means, and the company is able to show that it was properly addressed, it is deemed to have been received by the intended recipient one hour after it was sent (but subject to section 1147(5))
- 51.4 Where a document or information is sent or supplied to the company by one person (the “agent”) on behalf of another person (the “sender”), the company may require reasonable evidence of the authority of the agent to act on behalf of the sender.

## **52 Company seals**

- 52.1 Any common seal may only be used by the authority of the directors
- 52.2 The directors may decide by what means and in what form any common seal is to be used
- 52.3 Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.

52.4 For the purposes of this article, an authorised person is:

- (a) any director of the company,
- (b) the company secretary (if any); or
- (c) any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

**53 Right of GSTFT to consult with the board and to inspect accounts and other records**

53.1 Subject to article 53.3, GSTFT shall, upon giving reasonable notice to the company and at reasonable times, have the right to consult with the board on any matter relating to the operation of the company and representatives of GSTFT shall be permitted generally to discuss the affairs, finances and accounts of the company with the directors at such times as they may reasonably request and to be provided with information that GSTFT reasonably requests

53.2 Subject to article 53.3, GSTFT may on reasonable notice to the company inspect the company's management accounts and other monthly financial information and records

53.3 The rights of GSTFT contained in articles 53.1 and 53.2 are subject to GSTFT holding directly or indirectly 75% of the issued share capital in the company.

53.4 Except as permitted by article 53.1, provided by law or authorised by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a shareholder.

**54 Provision for employees on cessation of business**

54.1 The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries (other than a director or former director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary

**55 Indemnity**

55.1 Subject to article 56.2, a relevant director of the company or an associated company may be indemnified out of the company's assets against:

- (a) any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company,
- (b) any liability incurred by that director in connection with the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) CA 2006); or
- (c) any other liability incurred by that director as an officer of the company or an associated company.

55.2 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.

55.3 In this article and article 56:

- (a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and
- (b) a “**relevant director**” means any director or former director of the company or an associated company.

## **56 Insurance**

56.1 The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss.

56.2 In this article:

- (a) a “**relevant loss**” means any loss or liability which has been or may be incurred by a relevant director in connection with that director’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
- (b) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate

56.3 The company shall (unless the company receives the prior written consent from GSTFT that the company does not need to comply with this article 56.3) insure with a reputable insurance office and keep so insured at all times the Company’s assets and undertakings and liabilities and potential liabilities against such loss and other risks normally covered by insurance in accordance with good commercial practice in each case in an amount not less than a prudent company engaged in the same or a similar business would consider expedient or such higher amounts as Enterprises may reasonably require in writing and shall ensure that the same are reviewed annually by its insurance brokers and shall supply a copy of such reviews to GSTFT and a schedule of the insurance in place.

## **57 Enjoyment or exercise of members’ rights**

57.1 Any member may by notice in writing to the company nominate any other person or persons as entitled to enjoy or exercise all or any specified rights of that member in relation to the company in accordance with section 145 CA 2006.

57.2 A member who has made a nomination in accordance with article 57.1 may vary or terminate that nomination by notice in writing to the company.

57.3 The company shall act in accordance with every notice of nomination, variation or termination given in accordance with articles 57.1 or 57.2.

