

THE COMPANIES LAW, 5759 –1999

A LIMITED LIABILITY BY SHARES COMPANY

**ARTICLES**

**OF**

\_\_\_\_\_ **LTD.**

**INTERPRETATION; GENERAL**

1. In these Articles, unless the context requires otherwise, the words standing in the first column of the following table shall bear the meanings set opposite them respectively in the second column.

**TERMS**

**MEANINGS**

- 1.1 “**Articles**” means these Articles of the Company, as amended from time to time.
- 1.2 “**Board**” means the Board of Directors of the Company.
- 1.3 “**control**” means the ownership of: (a) more than 50% of the equity securities (or similar interest) and voting rights of a company or other entity; or (b) the right to appoint more than 50% of the members of a board of directors (or similar governing body) of such company or entity.
- 1.4 “**Deemed Liquidation Event**” as defined in Article 7.1.
- 1.5 “**Director**” means a member of the Board appointed in accordance with these Articles holding office at any given time.
- 1.6 “**General Meeting**” means an Annual or Special General Meeting of the Shareholders.
- 1.7 “**Interested Party**” means any “interested party” (“בעל עניין”) as such term is defined in the Israeli Securities Law, 1968, any Officer (“נושא משרה”) of the Company; any person owning shares in the Company or any “family member” (as such term is defined in the Companies Law) or Affiliate of such director, officer or shareholder.
- 1.8 “**in writing**” or any term of like import includes words typewritten, printed, painted, engraved, lithographed, photographed or represented or reproduced by any mode of reproducing words in a visible form, including telex, facsimile, telegram, e-mail or other form of writing produced by electronic communication.

- 1.9 **"IPO"** means the closing of a sale of the Company's Ordinary Shares to the public in a bona fide, underwritten, public offering pursuant to a registration statement under the U.S. Securities Act of 1933, as amended, the Israeli Securities Law or similar securities laws of another jurisdiction and the listing of such Ordinary Shares for trading on a recognized stock exchange, or the listing thereof on NASDAQ or another recognized, automated quotation system.
- 1.10 **"Liquidation Event"** as defined in Article 7.1.
- 1.11 **"Major Shareholder"** shall mean a Shareholder of the Company, holding shares of the Company, constituting at least  $\frac{\quad}{\quad}\%$  of the then issued share capital of the Company on an as-converted basis<sup>1</sup>.
- 1.12 **"Officer"** means an office holder, as such term is defined in the Companies Law.
- 1.13 **"on an as-converted basis"** means that with respect to any given right in question, and for purposes of any calculation of shareholdings in the Company, the Preferred Shares shall be calculated and treated as, and have the effect of, such number of Ordinary Shares into which such Preferred Shares are convertible at that time.
- 1.14 **"Ordinary Shareholder(s)"** means the holder(s) of Ordinary Shares.
- 1.15 **"Ordinary Share(s)"** means the Ordinary Shares of the Company of NIS [0.01] nominal value each.
- 1.16 **"Permitted Transferee(s)"** means<sup>2</sup>:
- (a) with respect to an individual: a company wholly owned by such individual; provided that both the transferor and the transferee shall undertake in writing towards the Company and its Shareholders to be bound, jointly and severally, by the undertakings and obligations of the transferor hereunder; and in the case of a transfer to a wholly owned company, also that such company shall remain a wholly owned company of the transferor at all times it holds shares in the Company;
  - (b) with respect to an incorporated entity (whether company or partnership) which is not a company to which shares have been transferred as to a Permitted Transferee under (a) above: *(I)* in the case of a transferor which is a limited partnership – its limited partners and general partners, or the limited or general partners of such limited or general partners, or any affiliate of any of the above managed by the same management company or managing general partner or by an entity which controls, is controlled by, or is under common control with such management company or managing general partner, or any

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<sup>1</sup> *This definition is used to limit the number of the shareholders having pre-emptive rights and rights of first refusal; other common variations of this definition are designated to limit the right to the founders and holders of preferred shares, each holding a pre-defined percentages of the company's shareholdings;*

<sup>2</sup> *Some investors add their own definition of permitted transferees to address their needs and structure;*

shareholder, partner or member of such affiliate; (2) any legal entity which controls, is controlled by, or is under common control with the transferor or with any of the entities listed in (1) above; or (3) any successor of such entity by merger or consolidation, or any person to which, at the same time, substantially all the business and assets of such entity are being sold;

- 1.17 “**person**” means an individual, corporation, partnership, joint venture, trust, any other corporate entity and any unincorporated corporation or organization.
- 1.18 “**Preferred A Shareholders**” means the holder(s) of the Series A Preferred Shares.
- 1.19 “**Preferred Share(s)**” means the Series A Preferred Shares.
- 1.20 “**Preferred Shareholder(s)**” means collectively the holder(s) of the Series A Preferred Shares.
- 1.21 “**Qualified IPO**” means an IPO reflecting a pre-money valuation of the Company of at least US \$ \_\_\_\_\_ (\_\_\_\_\_ U.S. dollars), generating minimum net proceeds to the Company of at least US \$ \_\_\_\_\_ (\_\_\_\_\_ U.S. dollars)<sup>3</sup>.
- 1.22 “**Recapitalization Event**” means any event of share combination or subdivision, share split, share dividend, bonus shares or any other reclassification, reorganization or recapitalization of the Company’s share capital and the like.
- 1.23 “**Series A Original Issue Date**” means the date on which Preferred A Shares were first issued.
- 1.24 “**Series A Original Issue Price**”  
US \$ \_\_, subject to appropriate adjustment in the event of any bonus shares, combinations or splits with respect to the Series A Preferred Shares<sup>4</sup>.
- 1.25 “**Series A Preferred Shares**” or “**Preferred A Shares**” means the Series A Preferred Shares of the Company of NIS 0.01 nominal value each.
- 1.26 “**Shareholder**” means any person that is the owner of a share or shares in the Company, as registered in the Shareholders’ Register.
- 1.27 “**Shareholders’ Register**” means the Register of Shareholders of the Company, administered in accordance with the Companies Law.
- 1.28 the “**Company**” means \_\_\_\_\_ Ltd.

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<sup>3</sup> Sometimes the Qualified IPO is defined based on multiples of the price per share.

<sup>4</sup> Insert the issue price of the Preferred A Shares.

1.29 **the “Companies Law”** means the Companies Law, 5759-1999, as shall be in effect from time to time and the regulations promulgated pursuant thereto

1.30 **the “Office”** means the registered office of the Company.

2. Subject to the aforesaid, in these Articles, all terms used herein and not otherwise defined herein shall have the meanings assigned thereto in the Companies Law, as in effect on the date on which these Articles came into effect. Words and expressions importing the singular number shall include the plural number and vice versa; words and expressions importing the masculine gender shall include the feminine gender and vice versa.

The captions in the Articles are for convenience only and shall not be deemed a part hereof or affect the construction of any provision hereof.

All shares of the Company held by any entity or person shall be aggregated together with those held by all Permitted Transferees thereof for the purpose of determining the availability of any rights under this Agreement where such availability is dependent upon minimum shareholdings, and for such purpose such persons and entities shall be viewed as a single holder.

#### **THE NAME OF THE COMPANY; OBJECTIVES OF THE COMPANY**

2A.1 The name of the Company is: \_\_\_\_\_ Ltd. (in English)

\_\_\_\_\_ ב"ע"מ (in Hebrew)

2A.2 The Company may conduct any legal business.

#### **PRIVATE COMPANY AND LIMITED LIABILITY**

3. The Company is a private company and accordingly:

3.1. The number of Shareholders at any time (exclusive of persons who are in the employment of the Company and of persons who having been formerly in the employment of the Company were, while in such employment, and have continued after termination of such employment to be, members of the Company) shall not exceed 50; provided, however, that if two or more persons hold one or more shares in the Company jointly, they shall be deemed to be a single Shareholder, for purposes of this Article;

3.2. Any invitation to the public to subscribe for any shares or debentures of the Company is hereby prohibited;

3.3. The right to transfer shares in the Company is restricted in the manner hereinafter prescribed.

4. The liability of a Shareholder for the obligations of the Company will be limited to the payment of the consideration (including the premium) for which his shares were issued to him, but not less than the par value of such shares; except in the event that said shares have been issued to him lawfully for a consideration which is below the par value, in which event his

liability will be limited to the payment of the consideration for which said shares were issued to him.

## SHARE CAPITAL

5. **Authorized Share Capital**

The authorized share capital of the Company is NIS \_\_\_\_\_ (\_\_\_\_\_) divided into two classes of shares, as follows: \_\_\_\_\_ Ordinary Shares of NIS 0.01 nominal value each, and \_\_\_\_\_ Series A Preferred Shares of NIS 0.01 nominal value each<sup>5</sup>.

6. **Rights Attached to Ordinary Shares**

The rights attached to the Ordinary Shares shall be equal and each Ordinary Share shall convey to its holder the right to receive notice of, and to participate and vote in, all General Meetings, to receive dividends and to participate in the distribution of the surplus assets and funds of the Company in the event of the liquidation, dissolution or winding up of the Company, subject to the preferential rights of the Preferred Shares set forth in these Articles. The holder of an Ordinary Share shall have no other right except as may be expressly provided for herein, and such holder may waive, in a written instrument, any of the rights set forth above, including the rights to receive notices of, and to participate and vote in, all General Meetings and to receive annual financial statements; provided, however, that such holder will be entitled to any other mandatory right of a shareholder in a private company pursuant to the Companies Law which cannot be disposed upon.

7. **Rights Attached to Preferred Shares**

The Preferred Shares confer on the holders thereof all the rights and privileges attached to the Ordinary Shares, on an as-converted basis. In addition, each Preferred Share shall entitle its holder to the rights, preferences and privileges as set forth in this Article 7 and elsewhere in these Articles:

7.1. **Liquidation Preference.** In the event of any Liquidation Event (as defined below) either voluntary or involuntary, any and all assets and funds available for distribution among the Shareholders (whether of the Company or that is payable to the Shareholders in a Deemed Liquidation Event transaction and whether cash, securities or other property) ("**Distributable Assets**") shall be distributed to the Shareholders in the following order and preference<sup>6</sup>:

- (a) *First*, each of the Preferred A Shareholders shall be entitled to receive, prior and in preference to any distribution or payment to the holders of any other class or series of shares in the Company, for each Series A Preferred Share held of record by such Shareholder, an amount equal to the sum of: (i) [\_\_times] the Series A Original Issue Price, plus (ii) an amount equal to

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<sup>5</sup> Sometimes venture capital investors will require that the number of the authorized Preferred Shares will equal to the number of the issued Preferred Shares so that any increase in the number of the Preferred Shares shall require amendment of the Articles and their approval.

<sup>6</sup> The text below provides for participating preferred shares; for non-participating preferred sub-clause (b) should be replaced with the following text: "Second, after payment in full of the Series A Liquidation Preference Amount to the Preferred A Shareholders, then all remaining Distributable Assets, if any, shall be distributed only among all of the Ordinary Shareholders on a pro rata basis in proportion to their respective number of Ordinary Shares". In the event that a pro rata as-converted distribution would yield to the holders of Preferred Shares a greater amount than their liquidation preference amount, they would be able to convert their shares into Ordinary Shares prior to the distribution taking place. Another way to draft non-participating clauses is to state that the Preferred Shares will receive the higher of their liquidation preference amount or the amount that a pro rata as-converted distribution assuming their conversion into ordinary shares would yield;

declared but unpaid dividend on such Series A Preferred Share [less any amounts of dividend preference previously paid] (collectively, the “**Series A Liquidation Preference Amount**”)<sup>7</sup> If the assets and funds thus distributed to the Preferred A Shareholders shall be insufficient to permit the payment in full of the Series A Liquidation Preference Amount to all the Preferred A Shareholders, then the entire assets and funds available for distribution, shall be distributed among the Preferred A Shareholders on a pro-rata basis in proportion to the respective amounts which would otherwise be payable in respect of such Series A Preferred Shares held by each.

- (b) *Second*, after payment in full of the Series A Liquidation Preference Amount to the Preferred A Shareholders, then all remaining Distributable Assets, if any, shall be distributed among all of the Shareholders (Preferred Shareholders and Ordinary Shareholders) on a pro rata basis in proportion to their respective holdings in the Company’s issued share capital on an as-converted basis<sup>8</sup>.
- (c) Whenever the distribution provided for in this Article shall be payable in securities or property other than cash, the value of such distribution shall be the fair market value of such securities or property, as reasonably determined in good faith by the Board, or by the liquidator in the case of winding up. The NIS equivalent of the U.S. dollar value of any distribution under this Article shall be determined in accordance with the Representative Rate of Exchange last published by the Bank of Israel prior to the date of the making of the distribution.
- (d) For purposes of this Article 7.1, any of the following events shall be considered a “**Liquidation Event**”: (i) any liquidation, dissolution or winding up of the Company, or (ii) any of the following events, (“**Deemed Liquidation Events**”) unless the holders of at least \_\_\_% of the then issued and outstanding Preferred Shares<sup>9</sup> shall agree in writing otherwise: (A) Any merger, reorganization or consolidation of the Company with or into another entity, or the acquisition of the Company by means of any transaction or series of related transactions, except any such merger, reorganization, consolidation or other transaction or series of related transactions, in which the issued shares of the Company as of immediately prior to such transaction or series of related transactions continue to represent, or are converted into or exchanged for shares that represent, immediately following such merger, reorganization,

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*7 If accrued interest is provided for add the following language between (i) and (ii):" plus (ii) an amount equal to \_\_\_ percent (\_\_\_%) of the Series A Original Issue Price per annum, compounded annually from the Series A Effective Date". Sometimes instead of accrued interest the parties structure this economic item as accrued dividends, payable only when dividends are declared by the Board or in the framework of a distribution upon a liquidation event as part of the preference amount, in that case the following language may be used instead of (ii):" an amount equal to any Accruing Dividends accrued but unpaid on such Series A Preferred Share, whether or not declared";*

*8 if a cap to the liquidation preference applies, add the following language at the end of this sentence: “; provided, however, that if the aggregate amount which the holders of Series A Preferred Stock are entitled to receive under clauses (a) and (b) above shall exceed \_\_ (\_\_\_) times the Original Issue Price for such Preferred Share (the “Maximum Participation Amount”), each holder of Series A Preferred Shares shall be entitled to receive upon such Liquidation Event the greater of (i) the Maximum Participation Amount and (ii) the amount such holder would have received if all Series A Preferred Shares had been converted into Ordinary Shares immediately prior to such Liquidation Event.*

*<sup>9</sup> The percentage is in many cases the same as the threshold approval required for the Protective Provisions.*

consolidation or other transaction or series of related transactions, at least a majority, by voting power, of the issued and outstanding shares of the surviving or acquiring entity (or in case such surviving or acquiring entity is a wholly owned subsidiary – of its parent); **(B)** a sale or other disposition of all or substantially all of the shares (including without limitation by way of repurchase or redemption by the Company) and/or the assets of the Company (including, for this purpose, the grant of an exclusive license to all or substantially all of the intellectual property rights of the Company covering all the then existing markets of the Company), in a single transaction or a series of related transactions, other than to a wholly-owned subsidiary of the Company; **(C)** any other transaction or series of related transactions as a result of which more than fifty percent (50%) of the issued and outstanding share capital of the Company following such transaction or series of Related Transactions is held by a person or entity or group of persons or entities (related contractually or otherwise), other than existing shareholders and other than such change(s) in the holdings of the Company resulting from an investment in the Company's share capital made solely for financing purposes<sup>10</sup>.

- (e) The Company shall give each holder of record of Preferred Shares written notice of any such impending Deemed Liquidation Event transaction referred to in (A), (B), (C) and (D) to Sub-Article 7.1(d)(ii), not later than [10 (ten)] days prior to the Shareholders meeting called to approve such transaction, or [20 (twenty)] days prior to the closing of such transaction, whichever notice date is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction, the provisions of this Article 7.1, and the amounts anticipated to be distributed to holders of each issued and outstanding series and class of shares of the Company pursuant to this Article 7.1, and the Company shall thereafter give such holders prompt notice of any material changes thereof. The transaction shall in no event take place sooner than [10 (ten)] days after the Company has given the first notice provided for herein or sooner than [10 (ten)] days after the Company has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Preferred Shares holding at least \_\_\_% of all the then issued and outstanding Preferred Shares<sup>11</sup>.
- (f) Until and unless the agreement or plan of a Deemed Liquidation Event transaction provides that the consideration payable to the shareholders of the Company shall be allocated among them in accordance with the provisions of this Article 7.1, the Company shall not effect nor close such Deemed Liquidation Event transaction. In the event of a Deemed Liquidation Event transaction in which the proceeds are paid to the Company and the distribution of such proceeds to the Shareholders pursuant to Article 7.1 is not effected by

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<sup>10</sup> *It is generally advisable to include a change of control transaction as a Deemed Liquidation Event, as such transactions may be triggered for example by the sale of shares by the shareholders of the Company.. A better practice is to protect against such events through a combination of other measures, such as protective provisions regarding the issuance of stock, rights of first refusal and co-sale rights over transfers of stock by other stockholders."*

<sup>11</sup> *The percentage is in many cases the same as the threshold approval required for the Protective Provisions.*

the Company within \_\_\_ days following the closing of such Deemed Liquidation Event transaction, the Preferred Shareholders, holding the majority of the issued and outstanding Preferred Shares, shall be entitled to require and cause the immediate liquidation of the Company and in such case the Company and the Shareholders shall take such actions as are necessary to cause the liquidation of the Company. It is also provided that notwithstanding anything to the contrary herein, for the explicit purpose of dissolving the Company as aforesaid, the holders of a majority of the Preferred Shares shall be deemed to have a voting power of not less than 75.1% of the voting power of the Company.

7.2. Conversion

- (a) Right to Convert. Each Preferred Share shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, and without the payment of additional consideration by the holder thereof, into such number of fully paid and non-assessable Ordinary Shares as is determined by dividing the Original Issue Price of such share by the Conversion Price of such share, in effect at the time of conversion. The initial Conversion Price of a Preferred Share shall be the Original Issue Price thereof; provided, however, that each such Conversion Price shall be subject to adjustment as set forth in this Article 7.2 below (the “**Conversion Price**”).
- (b) Automatic Conversion. Each Preferred Share shall automatically be converted into Ordinary Shares as provided in sub-Article (a) to this Article 7.2, upon the earlier of: (1) the date, or the occurrence of an event, specified by vote or written consent of the holders of at least \_\_\_% of the then issued and outstanding Preferred Shares<sup>12</sup>; or (2) immediately prior to the closing of a Qualified IPO, subject to the consummation of such Qualified IPO.
- (c) Mechanism of Conversion
  - (i) A conversion of Preferred Shares pursuant to the election of the holder thereof, shall be made by the surrender of the applicable certificate or certificates for such Preferred Shares, at the principal office of the Company, together with written notice of the election to convert all or any number of the Preferred Shares represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate representing the Preferred Shares to be converted, and the person(s) entitled to receive the Ordinary Shares into which the Preferred Shares are convertible shall be treated for all purposes as the record holder(s) of such Ordinary Shares as of such date.
  - (ii) If the conversion is in connection with an IPO, the conversion, unless otherwise designated by the holder, will be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering,

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<sup>12</sup> *The percentage is in many cases the same as the threshold approval required for the Protective Provisions.*



in which event the person(s) entitled to receive the Ordinary Shares, into which the Preferred Shares are convertible, shall not be deemed to have converted such Preferred Shares until immediately prior to the closing of such sale of securities.

- (iii) If the conversion is an automatic conversion, then the conversion shall be deemed to have taken place automatically regardless of whether the certificates representing such shares have been tendered to the Company, but from and after such conversion any such certificates not tendered to the Company shall be deemed to evidence solely the Ordinary Shares received upon such conversion and the right to receive a certificate for such Ordinary Shares.
- (iv) The Company shall, as soon as practicable after the conversion and tender of the certificates for the Preferred Shares converted, issue and deliver to the holder(s) of such Preferred Shares, a certificate or certificates for the number of Ordinary Shares into which such Preferred Shares are then convertible.
- (v) To the extent required, each conversion shall be made by converting or reclassifying the applicable Preferred Share into one fully paid and non-assessable Ordinary Share and the Company shall, at such time, issue to the holder thereof, for no additional charge (a portion of the premium paid for such Preferred Share being attributed as payment on account of the nominal value of such additional Ordinary Shares), such additional number of fully paid and non-assessable Ordinary Shares as is required so that the total number of Ordinary Shares so issued together with the one Ordinary Share into which the Preferred Share was converted or reclassified will equal such number of Ordinary Shares into which such Preferred Share is then convertible.