**SCHEDULE 1**  
**MATTERS REQUIRING GSTFT APPROVAL**

- 1 Creating or issuing new shares in the company or introducing new members.
- 2 Varying the rights attached to shares.
- 3 Granting share options or making agreements to grant options or securities with rights to convert into shares.
- 4 The purchase, redemption or acquisition of the company's own shares or undertaking any form of reorganisation or increase/decrease of its share capital (including reducing any amount standing in credit of any reserve).
- 5 Any capitalisation of profits.
- 6 Any merger or amalgamation of the company
- 7 Any listing or initial public offer in respect of the company's shares or its admission to AIM.
- 8 Changing the accounting reference date or accounting principles, practices or bases used in the preparation of the Company's audited accounts save for changes required by law or generally accepted accounting principles or standards.
- 9 Taking any steps to wind-up or appoint an administrator in respect of the company (including the filing of any notice of intention to appoint an administrator in respect of the company).
- 10 Any appointment of a company director or removal of a company director from office.
- 11 Make any political donations.
- 12 Entering into any contract with any director, or making amendments to any existing contracts with directors other than service contracts or contracts with entities connected to directors.
- 13 Creating any Encumbrance (excluding an interest arising by operation of law in the ordinary course of the business)
- 14 Employing, making or proposing to make any material change to the terms of employment of any employee, consultant or director with an annual remuneration of over £100,000
- 15 Establishing any profit sharing/bonus arrangements with any director or employee whose remuneration exceeds £100,000 or would with such arrangements exceed £100,000 per year.
- 16 Entering into any compromise or settlement agreement with an employee under which the benefit to such employee exceeds 12 months' salary of that employee.

- 17 Threaten, commence, discontinue, settle or compromise any litigation, tribunal or arbitration proceedings which may be material to the company or which may damage the company's goodwill.
- 18 Appointment of professional advisors outside the scope of the Business Plan when their fee is expected to exceed £500,000.



Private & Confidential

File Number 2072021

DATED

2014

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GUY'S & ST THOMAS' NHS FOUNDATION TRUST (1)

and

GUY'S AND ST THOMAS' ENTERPRISES LIMITED (2)

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SHAREHOLDERS AGREEMENT

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**Wragge&Co**

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THIS AGREEMENT is made ● of ● 2014

BETWEEN

- (1) GUY'S & ST THOMAS' NHS FOUNDATION TRUST ("The Trust"), and
- (2) GUY'S AND ST THOMAS' ENTERPRISES LIMITED a private company limited by shares under company number 6160266 ("Enterprises").

**Background**

- (A) The Trust owns 100% of the issued share capital of Enterprises.
- (B) Enterprises is a company which will through members of the Enterprises Group enter into commercial activities. The purpose of such commercial activities will be to generate funds, opportunities or other benefit for the Trust as its sole owner.
- (C) The parties recognise that although Enterprises will be free to pursue its business it must do so in a manner that is appropriate given its ownership by a public body and in particular a public body within the National Health Service.
- (D) The purpose of this agreement is to set out the manner within which the Trust in its capacity as shareholder expects the Enterprises Group to be operated and to set out certain mechanisms that are to be followed.
- (E) The Trust recognises that Enterprises is a corporate entity in its own right and that the directors of Enterprises owe fiduciary and statutory duties to Enterprises notwithstanding that some of them may also be directors of and/or employees of the Trust.

IT IS AGREED as follows:

**1 Definitions**

- 1.1 The following definitions shall apply in this agreement.

"Articles" the articles of association of Enterprises from time to time in force;

"Business Plan" the business plan from time to time issued by Enterprises and approved by the Enterprises' directors and the Trust;

"Enterprises' Directors" the directors from time to time of Enterprises;

**“Enterprises Group”** Enterprises and all the companies, LLPs and other entities that it controls.

- 1.2 Clause and Schedule headings shall not affect the interpretation of this agreement
- 1.3 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.4 References to clauses and Schedules are to the clauses and Schedules of this agreement
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time; provided that, as between the parties, no such amendment, extension or re-enactment shall apply for the purposes of this agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party. This clause does not, however, apply in relation to taxation.
- 1.8 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision
- 1.9 **Writing or written** includes faxes but not email.
- 1.10 Any words following 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.
- 1.11 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

## **2 Purpose of Enterprises**

- 2.1 The businesses of Enterprises and the Enterprises Group are to be pursued for the

benefit of the Trust as its ultimate owner and will primarily be involved in carrying out profitable commercial activity for the purpose of benefitting the Trust and its patients.