(d) Adjustment of Conversion Price for Certain Splits, Dividends and Combinations.

The Conversion Price of each of the Preferred Shares shall be proportionately adjusted as set forth below:

(i) Adjustments for Splits and Combinations.

If the Company shall subdivide its Ordinary Shares<sup>13</sup>, the applicable Conversion Price shall be proportionately decreased, so that the number of Ordinary Shares into which the Preferred Shares are convertible shall be increased in proportion to such increase in the aggregate number of Ordinary Shares. If the Company shall combine its Ordinary Shares, the applicable Conversion Price shall be proportionately increased, so that the number of Ordinary Shares into which the Preferred Shares are convertible shall be decreased in proportion to such decrease in the aggregate number of Ordinary Shares. Any adjustment under this subsection shall become effective as of the earlier of (i) the date such

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<sup>13</sup> *The subdivision of Preferred Shares triggers an immediate adjustment of the original issue price definition, thus automatically adjusting the numerator of the conversion ratio.*

subdivision or combination becomes effective; or (ii) if the Company shall fix a record date for the purpose of so subdividing or combining, such record date.

(ii) Recapitalizations.

If at any time or from time to time the Ordinary Shares shall be changed into the same or a different number of shares of any other class or series of shares of the Company, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for elsewhere in this Article 7.2 or a merger or other reorganization referred to in Article 7.1), provision shall be made, concurrently with the effectiveness of such reorganization or reclassification, so that the holders of Preferred Shares shall thereafter be entitled to receive, upon conversion of their Preferred Shares and in lieu of the Ordinary Shares into which such Preferred Shares are convertible, such number of other class or series of shares of the Company, which a holder of such number of Ordinary Shares deliverable upon conversion immediately prior to such change would have been entitled to receive upon such change. In any such case, appropriate adjustment shall be made in the application of the provisions of this Article 7.2 with respect to the rights of the Preferred Shareholders and of the Preferred Shares after the recapitalization, to the end that the provisions of this Article 7.2 (including adjustment of the Conversion Price then in effect and the number of shares into which the Preferred Shares are convertible) shall be applicable after that event in a manner as nearly equivalent as may be practicable.

(e) Adjustments to Conversion Price for Dilutive Issues .

(i) Special Definitions. For purposes of this sub-Article 7.2(e), the following definitions shall apply<sup>14</sup>:

- (1) **'Options'** shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Ordinary Shares or Convertible Securities (defined below).
- (2) **'Convertible Securities'** shall mean any evidence of indebtedness, shares or other securities directly or indirectly

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<sup>14</sup> *Some additional exclusions that are heavily negotiated:*

*(i) to lending institutions or financing institutions in connection with financing arrangements in a cumulative amount not exceeding \_\_\_% of the Company's issued and outstanding share capital [provided that such financing transactions are approved by the Board with the affirmative vote or written consent of the Preferred Director] . (ii) to strategic investor(s) or strategic partner(s) being issued in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar strategic agreements or strategic partnerships approved by the Board [with the affirmative vote or written consent of the Preferred Director] [,provided that the aggregate number of securities issued as aforesaid shall at no time constitutes more than \_\_\_% of the issued share capital of the Company on an as-converted calculated immediately following any such issuance]. (iii) in connection with the acquisition of another company, business entity or line of business of another business entity by the Company by merger, consolidation, purchase of substantially all of the assets and/or shares or other reorganization as a result of which the Company or its shareholders owns more than fifty percent (50%) of the voting power of such company or business entity [provided that such transactions are approved by the Board with the affirmative vote or written consent of the Preferred Director. (iv) to non-profit charitable organizations.*

convertible into or exchangeable for Ordinary Shares or Preferred Shares (not including Options).

- (3) '**Additional Shares**' shall mean all shares of Ordinary Shares issued (or, pursuant to Article 7.2(e)(vi), deemed to be issued) by the Company after the Series A Original Issue Date with the exception of the following Ordinary Shares issued, issuable or, pursuant to Article 7.2(e)(vi) herein, deemed to be issued ("**Excluded Securities**"):
- (A) upon conversion of the Series A Preferred Shares;
  - (B) [up to \_\_\_\_\_ Shares issued] to employees, directors, service providers, advisors or consultants of the Company or its subsidiaries pursuant to any share option plan or any share incentive plan or other share or option incentive arrangement, which are approved by the Board, [with the affirmative vote or written consent of the Preferred Director] ("**ESOP Securities**");
  - (C) as a dividend to all the Shareholders.
  - (D) regarding which the holders of at least \_\_\_% of the Preferred Shares (voting together as a single class) consent in writing are not to be considered "Additional Shares" or agree to waive their anti dilution adjustment rights<sup>15</sup>.
  - (E) upon exercise, conversion or exchange of Options or Convertible Securities outstanding as of the Series A Original Issue Date [and reflected in the capitalization table attached to \_\_\_\_\_] ("**Outstanding Securities**") and securities to be issued pursuant to the exercise or conversion of outstanding Options or Convertible Securities which shall have been originally subject to or exempted from the terms of Article 7.2(e).
  - (F) for which adjustment of the Conversion Price is made pursuant to Article 7.2(d).

***Alternative one: Broad Based Weighted Average Anti Dilution Formula***

(ii) Adjustment for the Conversion Price of Preferred Shares

In the event that the Company shall issue Additional Shares (including Additional Shares deemed to be issued pursuant to Article 7.2(e)(vi)) without consideration or for a consideration per share less than the

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<sup>15</sup> *The percentage is in many cases the same as the threshold approval required for the Protective Provisions.*

Conversion Price of any of the Preferred Shares, in effect on the date of and immediately prior to such issuance, then in such event the Conversion Price of the applicable Preferred Shares shall be reduced, concurrently with such issuance, to a price equal to a fraction: (A) the numerator of which is the sum of: (1) the total number of Ordinary Shares outstanding, immediately prior to the issuance of such Additional Shares multiplied by the Conversion Price of the applicable Preferred Shares, in effect immediately prior to the issuance of such Additional Shares, plus (2) the total amount of the consideration received by the Company for such Additional Shares, and (B) the denominator of which is the sum of: (1) the total number of Ordinary Shares outstanding immediately prior to the issuance of such Additional Shares plus (2) the number of such Additional Shares issued. For the purpose of the above calculation, the number of Ordinary Shares outstanding immediately prior to such issue of the Additional Shares shall be calculated on a fully diluted basis, treating for this purpose as issued and outstanding all Ordinary Shares issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the Preferred Shares) outstanding (assuming exercise of any outstanding Options therefore) immediately prior to such issue[, but not including in such calculation any additional Ordinary Shares issuable solely as a result of the adjustment of the Conversion Price of the Preferred Shares resulting from the adjustment caused by such issue]

The formula can be expressed algebraically as follows<sup>16</sup>:

$$P' = \frac{(P \times N) + C}{N+n}$$

where:

P = Conversion Price of the Preferred Shares immediately prior to the dilutive issuance.

P' = New Conversion Price of the Preferred Shares after the dilutive issuance.

N = Total number of Ordinary Shares outstanding immediately prior to the dilutive issuance of Additional Shares.

n = Number of Additional Shares issued in the dilutive issuance [plus, with respect to the calculation made for the adjustment of the new Conversion Price of the Preferred B Shares, the number of any

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<sup>16</sup> This Article represent a typical "broad-based weighted average" anti dilution formula, as it includes as "issued and outstanding" also shares which are issuable upon conversion of Convertible Securities and exercise of Options. Whether an anti-dilution provision is broad or narrow is determined by the number of shares included in the applicable formula. A narrow base would of course result in a larger decrease in the conversion price. Such a narrow base formula may for example include only the shares which have been actually issued or a narrower formula which includes only the issued preferred A shares.

additional Ordinary Shares issuable upon conversion of the Series A Preferred Shares pursuant to the operation of the adjustment to the Conversion Price of the Series A Preferred Shares made pursuant to sub-Article 7.2(e)(ii) as a result of the dilutive issuance of the Additional Shares]

C = Total amount of consideration received by the Company for the Additional Shares issued in the dilutive issuance.

***Alternative two: Full Ratchet Anti Dilution Formula***

(ii) Adjustment for the Conversion Price of Preferred Shares

In the event that the Company shall issue Additional Shares (including Additional Shares deemed to be issued pursuant to Article 7.2(e)(vi)) without consideration or for a consideration per share less than the Conversion Price of any of the Preferred Shares, in effect on the date of and immediately prior to such issuance, then in such event the Conversion Price of the applicable Preferred Shares shall be reduced, concurrently with such issuance, to the price per share received by the Company for such issue or deemed issue of the Additional Shares (i.e. a full ratchet adjustment)<sup>17, 18</sup>.

(iii) No Adjustment of Conversion Price. No adjustments of any Conversion Price shall be made in an amount less than one cent per share. .

(iv) Deemed Issue of Additional Shares. In the event the Company at any time or from time to time after the Series A Original Issue Date shall issue any Option or Convertible Securities, which are themselves Additional Shares, or shall fix a record date for the determination of holders of any class of securities then entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) of Ordinary Shares issuable upon the exercise of such Options or, in the case of Convertible Securities and Options for Convertible Securities, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which Additional Shares are deemed to be issued:

- (1) no further adjustment in the applicable Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares

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<sup>17</sup> When applying full ratchet anti-dilution where there is more than one series of preferred shares, it is advisable to determine which series will be subordinated in applying the anti-dilution adjustment. The following language may be used: "The rights of the Preferred A Shares under this sub-Article 7.2(e) for adjustments to be made to the Conversion Price in the event of dilutive issuances shall be subordinated to those of the Preferred B Shares";

<sup>18</sup> The parties may also agree on a combined formula which provides for a full ratchet adjustment to apply until the next pre-defined investment round or within a pre-defined period of time and thereafter to apply a "broad-based weighted average" anti dilution formula.

of Ordinary Shares upon the exercise of such Options or conversion or exchange of such Convertible Securities, in each case, pursuant to their respective terms;

- (2) if such Options or Convertible Securities by their terms (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Options or Convertible Securities), provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Company, or decrease or increase in the number of Ordinary Shares issuable, upon the exercise, conversion or exchange thereof, the applicable Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to such Conversion Price as would have obtained had such increase or decrease been in effect upon the original date of issuance of such Options or Convertible Securities;
- (3) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the applicable Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:
  - (A) in the case of Convertible Securities or Options for Ordinary Shares, the only Additional Shares issued were Ordinary Shares, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefore was the consideration actually received by the Company for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Company upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Company upon such conversion or exchange; and
  - (B) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Company for the Additional Shares deemed to have been then issued was the consideration actually received by the Company for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the

Company upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

- (4) no readjustment pursuant to clauses (2) or (3) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the applicable Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Options or Convertible Securities, or (ii) the applicable Conversion Price that would have resulted from other issuances of Additional Shares between the original adjustment date and such readjustment date.
- (v) Determination of Consideration. For purposes of this Article 7.2, the consideration received by the Company for the issue of any Additional Shares shall be computed as follows:
  - (1) Cash and Property. Such consideration shall:
    - (A) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Company excluding amounts paid or payable for accrued interest;
    - (B) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors; and
    - (C) in the event Additional Shares are issued together with other shares or securities or other assets of the Company for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board of Directors.
  - (2) Options and Convertible Securities. The consideration per share received by the Company for Additional Shares deemed to have been issued pursuant to Article 7.2(e)(vi), relating to Options and Convertible Securities, shall be determined by dividing (x) the total amount, if any, received or receivable by the Company as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (in each case as set forth in the instrument relating thereto, without regard to any provision contained therein for any subsequent adjustment of such consideration) payable to the Company upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by (y) the maximum number of Ordinary Shares (as set forth in the instruments relating thereto, without

regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, as determined in Article 7.2(e)(vi) hereof.

- (f) Multiple Closing Dates. In the event the Company issue Additional Shares at more than one closing, taking place within a period of no more than [180 (one hundred eighty)] days from the first closing to the last, as a part of one transaction or a series of related transactions, resulting in an adjustment to the Conversion Price pursuant to the terms of Article 7.2(e), then, upon the final such issuance, the Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the first closing (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period)<sup>19</sup>.
- (g) No Fractional Shares and Certificates as to Adjustments
- (i) No fractional shares shall be issued upon conversion of the Preferred Shares, and the number of Ordinary Shares to be issued shall be rounded up or down to the nearest whole share. All Ordinary Shares (including fractions thereof) issuable upon conversion of more than one Preferred Share by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of an Ordinary Share, the Company shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors).
- (ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Preferred Shares pursuant to this Article 7.2, the Company, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Preferred Shares a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon the written request at any time of any holder of Preferred Shares furnish or cause to be furnished to such holder a like certificate setting forth (a) such adjustment or readjustment, (b) the Conversion Price of the Preferred Shares at the time in effect, and (c) the number of Ordinary Shares and the amount, if any, of other property which at the time would be received upon the conversion of a Preferred Share held by such holder.
- (h) Notices of Record Date

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<sup>19</sup> *The calculation of an adjustment to the conversion price can vary significantly if it is being adjusted for each closing rather than the entire financing.*



In the event of any taking by the Company of a record date for the purpose of determining the holders of any class of securities who are entitled to receive any dividend (including a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of any class or any other securities or property, or to receive any other right, the Company shall mail to each Preferred Shareholder, at least [10 (ten)] days prior to the record date specified therein, a notice specifying the record date for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(i) Reservation of Shares Issuable Upon Conversion

The Company shall at all times keep available out of its authorized but unissued Ordinary Shares, for the purpose of effecting the conversion of the Preferred Shares, such number of its Ordinary Shares as shall from time to time be sufficient to effect the conversion of all issued Preferred Shares; and if at any time the number of authorized but unissued Ordinary Shares shall not be sufficient to effect the conversion of all then issued Preferred Shares, in addition to such other remedies as shall be available to the holder of such Preferred Shares, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued Ordinary Shares to such number of shares as shall be sufficient for such purposes. Without derogating from the aforesaid, in the event that in the opinion of the Company's legal counsel, any conversion of Preferred Shares shall require additional Shareholders' resolutions or consents, each Shareholder shall execute any such document and/or resolutions reasonably necessary to effectuate such conversion.

- (j) If applicable, conversion of the Preferred Shares may be effected by way of reclassification of the Preferred Shares into Ordinary Shares or issuance of additional Ordinary Shares, as shall be required by the conversion at the then existing conversion rate determined pursuant to Article 7.2(a). To the extent that any corporate action shall be required to effect the above, all Shareholders shall provide their affirmative vote to any such corporate action and execute any such document and/or resolutions reasonably necessary to effectuate the same.

7.3. Dividends & Other Distributions. In the event that dividends or other distributions are declared and distributed by the Company, the Preferred A Shareholders shall be entitled to receive per each Preferred A Share, prior and in preference to any distribution or payment on any other class or series of shares of the Company, an amount equal to the sum of) the Series A Liquidation Preference Amount (the "**Dividend A Preference**"), and after full distribution of the Dividend A Preference, the holders of Preferred A Shares will then participate in any remaining distribution with the holders of all other classes or series of shares on a pro rata basis in proportion to their respective holdings in the Company's issued share capital on an as-converted basis. No dividends shall be paid on any other class of shares unless the Dividend A Preference have been paid in full<sup>20</sup>.

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<sup>20</sup> Usually, there is no reasonable expectation that venture capital backed companies will distribute dividends before an IPO; however, it is common to see provisions similar to this provision that assure that no distribution will be made before the investors receive their preference. As noted above, dividend provisions are used sometimes as an alternative tool for accrued interest as part of the investors' preference amounts. See footnote 7.

7.4. Voting Rights. Each of the Preferred Shares shall entitle the holder thereof to one vote for each Ordinary Share into which such Preferred Shares could then be converted (with any fractional share determined on an aggregate conversion basis being rounded to the nearest whole share), and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Ordinary Shares, and shall be entitled to notice of any General Meeting in accordance with these Articles, and shall be entitled to vote, together with holders of Ordinary Shares, with respect to any question upon which holders of Ordinary Shares have the right to vote..

8. **Increase of Share Capital**

8.1. Subject to the provisions of these Articles, the Company may, from time to time, by resolution of the Shareholders, whether or not all the shares then authorized have been issued, increase its share capital by the creation of new shares. Any such increase shall be in such amount and shall be divided into shares of such nominal amounts, and such shares shall confer such rights and preferences, and shall be subject to such restrictions, as such resolution shall provide.

8.2. Except to the extent otherwise provided in such resolution, the new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, forfeiture and otherwise as the shares in the original capital.

9. **Special Rights; Modification of Rights**

9.1. Subject to the provisions of these Articles, and without prejudice to any special rights previously conferred upon the holders of existing shares in the Company, the Company may, from time to time, by resolution of its Shareholders, provide for shares with such preferred or deferred rights or rights of redemption or restricted rights, or any other special rights in respect of dividend distributions, voting, appointment or dismissal of Directors, return of share capital, distribution of Company's property, or otherwise, all as determined by the Company from time to time.

9.2. Subject to the provisions of Article 39, the rights, preferences and/or privileges attached to any class or series of shares may be modified or abrogated, with the sanction of a resolution passed at the General Meeting.

9.3. For the avoidance of doubt, it is hereby clarified and agreed that (i) an increase of the authorized or issued share capital of an existing class or series of shares or the issuance of additional shares thereof; (ii) the creation of a new class or series of shares or the issuance of shares thereof, whether such new class of shares having certain rights, preferences or privileges superior or equivalent to all other then existing equity securities of the Company.

9.4. Subject to the provisions of Article 39, any right, preference or privilege conferred under these Articles upon any number of classes or series of shares or particular class or series of shares, which waiver is applied in the same manner with respect to all the classes or series of shares to which such waiver is applicable, regardless of whether the economic effect of such waiver affects classes or series of shares differently, may be waived (either generally or in a particular instance) by written consent of the holders of a majority of the then issued and outstanding shares of all the affected classes or series of shares, voting together as a single class, on an as-converted basis.

10. **Consolidation, Subdivision, Cancellation and Reduction of Share Capital**

10.1. The Company may, from time to time, by resolution of its Shareholders (subject, however, to the provisions of these Articles, including the provisions of Article 39, and to the applicable law):

- (a) consolidate and divide all or any of its issued or unissued share capital into shares of larger nominal value than its existing shares;
- (b) subdivide its shares (issued or unissued) or any of them, into shares of smaller nominal value than is fixed by these Articles (subject, however, to the provisions of the Companies Law);
- (c) cancel any shares which, at the date of the adoption of such resolution, have not been taken or agreed to be taken by any person, and reduce the amount of its share capital by the amount of the shares so cancelled; or
- (d) reduce its share capital in any manner, and with and subject to any incident authorized, and consent required, by law.

**SHARES**

11. **Issuance of Shares**

Subject to the provisions of these Articles, including the provisions of Article 39, all unissued shares of the Company shall be at the disposal of the Board and the Board may issue or allot them, at a premium or at par value or subject to the Companies Law, at a discount, grant options to acquire them, either at a premium or at par value or subject to the Companies Law, at a discount, or otherwise dispose of them to such persons, at such times and on such terms as it deems proper.

12. **Registered Holder**

Except as otherwise provided in these Articles, the Company shall be entitled to treat the registered holder of any share as the absolute owner thereof, and, accordingly, shall not, except as ordered by a court of competent jurisdiction, or as required by statute, be bound to recognize any equitable or other claim to, or interest in such share on the part of any other person. In the case of two or more persons being registered as joint holders of any share(s), the Company may treat the holder whose name appears first in the Shareholders' Register as senior to the others; provided, however, that such joint holders may request the order in which their names shall appear in the Shareholders' Register. A Shareholder who holds shares in trust for a beneficiary shall inform the Company of such trust and such Shareholder shall be registered in the Shareholders' Register under notice regarding such trust and setting forth the identity of the beneficiary; for all purposes herein, the trustee shall be regarded as a Shareholder.