- 2.2 In carrying out commercial ventures Enterprises will ensure that it and the Enterprises Group does nothing that could be reasonably expected to damage the goodwill, name and reputation of the Trust particularly bearing in mind the Trust's position as a public social enterprises involved in the National Health Service and a leading Foundation Trust in its field including promotion of healthy lifestyle and prevention of disease and incapacity
- 2.3 Specifically the Enterprises Group should be pursuing commercial activities which have one or more of the following attributes
  - (a) Raise money for the Trust which can be made available to the Trust by way of dividend, payment for services or otherwise,
  - (b) Enhance the reputation name and brand of the Trust;
  - (c) Enable the Trust to operate more efficiently or at lower cost;
  - (d) Enable the Trust to attract more high quality talented people

### **3 Conduct, Consent and Adverse Reporting**

- 3.1 The conduct of the Enterprises Group (including staff, directors and associated governance) should operate to high ethical standards applicable to public companies.
- 3.2 Enterprises shall ensure that the Enterprises Group shall promptly report any material adverse events or circumstances to the Trust if those events or circumstances are in turn material for the Enterprises Group or the Trust or such that in your reasonable opinion it needs to be immediately reported to the Trust.
- 3.3 Enterprises and the Enterprises Group will not do any of the things set out in Schedule 2 without the written consent of the Trust such consent not to be unreasonably withheld nor delayed.

#### **4     Trust commercial activities**

- 4.1     Nothing in this agreement will prevent or restrict the Trust in pursuing commercial activities in its own name. Specifically there is no obligation for the Trust to pass opportunities for commercial ventures through to Enterprises although it is expected that the Trust may wish to do so but it will have no obligation to do so.

#### **5     Inter-party agreement**

- 5.1     The parties recognise that there will be various commercial agreements which are entered into between the Trust and members from time to time of the Enterprises Group. It is the intention of both parties that such commercial agreements will be entered into on reasonable commercial terms between the Trust and such member of the Enterprises Group as is considered appropriate by each of the Trust, Enterprises and by the board of directors or other governing organ of such member of the Enterprises Group.

#### **6     Work Force - Work Force Issues**

- 6.1     Enterprises recognises that for the purposes of equal pay and other employee rights it is possible that agreeing terms and conditions with Enterprise employees or with employees of members of the Enterprises Group could have an adverse effect on the Trust. In particular could give rise to an increase in cost or other disruption to the Trust ("Equal Pay Issue").
- 6.2     Accordingly Enterprises will use all reasonable endeavours to ensure that it does not create any Equal Pay Issue for the Trust and will keep the Trust fully informed as to its proposals in relation to staff pay and conditions and anything else that could reasonably be expected to give rise to an Equal Pay Issue.
- 6.3     In setting its own Policies and Procedures, Enterprises will pay due regard to compatible Policies and Procedures of the Trust so as to avoid unnecessary inconsistencies or conflict where such conflict or inconsistency arises. Enterprises will be free to decide what is appropriate for Enterprise but will inform the Trust accordingly.
- 6.4
- (a)     Subject to 6.3 above the Trust and Enterprises will jointly agree a set of guidelines on workforce issues in relation to the Enterprises Group.

- (b) The Enterprises Board will take appropriate advice to minimise risk of equal pay claims and ensure that any commercial developments minimise comparison issues and claims between the Trust and the Enterprises Group between varying types of staff.
- (c) The guidelines will serve to create consistency regarding employment policy but recognise the need to enable more flexibility and entrepreneurship for the Enterprises Group relating to the employment proposition, to enable them to be market competitive and attractive in the marketplace as an employer

## **7 Material information**

- 7.1 As Enterprises is a wholly owned by a public body, Enterprises agrees that in the event of it being involved in any dispute or in any activity that could reasonably be expected to cause adverse press or political comment in relation to the Trust such matter will first be discussed with the Trust wherever possible. Enterprises will use all reasonable endeavours to prevent circumstances arising which give rise to such adverse consequences. If adverse issues arise then Enterprises shall ensure that the Trust is informed promptly and given full information so as to be able to mitigate any adverse effects.

## **8 Business plan**

- 8.1 The Enterprise directors will ensure that for each financial year there is a Business Plan prepared in a form reasonably acceptable to the Trust covering the issues in Schedule 1 for the Enterprises Group. Enterprises will use all reasonable endeavours to ensure that levels of expenditure, borrowing and liabilities do not exceed the levels set out in the Business Plan as approved by the Trust unless any such deviation is with the prior written agreement of the Trust.
- 8.2 Enterprises will ensure that a draft business plan for the financial year April to March is submitted to the Trust for comment and approval by no later than the previous 15<sup>th</sup> November or such later date as is agreed.
- 8.3 Enterprises will use all reasonable endeavours to ensure that the Enterprises Group businesses are run broadly in accordance with the Business Plan and to the extent that this is not the case it will promptly inform the Trust of any material divergence.

## **9 Directors**

- 9.1 No appointment or dismissal of directors will be made without the prior written consent of the Trust.
- 9.2 No person shall be appointed nor dismissed as chairman of the board of directors of Enterprises without the prior written consent of the Trust.
- 9.3 Enterprises Group directors may only appoint as alternative directors a person who is either a director of Enterprises or a person who has been approved by the Trust to act as an alternate Director.
- 9.4 Enterprises shall ensure that its Director's comply with the Conflict of Interest requirements as from time to time set out in the Enterprises' Director's Handbook approved by the Enterprises' Board and also in accordance with the relevant provisions of the Articles.

## **10 Articles**

- 10.1 Enterprises shall ensure that its business is run and its affairs conducted in accordance with the provisions of the Articles

## **11 Directors emoluments**

- 11.1 Non-executive directors of Enterprises or of a member of the Enterprises Group who are not directors nor employees of the Trust will be remunerated at a level similar to that of a Trust non-executive director.
- 11.2 Directors or employees of the Trust who are also directors within the Enterprises Group shall not receive any additional remuneration without the consent of the Trust. A schedule detailing the additional responsibilities will be agreed and appended to existing job descriptions.

## **12 Announcements and publicity**

- 12.1 Enterprises shall ensure that at no time will it make any derogatory statement in relation to the Trust nor in relation to any aspect of the National Health Service.

## **13 Access to information**

- 13.1 Enterprises shall provide the Trust with access to and copies of such information, accounts and records of Enterprises and of all members of the Enterprises Group as



the Trust may reasonably require from time to time.

13.2 In the event of such information not being readily available to Enterprises then Enterprises shall be entitled to make a reasonable charge to cover any extra costs that Enterprises incurs in relation to the provision of such information

13.3 Each director who is either an employee of or a director of the Trust is hereby irrevocably authorised by Enterprises to disclose to the Trust information or documents belonging to or concerning Enterprises or any member of the Enterprises Group or in relation to their respective affairs, business, assets or liabilities.

#### **14 Accounts**

14.1 Enterprises will provide the Trust with draft accounts for each financial year within 30 working days at the end of the period to which they relate plus copy of the audited accounts promptly following their approval by the directors.

14.2 Enterprises will also submit to the Trust a copy of its monthly management accounts which will show the revenues, cash flow, liabilities and overall performance and in addition where appropriate performance in relation to the Business Plan.

14.3 In addition Enterprises will provide appropriate reports to the Trust as reasonably required by the Trust as to the activities of Enterprises and each member of the Enterprises Group

14.4 The Chairman of Enterprises will upon request attend at meetings of the Trust Board and/or its sub-committees.

#### **15 Dividend policy**

15.1 This will be agreed from time to time between the Trust and the Board of Enterprises.

Signed [ ]

for and on behalf of the Trust

Signed [ ]

for and on behalf of the Enterprises

## **Schedule 1**

### **Provisions of the Annual Business Plan**

#### **1 Overall**

The purpose of the Business Plan is for it to show the projected financial and commercial position of Enterprises and each of its corporate entities for the next financial year commencing 1<sup>st</sup> April.

This will be used to determine the resources required and the likely income that the Trust as shareholder can expect to receive.

It is the responsibility of Enterprises to ensure that the Business Plan reasonably predicts the future needs of the Enterprises Group and the results that the Group reasonably expects to achieve.