13. **Preemptive Rights**<sup>21</sup>

13.1. Until the earlier to occur of a Qualified IPO or an IPO in connection with which all Preferred Shares convert into Ordinary Shares, each Major Shareholder shall have a

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<sup>21</sup> *There are many variations to the pre-emptive rights provisions. The provisions herein limit this right to major shareholders but allow over-allotment. Since the pre-emptive right can delay the financing process, the parties often wish to limit this right only to major shareholders (see definition in Article \_\_ above). Also, in order to facilitate bringing in new investors the Company may wish to limit the percentage of the financing to which the right may apply or allowing the investors only to retain their pro-rata share with no over-allotment. See also footnote \_\_ with respect to excluded issuances.*

preemptive right to maintain its/his respective percentage ownership in the Company on an as-converted basis by purchasing its Pro-Rata Share of New Securities (as these terms are defined below) that the Company may, from time to time, propose to sell and issue (the “**Preemptive Right**”). A “**Pro Rata Share**”, for purposes of this Article 13, shall be the ratio of the number of Ordinary Shares on an as-converted basis then held by such Major Shareholder as of the date of the Preemptive Rights Notice (as defined below), to the sum of the total number of Ordinary Shares on an as-converted basis outstanding immediately prior to the issuance of such New Securities<sup>22</sup>.

13.2. The Preemptive Right shall be subject to the following provisions:

- (a) If the Company proposes to issue New Securities, it shall give each Major Shareholder a detailed written notice (the “**Preemptive Rights Notice**”) of its intention, describing the New Securities, the price, the general terms upon which the Company proposes to issue them, and the number of shares that each Major Shareholder is entitled to purchase under Article 13.1 above. Each Major Shareholder shall have [14 (fourteen)] days from delivery of the Preemptive Rights Notice (the “**Preemptive Rights Period**”) to notify the Company in writing of its desire to purchase all or any part (specifying the exact number) of its Pro Rata Share of such New Securities, for the price and upon the general terms specified in the Preemptive Rights Notice (the “**Preemptive Rights Response**”). [In addition, each Major Shareholder shall have the right to purchase all or any part of the New Securities not subscribed for in the Preemptive Rights Responses of the other Major Shareholders, by indicating in its Preemptive Rights Response its intention to purchase an additional number of New Securities in addition to its Pro Rata Share (specifying the number of such additional New Securities) (“**Over Allotment Notice**”).]
- (b) Any Major Shareholder who did not provide a Preemptive Rights Response to the Company within the Preemptive Rights Period, shall be deemed to have waived its Preemptive Right hereunder with respect to that particular offering of New Securities. Any Major Shareholder informing the Company of its decision to exercise its Preemptive Right hereunder shall be obliged to purchase the number of New Securities specified in its notice and to pay the Company the consideration due from it when called upon to do so by the Company. Any New Securities not subscribed for by any Major Shareholder shall be allocated among and sold to such other Major Shareholders who elected to purchase more than their Pro Rata Share and provided the Over Allotment Notice, in proportion to each such Major Shareholder respective Pro Rata Share out of the combined Pro Rata Shares of all such Major Shareholders who gave Over Allotment Notice, provided that no such Major Shareholder shall be allocated with more New Securities than requested in its Preemptive Rights Response.
- (c) The Company may, within [120 (one hundred and twenty)] days from the date of the end of the Preemptive Rights Period, sell the unsubscribed New Securities at a price and on terms no more favorable to the purchaser(s) thereof than the terms stated in the Preemptive Rights Notice. If the Company has not

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<sup>22</sup> *Venture capital funds often wish to be able to have the preemptive rights exercisable by their respective permitted transferees, in order to allow them to keep their percentages in the Company by participating in the rounds through successor funds.*

sold the unsubscribed New Securities within said [120 (one hundred and twenty)] day period, the Company shall not thereafter issue or sell such unsubscribed New Securities without first re-offering them to the Major Shareholders in the manner provided above.

13.3. “**New Securities**” shall mean securities of any kind or class of the Company, including shares of any class, options, warrants, convertible debentures or any rights to subscribe for, purchase or otherwise acquire shares of any class in any manner, provided however, that New Securities shall not include: (i) Excluded Securities; (ii) securities issuable upon exercise of or conversion of, outstanding options or warrants which shall have been originally offered to or exempted from offering to the Major Shareholders upon their issuance pursuant to the terms of this Article 13 (iii) securities issued in the framework of an IPO; (iv) securities issued in an issuance with respect to which Major Shareholders holding in the aggregate at least \_\_% of the aggregate shares held by all such Major Shareholders shall have waived in writing their Preemptive Right under this Article 13<sup>23</sup>.

#### 14. Share Certificates

14.1. Every person whose name is entered as a Shareholder in the Shareholders’ Register shall be entitled without payment to receive one certificate in respect of each class or series of shares held by such Shareholder, or, with the consent of the Board and upon payment of a sum, if any, for every certificate after the first as the Board shall determine, to several certificates, each for one or more of such shares. Shares of different classes or series may not be included in the same certificate. Where a Shareholder has transferred a part of the shares held by him or it, he or it shall be entitled to a certificate for the balance without charge.

14.2. Every certificate shall specify the shares to which it relates. In the case of a share held jointly by several persons, the Company shall not be bound to issue more than one certificate, and the issuance of such certificate to one of several joint holders shall be deemed sufficient delivery to all.

14.3. If a share certificate is worn out, defaced, lost or destroyed, it may be renewed on such terms, if any, as to evidence and indemnity with or without security as the Board requires. In the case of loss or destruction the person to whom the new certificate is issued shall pay to the Company all expenses incidental to the investigation or evidence of loss or destruction and the preparation of the requisite form of indemnity.

14.4. Share certificates shall be issued under the seal or the rubber stamp of the Company and shall bear the signatures of two Directors (or if there be only one Director, the signature of such Director), or of any other person or persons authorized thereto by the Board.

#### 15. Calls on Shares

15.1. The Board may, from time to time, make such calls as it may think fit upon Shareholders in respect of any sum unpaid in respect of shares held by such Shareholders which is not, by the terms of allotment thereof or otherwise, payable at a fixed time, and each Shareholder shall pay the amount of every call so made upon him (and of each installment thereof if the same is payable in installments), to the person(s) and at the time(s) and place(s) designated by the Board, as any such time(s) may be thereafter extended and/or such person(s) or place(s)

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<sup>23</sup> *The securities excluded from the pre-emptive rights are usually consistent with the carve-outs to the anti-dilution protection contained in Article 7.2(e)(3) above. However, additional exclusions may be negotiated, since preemptive rights are usually considered a less important investor right than a conversion price adjustment.*

changed. Unless otherwise stipulated in the resolution of the Board (and in the notice hereafter referred to), each payment in response to a call shall be deemed to constitute a pro rata payment on account of all shares in respect of which such call was made.

15.2. Notice of any call shall be given in writing to the Shareholder(s) in question not less than fourteen 14 (fourteen) days prior to the time of payment, specifying the time and place of payment, and designating the person to whom such payment shall be made; provided, however, that before the time for any such payment, the Board may, by notice in writing to such Shareholder(s), revoke such call in whole or in part, extend such time, or alter such person and/or place. In the event of a call payable in installments, only one notice thereof need be given.

15.3. If, by the terms of allotment of any share or otherwise, any amount is made payable at any fixed time, every such amount shall be payable at such time as if it were a call duly made by the Board and of which due notice had been given, and all the provisions herein contained with respect to such calls shall apply to each such amount.

15.4. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof and all interest payable thereon. A call duly made upon one of the joint holders shall be deemed to have been duly made upon all of the joint holders.

15.5. Any amount unpaid in respect of a call shall bear interest from the date on which it is payable until actual payment thereof, at such rate (not exceeding the then prevailing debitory rate charged by leading commercial banks in Israel), and at such time(s) as the Board may prescribe.

15.6. Upon the allotment of shares, the Board may provide for differences among the allottees of such shares as to the amount of calls and/or the times of payment thereof.

15.7. With respect to shares not fully paid for according to their terms of issuance, a Shareholder, whether he is the sole holder of shares or holds the shares together with another person, shall not be entitled to receive dividends nor to use any other right a Shareholder has unless he has paid all the calls by the Company that shall be made from time to time.

15.8. The provisions of this Article 15 shall in no way derogate from any rights or remedies the Company may have pursuant to these Articles or any applicable law.

16. **Prepayment**

With the approval of the Board, any Shareholder may pay to the Company any amount not yet payable in respect of his shares, and the Board may approve the payment of interest on any such amount until the same would be payable if it had not been paid in advance, at such rate and time(s) as may be approved by the Board. The Board may at any time cause the Company to repay all or any part of the money so advanced, without premium or penalty. Nothing in this Article 16 shall derogate from the right of the Board to make any call before or after receipt by the Company of any such advance in the event that a Shareholder is in default.

17. **RESERVED.**

18. **Redeemable Shares**

The Company may subject to applicable law and the provisions of these Articles, including the provisions of Article 39, issue redeemable shares and redeem the same.

19. **Lien on Shares**

19.1. The Company shall have a first and paramount lien on every share, not being a fully paid share, for all moneys or other considerations and obligations towards the Company in consideration for which the shares were issued, whether presently payable or required to be provided or fulfilled, or which are either called or payable or required to be provided or fulfilled at a fixed time in respect of that share(s), but the Board may at any time declare any share to be wholly or in part exempt from the provision of this Article. The Company's lien on a share shall extend to all dividends and other moneys and/or assets and/or other distributions payable thereon.

19.2. The Company may sell any share on which it has a lien in any manner the Board deems fit, but such share shall not be sold before the date of payment of the amount in respect of which the lien exists, or the date of fulfillment and performance of the obligations and commitments in consideration of which the lien exists, has arrived, and until 14 (fourteen) days have passed after written notice has been given to the registered holder at that time of the share, or to whoever is entitled to it upon the registered owner's death or bankruptcy, demanding payment of the amount against which the lien exists, or the fulfillment and performance of the obligations and commitments in consideration of which the lien exists, and such payment or fulfillment and performance have not been made.

19.3. The net proceeds of the sale shall be applied in payment of the amount due to the Company or the fulfillment and performance of the obligations and commitments as aforesaid in the preceding Article (whether or not the same have matured), and the remainder, if any, shall be paid to whoever is entitled to the share on the day of the sale.

19.4. After the execution of such sale of shares as aforesaid, the Board shall be permitted to sign or authorize any person to sign a deed of transfer of the sold shares and to register the purchaser's name in the Shareholders' Register as the owner of the shares so sold, and it shall not be the obligation of the purchaser to supervise the application of the purchase price nor will his right in the shares be affected by any fault or error in the procedure of sale. The sole remedy of one who has been aggrieved by the sale shall be in damages only and against the Company exclusively.