#### **2 Contents of Business Plan**

The Business Plan will contain such material as is required for it to be fit for purpose both as a tool for managing the Enterprises Group and giving the Trust reasonable foreseeability as to the resources required from the Trust and the benefit the Trust can expect to receive from the Enterprises Group. In particular it will contain the information below.

#### **3 Current Position**

Unless otherwise covered in other reports it will include the current portfolio of members of the Enterprises Group including any interest in LLPs or associated companies

For each Entity there will be a balance sheet, profit and loss account and cash position to the previous quarter plus a projected position to the end of the current financial year.

Set out material issues both positive and negative in relation to each Entity

Give a commentary on how the current position and projected current year end position (31<sup>st</sup> March) compares with the position predicted in the Business Plan for the current year.

#### **4 Future Position**

For each Entity there will be a Business Plan showing the projected financial and commercial position for the next 3 financial years. It is accepted that years 2 and 3 will be more aspirational but year 1 i.e. from the next 1<sup>st</sup> April should be reliable.

For each of those three financial years there will be forecast balance sheets, cash flow and profit and loss accounts plus what each Entity needs to do to achieve its forecast position and the sensitivities and assumptions that apply.

For each entity there will be.

- Projected capital expenditure
- Turnover
- Profit
- Borrowings
- Cash balances

The plan for the first financial year should give an estimate of cash that will be available to be dividend to the Trust

For financial year one there will be detail of what resources including loans are likely to be required from the Trust to the Enterprise Group in the coming year.

Each Entity will be required to confirm what it intends to do in order to achieve the projected financial outcome.

The Business Plan should have attached to it a list of any material risks affecting any member of the Enterprises Group.

## Schedule 2

### Trust Consent Issues

- 1 Changing the company's bankers or auditors
- 2 Raising or seek to raise any funding or other facility whether debt, equity or otherwise from any third party (excluding any the operation of any overdraft facility of the company's bank account in excess of £100,000).
- 3 Making any loan (otherwise than by way of deposit with a bank or other institution, the normal business of which includes the acceptance of deposits) or granting any credit (other than in the normal course of trading ) or giving any guarantee or indemnity other than to one of its subsidiary companies.
- 4 Entering into any material or long term agreements for the hire, purchase or leasing of equipment with a value in excess of £20,000 per year, which was not included in the approved Business Plan in use at that time.
- 5 Acquiring or disposing of any material or long term freehold or leasehold property, or grant or surrender a lease in respect of that property, or grant any concession or right of occupation in respect of that property, which was not included in the Business Plan in use at that time.
- 6 The appointment or removal of a company director or the chairman
- 7 Declaring or paying any dividend or make any other distribution in respect of the profits, assets or reserves of the company.
- 8 Passing of a resolution in general meeting, or passing a written resolution, in respect of any subsidiary.
- 9 Submitting a bid for a new business opportunity, which was not included in the Business Plan in use at that time, involving
  - (a) services with a total contract value of over £5 million; or
  - (b) a contract term in excess of 5 years, or
  - (c) capital investment by the company in excess of £1 million.
- 10 Submitting a bid for a new business opportunity, which was not included in the Business Plan in use at that time, involving
  - (a) onerous or unusual terms and conditions; or
  - (b) a high risk profile.
- 11 Entering into any of the following transactions which are material to the business and was not included in the Business Plan in use at that time.

- (c) acquiring of the whole or part of any business, any business' assets or undertaking;
  - (d) disposing of all or any part the company's assets or business;
  - (e) licencing, selling, transferring or disposing of any intellectual property or any intellectual property rights belonging to the company; or
  - (f) establishing or participating in any joint venture agreement or partnership or LLP.
- 12 Making, granting or allowing of any claim, disclaimer, surrender, election or consent of a material nature for tax purposes.
- 13 Establish any pension scheme, share option scheme or any employee share scheme (other than any share option scheme approved in any Business Plan) or vary or discontinue any of the same.
- 14 Awarding any remuneration to a director pursuant to article 26 (Director's Remuneration).
- 15 Enter into any guarantee which is binding on the Trust.