20. **Forfeiture and Surrender**

20.1. If a Shareholder fails to pay the whole or any part of any call or installment on the day fixed for payment, the Board may, at any time thereafter during such time as any part of such call or installment remains unpaid, serve a notice on him requiring payment of so much of the call or installment, as is unpaid, together with any accrued interest and any costs, charges and expenses incurred by the Company by reason of such non-payment.

20.2. The notice shall fix a further day, not being less than 14 (fourteen) days from the date of the notice, on or before which, and the place where, the payment required by the notice is to be made, and shall state that, in the event of non-payment at or before the time and at the place specified, the shares on which the call was made will be liable to be forfeited.

20.3. If the requirements of any such notice are not complied with, any share in respect of which such notice has been given may, at any time thereafter, before the payments required by the notice have been made, be forfeited by a resolution of the Board to that effect. Every forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

20.4. Subject to the Companies Law and to these Articles, a forfeited share shall become the property of the Company, and may be sold, re-allotted or otherwise disposed of upon such terms and in such manner as the Board deems fit; and at any time before sale, re-allotment or disposal, the forfeiture may be annulled on such terms as the Board thinks fit. The Board may authorize any person to execute the transfer of a forfeited share.

20.5. A person whose shares have been forfeited shall cease to be a Shareholder in respect of the forfeited shares, but shall, notwithstanding the forfeiture, and subject to any written contractual agreement with any shareholder from time to time, remain liable to pay to the Company all moneys which at the date of forfeiture were then payable by him to the Company in respect of the shares, with interest thereon at such rate not exceeding the maximum interest rate prevailing at that time and from time to time at the largest commercial Israeli bank for overdraft in current accounts, as the Board shall deem fit from the date of forfeiture until actual payment thereof.

Subject to any written contractual agreement with any Shareholder from time to time, in the event that the payment received by the Company by virtue of the forfeited shares shall exceed the amounts owed to the Company in respect of such shares including all the expenses incurred by the Company in connection with the exercise of its rights to forfeit shares, then the Company shall pay the excess amounts to the original holder of the forfeited shares, within 7 (seven) days after the Company collects the last payment of consideration in respect of such shares.

20.6. The Board may accept the surrender of any share which it is in a position to forfeit upon such terms and conditions as may be agreed and, subject to any such terms and conditions, a surrendered share shall be treated as if it had been forfeited.

20.7. An affidavit in writing that the declarant is one of the Directors and that a share has been duly forfeited or surrendered on a date stated in the affidavit, shall be conclusive evidence of such facts as against all persons claiming to be entitled to the share, and that affidavit and the receipt of the Company of the consideration, if any, given for the share, on the sale or disposition or re-allotment thereof, shall constitute good title to the share. After the person to whom the share is sold, re-allotted or disposed of shall have been registered as the holder thereof, he shall not be bound to see to the application of the purchase money or any other consideration and his title to the share shall not be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, surrender, sale, re-allotment or disposal of the share.

20.8. The provisions of these Articles as to forfeiture shall apply also in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.



20.9. The Board may at any time, before any share so forfeited or surrendered, shall have been sold, re-allotted or otherwise disposed of, nullify the forfeiture or surrender on such conditions as it thinks fit, but no such nullification shall prohibit the Board from re-exercising its powers of forfeiture pursuant to this Article 20.

## TRANSFER OF SHARES

21. Any transfer of shares in the Company shall be subject to the provisions of Articles 22 through 28.

### 22. Right of First Refusal

22.1. Subject to the provisions of Article 23 hereunder, until an IPO, a Shareholder (hereinafter: the “**Offeror**”) shall not transfer, sell, assign, pledge or otherwise dispose of, whether directly or indirectly, any shares of the Company or any interest therein, without offering them first to the Major Shareholders (collectively: the “**Offeree(s)**”) in the manner specified below<sup>24</sup>.

22.2. If the Offeror wishes to sell or transfer all or part of his shares or other securities in the Company (hereinafter: the “**Offered Shares**”), the Offeror shall give written notice to the Company, specifying the number of Offered Shares, the price required therefore, the terms of payment and the name of the purchaser who is interested in buying all the Offered Shares according to the same terms if the right of first refusal shall not be exercised (hereinafter: the “**Offer**”) and requesting the Company to send a right of first refusal notice to the Offerees. The Company shall comply with such request by sending a copy of the Offer, within [7 (seven)] days, to all Offerees, who did not waive in writing their right to receive such notice in advance. Each Offeree may accept such offer in respect of all or any of the Offered Shares by giving the Company a written notice to that effect within [14 (fourteen)] days after being served with the Offer (hereinafter the “**First Refusal Period**” and the “**Letter of Response**”, respectively).

22.3. In the Letter of Response, each Offeree should also specify the number of shares that he/it is prepared to purchase, should any other Offeree refuse to buy his pro-rata share in the Offered Shares.

22.4. If an Offeree does not respond within the First Refusal Period in the abovementioned manner, he/it shall be deemed as having waived its right to purchase any of the Offered Shares.

22.5. If the Letters of Response, in the aggregate, are in respect of all of, or more than, the Offered Shares, then the accepting Offerees shall acquire the Offered Shares, on the same terms specified in the Offer, in proportion to their respective holdings in the Company on an as-converted basis; provided, however, that no Offerees shall be entitled to acquire under the provisions of this Article 22 more than the number of Offered Shares accepted by such Offeree in its Letter of Response, and upon the allocation to it of the full number of shares so accepted, it shall be disregarded in any subsequent computations and allocations hereunder. Any shares remaining after the computation of such respective entitlements shall be re-

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<sup>24</sup> *Certain financial investors might not agree to be subject to the right of first refusal and might require that the right of first refusal would apply only on holders of Ordinary Shares. Also, venture capital funds often wish to be able to have the right of first refusal exercisable by their respective permitted transferees, in order to allow them to participate in the purchase of shares transaction rounds through successor funds.*

allocated among the accepting Offerees (other than those to be disregarded as aforesaid), in the same manner, until one hundred percent (100%) of the Offered Shares have been allocated as aforesaid. A Letter (or Letters) of Response accepting the Offer, in the aggregate, with respect to all of the Offered Shares, and delivered to the Company within the First Refusal Period, shall be regarded as an agreement among such Offeree(s) and the Offeror for the sale and purchase of all the Offered Shares at the price and conditions specified in the Offer.

22.6. If the Letters of Response are in the aggregate with respect of less than the number of Offered Shares, or if the Offerees do not respond at all to the Offer, then the Offeror may sell and transfer all the Offered Shares to the purchaser specified in the Offer (the “**Purchaser**”), at the same price and on the same terms as specified in the Offer, within [90 (ninety)] days from the earlier of: (i) the expiration of the First Refusal Period, or (ii) the actual day when all the Offerees gave notice of their refusal to purchase the Offered Shares.

22.7. If the Offeror does not sell and transfer all the Offered Shares to the Purchaser within the aforesaid period, or he wishes to sell or transfer the Offered Shares to another purchaser or on terms more favorable to the Purchaser than those stated in the Offer, he shall offer first the Offered Shares to the Offeree(s) again, in accordance with the provisions of this Article 22.

22.8. This Article shall also apply to the sale of shares by a receiver, liquidator, trustee in bankruptcy, administrator of an estate, executor of a will, etc.

22.9. The transfer of shares to an Offeree exercising its right of first refusal under this Article 22, does not require the approval of the Board.

### 23. **Co-Sale Right**

23.1. Until an IPO and in addition to and without derogating from the Right of First Refusal set forth in Article 22 and the limitation of transfer set forth in Article 24, in the event that the Offeror is any one of the Founders (each a “**Founder**” and the Founder who is the Offeror, the “**Selling Founder**”)) and the proposed sale or transfer is not to a Permitted Transferee of such Selling Founder, each Major Shareholder (“**Co-Sale Right Holders**”) shall have the right, exercisable upon written notice to the Selling Founder within the First Refusal Period, to participate in the Selling Founder’s sale of the Offered Shares pursuant to the specified terms and conditions of the Offer. To the extent that one or more of the Co-Sale Right Holders exercise such right of participation in accordance with the terms and conditions set forth below, the number of shares that the Selling Founder may sell in such transaction shall be correspondingly reduced.

23.2. Each Co-Sale Right Holder may sell all or part of that number of such holder’s shares equal the product obtained by multiplying (i) the aggregate number of the Offered Shares by (ii) a fraction, the numerator of which is the number of Preferred Shares owned by such Co-Sale Right Holder at the time of the sale or transfer and the denominator of which is the sum of the aggregate number of shares then held by the Selling Founder and the number of Preferred Shares then held by the Co-Sale Right Holder.

23.3. No transfer of shares by the Selling Founder shall be concluded unless the purchaser thereof concurrently purchases, under the same terms, all of the shares for which the Co-Sale Right Holders elected to participate as aforesaid. To the extent that any prospective purchaser refuses to purchase shares from a Co-Sale Right Holders who elected to participate

as aforesaid, the Founder shall not sell to such prospective purchaser any shares unless and until, simultaneously with such sale, the Founder shall purchase such shares from such Co-Sale Right Holders under the terms of the Offer.

23.4. In the event the Selling Founder should sell any of his shares in contravention of the co-sale rights of the Co-Sale Right Holder hereunder (a “**Prohibited Transfer**”), each Co-Sale Right Holder, in addition to such other remedies as may be available to such Co-Sale Right Holder at law, in equity or hereunder, shall have the put option provided below, and the Selling Founder shall be bound by the applicable provisions of such put option.

In the event of a Prohibited Transfer by a Selling Founder, each Co-Sale Right Holder shall have the right to sell to such Selling Founder and the Selling Founder shall be obligated to purchase the type and number of Preferred Shares equal to the number of shares each Co-Sale Right Holder would have been entitled to transfer to the purchaser under the co-sale right had the Prohibited Transfer hereof been effected pursuant to an in compliance with the terms of this Article 23. Such sale shall be made at a price per share equal to the price per share paid by the purchaser to the Selling Founder in the Prohibited Transfer. The Selling Founder shall also reimburse each Co-Sale Right Holder for any and all fees and expenses, including legal fees and expenses, incurred pursuant to the exercise or the attempted exercise of the Co-Sale Right Holder’s rights under this Article 23.

24. **Restriction on Sales by the Founders.**

24.1. Until an IPO<sup>25</sup>, no Founder shall sell, assign, transfer, pledge, hypothecate, mortgage or dispose of, by gift or otherwise, or in any way encumber (each of the foregoing being referred to as a “**Disposition**”) any of his shares or other securities in the Company, without the prior written approval of the holders of no less than \_\_\_% of the Preferred Shares<sup>26</sup>, except in connection with a sale of all or substantially all of the shares of the Company or unless such Disposition is made to a Permitted Transferee as provided in Article 24.2.

24.2. Permitted Transferees. Notwithstanding the provisions of Article 24.1 above, each Founder may freely effect a Disposition of his shares or other securities to his Permitted Transferees, provided that: (a) the Permitted Transferee assumes in writing all of such Founder’s rights and obligations with respect to the transferred shares as are set forth in any agreement with the Company and other shareholders and in these Articles (including the restrictions on transfer under this Article 24); (b) any further Disposition of such share by the Permitted Transferee may only be made back to the Founder from whom such Permitted Transferee received the shares or the securities who are the subject of the Disposition, or as provided in Article 24.1; and (c) the Founder shall undertake in writing towards the Company and the Shareholders to remain liable towards the Company and the Shareholders, jointly and severally with such Permitted Transferee, with respect to the compliance of such Permitted Transferee with the obligations and restrictions applicable to the shares so transferred to such Permitted Transferee.

24.3. Any attempt by the Founder (or his Permitted Transferee) to transfer shares in violation of this Article 24 shall be void, and the Company hereby agrees that it will not give effect to such a transfer nor will it treat any alleged transferee as the holder of such shares.

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<sup>25</sup> *In some rounds, investors agree that the founders shall have following a pre-defined period a right to sell a limited pre-defined dollar value and/or percentage of his shares per year for up to a maximum pre-defined dollar value and/or percentage;*

<sup>26</sup> *The percentage is in many cases the same as the threshold approval required for the Protective Provisions.*

25. **Permitted Transfers**

A Shareholder may transfer its Ordinary Shares or Preferred Shares, as the case may be, to its applicable Permitted Transferee(s) without having to comply with the provisions of Articles 22 or 26.1(a) hereof, provided that such Permitted Transferee(s) shall undertake in writing to hold such transferred shares under the same terms, restrictions and conditions that the transferring Shareholder was subject to, with respect to the said shares, including under any contractual obligations of the transferor under agreements to which the Company is also a party.

26. **Board Approval and General Requirements for Transfer**

26.1. Unless expressly provided otherwise herein, a transfer of shares or other securities in the Company shall require the approval of the Board, which approval shall not be unreasonably withheld; provided, however, that the Board, at its discretion, may refuse to register any transfer of shares or other securities to any person and/or entity that is a competitor of the Company.

26.2. No transfer of shares or other securities in the Company shall be effective, unless the transfer is made in accordance with the provisions of these Articles applying to transfer of shares. No transfer of shares shall be registered unless a proper instrument of transfer, in such form as approved by the Board from time to time, executed by both the transferor and transferee, has been submitted to the Company, together with any share certificate(s) issued in respect of such shares and such other evidence of title as the Board may reasonably require. Until the transferee has been registered in the Shareholders Register in respect of the shares so transferred, the Company may continue to regard the transferor as the owner thereof. The Board, may, from time to time, prescribe a reasonable fee for the registration of a transfer.

26.3. Unless the Board determines otherwise with respect to any specific transfer, no transfer shall be effective unless the transferee agrees in writing to hold the shares transferred pursuant to the terms and conditions by which the transferor held such shares, including but not limited to, the provisions of these Articles and any other contractual obligations of the transferor with respect to the shares transferred under agreements to which the Company is also a party.

26.4. If the Board approves a transfer of shares, it will register the transfer of shares in the Shareholders' Register as soon as possible. If the Board refuses to register a transfer, it shall, within 2 (two) weeks after the date on which the transfer was lodged with the Company, send to the transferee notice of its refusal.

26.5. A share may be transferred in whole only, and not in part; however, if a share(s) has joint owners, any of the joint owners may transfer his rights in the share(s).

26.6. All share transfer deeds will be delivered to the Company at the Office. A share transfer deed which is recorded in the Shareholders' Register will remain with the Company, and any share transfer deed which the Board refuses or declines to approve will be returned, upon demand, to whomever delivered it to the Company, together with the Share Certificate, if delivered.

26.7. No Shareholder shall make any disposition of shares of the Company to the extent such disposition is in violation of applicable law(s), including without limitation, applicable securities laws.

26.8. The Shareholders' Register shall be closed for a period of 14 (fourteen) days immediately preceding the Annual General Meeting of the Company and at other dates and for such other periods as determined by the Board from time to time; provided, however, that the Shareholders' Register shall not be closed for a total of more than 30 (thirty) days in any calendar month.

**27. Bring Along**

27.1. Subject to Article 39 below, in the event that prior to the earlier to occur of, a Qualified IPO or an IPO in connection with which all Preferred Shares convert into Ordinary Shares, Shareholders of the Company, holding at least \_\_\_% (\_\_\_\_\_ percent) of the Company's issued share capital at such time, on an as-converted basis, [among which are holders of at least \_\_\_% of the issued Preferred Shares] (the "**Proposing Shareholders**"): (i) desire to sell and/or transfer all of their shares in the Company to any purchaser; or (ii) accept an offer to sell all or substantially all of the assets of the Company to a third party (each (i) and (ii) a "**Bring Along Sale Transaction**"), then:

- (a) at every meeting of the Shareholders of the Company called with respect to such Bring Along Sale Transaction and at every adjournment or postponement thereof, and on every action or approval by written consent of the Shareholders of the Company with respect to such Bring Along Sale Transaction, all other Shareholders shall vote all shares of the Company that such Shareholders then hold or for which such Shareholders otherwise then have voting power: (A) in favor of approval of the Bring Along Sale Transaction and any matter that could reasonably be expected to facilitate the Bring Along Sale Transaction, and (B) in opposition to any and all other proposals that could [reasonably be expected to] delay or impair the ability of the Company to consummate such Bring Along Sale Transaction;
- (b) if such Bring Along Sale Transaction is conditioned upon the sale, transfer or exchange of all remaining shares of the Company and - if applicable - warrants and/or options granted by the Company, all other Shareholders and holders of warrants and/or options, if any, shall agree to and shall join in such Bring Along Sale Transaction, as the case may be, and shall sell, transfer or exchange their shares and warrants in such transaction under the same terms and conditions which similarly apply to all selling shareholders, but subject to the operation of the liquidation preference rights as set forth in Article 7.1.;
- (c) each Shareholder, shall take all necessary actions in connection with the consummation of the Bring Along Sale Transaction as reasonably requested by the Company or the Proposing Shareholders and shall, if requested by the Proposing Holders, execute and deliver any agreements prepared in connection with such Bring Along Sale Transaction which agreements are executed by the Proposing Holders containing terms which similarly apply to all selling shareholders .

27.2. The threshold of not-less than \_\_\_% of the Company's issued share capital on an as-converted basis, [among which are holders of at least \_\_\_% of the issued Preferred Shares], set forth in Article 27.1 above for the purpose of a Bring Along Sale Event, is hereby determined also for the provisions of Sections 341 and 342 of the Companies Law, to constitute the sufficient shareholding requirements thereunder, such that no further consent of holders of Ordinary Shares or Preferred Shares or additional majority or procedure requirement shall be required for the purposes of such sections of the Companies Law.

27.3. The transfer of shares pursuant to this Article 27 shall not be subject to any restriction on transferability of securities hereunder, including without limitation the rights of first refusal set forth in Article 22 above.

28. **Transmission of Shares**

28.1. In case of a share registered in the names of two or more Shareholders, the Company may recognize the survivor(s) as the sole owner(s) thereof, unless and until the provisions of Article 28.2 have been effectively invoked.

28.2. Any person becoming entitled to a share in consequence of the death of any person, upon producing evidence of the grant of probate or letters of administration or declaration of succession (or such other evidence as the Board may reasonably deem sufficient that he sustains the character in respect of which he proposes to act under this Article or of his title), shall be registered as a Shareholder in respect of such share, or may, subject to the provisions as to transfer herein contained, transfer such share.

28.3. The Company may recognize the receiver or liquidator of any corporate Shareholder in winding-up or dissolution, or the receiver or trustee in bankruptcy of any Shareholder, as being entitled to the shares registered in the name of such Shareholder.

28.4. A receiver or liquidator of a corporate Shareholder in winding-up or dissolution, or the receiver or trustee in bankruptcy of any Shareholder, upon producing such evidence as the Board may deem sufficient that he sustains the character in respect of which he proposes to act under this Article or of his title, shall with the consent of the Board (which the Board may grant or refuse in its absolute discretion), be registered as a Shareholder in respect of such shares, or may, subject to the provisions as to transfer herein contained, transfer such shares.

28.5. A person upon whom the ownership of a share devolves by transmission shall be entitled to receive, and may give a discharge for any dividends or other monies payable in respect of the share but such person shall not be entitled in respect of it to receive notices, or to attend or vote at meetings of the Company, or, save as otherwise provided herein, to exercise any of the rights or privileges of a Shareholder unless and until such person shall be registered in the Shareholders' Register.

## GENERAL MEETINGS

### 29. **Annual General Meeting**

29.1. The Company is not required to convene an Annual General Meeting, except:

- (i) as required in order to appoint an auditor; or
- (ii) in the event a Shareholder demands convening an Annual General Meeting; or
- (iii) in the event a Director demands convening an Annual General Meeting.

29.2. If a demand is made to convene an Annual General Meeting, as aforesaid, it will take place not later than 15 (fifteen) months after the previous Annual General Meeting and if no Annual General Meeting took place in the preceding year, at a time fixed by the Board which will not be later than 30 (thirty) days after receipt of the demand for convening the Annual General Meeting.

### 30. **Special General Meetings**

30.1. All General Meetings other than Annual General Meetings shall be called "Special General Meetings".

30.2. The Board will convene a Special Meeting:

- (i) upon its resolution to such effect;
- (ii) upon a demand made by 1 (one) Director; or
- (iii) upon a demand made by Shareholder(s) holding shares constituting at such time at least 10% (ten percent) of the voting rights of the Company.

30.3. If a demand is made to the Board to convene a Special Meeting as aforesaid, it will convene such Meeting within 21 (twenty-one) days from the date of the demand, to a date specified in the invitation in accordance with these Articles.

### 31. **Notices of General Meetings; Omission to Give Notice**

31.1. Subject to the provisions of the Companies law, a prior written notice of not less than 7 (seven) days but no more than 45 (forty five) days shall be given in a manner provided by these Articles to such Shareholders that on the date when such notice is issued are entitled to receive notices to a General Meeting under the provisions of these Articles. The notice shall specify the place, the day and the hour of meeting, and the agenda of such meeting.

31.2. It shall not be necessary to give the full text of a proposed resolution in the notice of any meeting, and it shall be sufficient to state generally the content of such proposed resolution, except in case of proposed amendment of these Articles where the proposed amendment shall be detailed. It is hereby expressly provided that if all Shareholders entitled to attend and vote at the General Meeting agree to waive the above requirements regarding notice, general meetings may be held and all kind of resolutions proposed and passed by them

without any notice having been given or with a shorter notice being given than required by law or this Article in respect of such General Meeting.

31.3. The accidental omission or defect in giving notice of any meeting, or in sending a form of proxy with a notice where required by these Articles, to any person entitled to receive the same, or the non-receipt of a notice of meeting or form of proxy by such a person, shall not invalidate the proceedings at the meeting, if the notice has been sent to the address of such Shareholder as recorded in the Shareholders' Register.

## **PROCEEDINGS AT GENERAL MEETINGS**

### **32. Quorum**

No business shall be transacted at any General Meeting unless a quorum is present when the meeting proceeds to act. The presence, in person or by proxy, within one-half hour from the time specified for commencing the meeting, of two or more Shareholders, holding in the aggregate more than 50% (fifty percent) of the voting rights in the Company on an as-converted basis, [among which are holders of at least \_\_\_% of the Preferred Shares,] shall constitute a quorum for all purposes. If within half an hour from the time fixed for the meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place, or any other day, hour and/or place as the Board shall notify the Shareholders. If at such postponed meeting no quorum is present within half an hour of the time appointed for the meeting, the Shareholder(s) present shall constitute a quorum. No business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting as originally called.

### **33. Participation.**

Shareholders entitled to be present and vote at a General Meeting may participate in a General Meeting by means of video or telephone conference or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute attendance in person at the meeting.

### **34. Chairman of General Meeting**

34.1. The Chairman of the Board, if any, or any other person nominated for the purpose by the Board, shall preside as chairman at every General Meeting. If at any meeting there is no such Chairman or other person, or if neither the Chairman nor the other person is present within 15 (fifteen) minutes after the time fixed for the meeting, or if he or she is not willing to act as chairman of the meeting, the Directors present shall choose one of themselves or if no Director is present, or if all the Directors present decline to take the chair, the Shareholders present shall choose one of themselves to be the chairman of the meeting.

34.2. The office of chairman shall not, by itself, entitle the holder thereof to vote at any General Meeting nor shall it entitle such holder to a second or casting vote (without derogating, however, from the rights of such chairman to vote as a Shareholder or proxy of a Shareholder if, in fact, he is also a Shareholder or such proxy).



35. **Adoption of Resolutions at General Meetings**

35.1. At any General Meeting a resolution put to the vote of the meeting (whether by a show of hands or by written ballot) shall be decided by a count of votes.

35.2. Subject to the provisions of the Companies law and to the provisions of these Articles, including the provisions of Article 39, all resolutions at General Meetings, including without limitation, resolutions adopted for the amendment of these Articles, shall be adopted by a simple majority of more than 50% (fifty percent) (on an as-converted basis) of the voting power of the Shareholders who are present in person or by proxy at such meeting and voting thereon.

35.3. In the case of an equality of votes, the chairman of the meeting shall not be entitled to a further or casting vote in addition to the votes to which he may be entitled as a Shareholder or as a representative or proxy of a Shareholder. In such a case the vote will be treated as if it was rejected.

35.4. The minutes of the proceedings of the General Meeting signed by the chairman of such meeting, stating that a resolution has been carried, unanimously, or by a particular majority, or rejected, and an entry to that effect in the minute books of the Company, shall constitute a prima facie evidence of the fact, without proof of the number or proportion of the votes recorded in favor of or against such resolution.

36. **Adoption of Resolutions without Meeting**

Resolutions may be adopted without convening a General Meeting, providing that all of the Shareholders entitled to participate in and vote at the meeting have agreed thereto. A resolution in writing signed by all Shareholders of the Company then entitled to attend and vote at General Meetings or to which all such Shareholders have given their written consent (by letter, facsimile tele-copier, e-mail, telegram, telex or otherwise) shall be deemed to have been unanimously adopted by a General Meeting duly convened and held. Any such resolution may consist of several counterparts of like form and signed or consented to as aforementioned by one or more Shareholders.

## **VOTES OF SHAREHOLDERS**

37. **Voting Rights**

37.1. Shareholders may vote either personally or by proxy. A Shareholder which is a corporation may appoint, pursuant to the provisions of Article 38.2 below, one representative to vote on its behalf.

37.2. Except as otherwise provided in these Articles, including without limitation, the provisions of Article 37.5 below and subject to any provision hereof conferring special rights as to voting, or restricting the right to vote, every Shareholder, present in person or by proxy in a General Meeting, shall have one vote for each Ordinary Share held by such Shareholder of record, and with respect to each Preferred Share – to such number of votes equal to the number of Ordinary Shares into which such Preferred Share held by him of record could then be converted, with respect to every resolution, without regard to whether the vote thereon is conducted by a show of hands, by written ballot or by any other means. A proxy need not be a Shareholder of the Company.

37.3. In the case of joint holders of a Share, the vote of the holder that appears first in the Shareholders' Register, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.

37.4. No Shareholder shall be entitled to vote at any General Meeting (or be counted as part of the quorum thereat), unless all calls or other sums then payable by him in respect of his shares in the Company have been paid, unless the Company has otherwise agreed in a written document or an agreement made with such Shareholder.

37.5. A Shareholder of unsound mind, or in respect of whom an order to that effect has been made by any court having jurisdiction, may vote, whether on a show of hands or by a count of votes, only through his legal guardian or such other person, appointed by the aforesaid court, who performs the function of a representative or guardian. Such representative, guardian, or other person may vote by proxy.

38. **Proxy**

38.1. **Voting in Writing.** The Company may send the Shareholders entitled to notice of and to attend and vote at any meeting a proxy statement that shall provide for two-way voting on all resolutions to be proposed at that meeting other than resolutions relating to the procedure of the meeting. The instrument of proxy shall be in writing, made to the name of the Shareholder in question, and shall be signed by him or his attorney, or, if such Shareholder is a corporation, by a duly authorized Officer of such corporation or attorney, but the execution of such instrument need not be attested.

38.2. A Shareholder may be present at and participate and vote in a General Meeting, either in person or by proxy.

38.3. Any Shareholder which is a corporation may, by resolution of its board of directors or other governing body, authorize such person as it deems fit to act as its representative at any meeting of the Company or of any class or series of Shareholders, and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which the latter could exercise if it were an individual Shareholder.

38.4. The instrument appointing a proxy shall be substantially in the following form, or in a similar or customary form which is acceptable to the Board:

\_\_\_\_\_ Ltd.

I \_\_\_\_\_ [*name of Shareholder*] of \_\_\_\_\_ [*Address of Shareholder*] being a holder of \_\_\_\_\_ shares of \_\_\_\_\_ Ltd., hereby appoint \_\_\_\_\_ [*Name of Proxy*] of \_\_\_\_\_ [*Address of Proxy*] as my proxy to vote for me and on my behalf at the General Meeting of the Company to be held on the \_\_\_\_ day of \_\_\_\_\_ and at any adjournment thereof.

Signed this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
[*Signature of Appointor*]

38.5. The instrument of proxy (and the power of attorney or other authority, if any, under which such instrument has been signed) shall be deposited at the Office, or at such other place as shall be specified in the notice of meeting, prior to the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or presented to the chairman of such meeting.

38.6. A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or incapacity of the principal, or revocation of the instrument of proxy or of the authority under which the instrument of proxy was executed, if no notice in writing of such death, incapacity, or revocation shall have been received by the Company at the Office, or other place referred to in the preceding Article, before the commencement of the meeting or adjourned meeting at which the instrument of proxy is used.

38.7. A Shareholder will be entitled to vote at the General Meetings by one proxy only appointed by him, which proxy shall be appointed with respect to such Shareholder's entire shareholdings in the Company; and such Shareholder shall not be entitled to appoint several proxies with respect to different shares held by such appointing Shareholder or otherwise to split its voting rights in the Company. If both a Shareholder and his proxy are present at a General Meeting with respect to the same shares, the appointment of the proxy shall be void with respect to such shares.

### SPECIAL ISSUES

39. **Special Issues**<sup>27</sup>

39.1. Notwithstanding anything to the contrary in these Articles, until the earlier to occur of a Qualified IPO or an IPO in connection with which all Preferred Shares are converted into Ordinary Shares [and for so long as the holders of the Preferred Shares holds Preferred Shares which constitute at least \_\_\_% of the Company's issued and outstanding share capital (calculated on an as converted-basis)], the Company shall not, and will exercise its control over its subsidiaries to ensure that its subsidiaries will not, take any action or adopt any resolution with regard to the issues set forth in this Article 39.1 below (either directly or by amendment, merger, consolidation or otherwise) and no such action or resolution shall have any effect without first obtaining the affirmative vote or written consent of the holders of at least \_\_\_% of the then issued and outstanding Preferred Shares voting together as a single class<sup>28</sup>:

- (i) any amendment, repeal, change, or alteration of the Company's Articles that would adversely affect the rights, preferences, or privileges of the Preferred Shares and/or the rights, preferences, or privileges of the holders of the Preferred Shares<sup>29</sup>;

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<sup>27</sup> *The matters that will be subject to veto rights of the holders of Preferred Shares will be the subject of negotiations between the Company and the investors; naturally the investors will require a more extensive list of items in early rounds, as reflected in the list presented in Article 39. Other negotiation items are: (i) whether there will be, and what will be the number of, a minimum threshold of percentage holding requirement for the veto rights; and (ii) which items will be subject to veto by the holders of Preferred Shares and which by the directors appointed by the holders of Preferred Shares.*

<sup>28</sup> *These provisions provides for a class vote of all Preferred Shares together, the parties, however, may agree to have separate class vote with respect to one or more issues;*

<sup>29</sup> *Alternative provisions may refer to any "any amendment, repeal, change, or alteration of the Company's Articles";*

- (ii) any creation, authorization or issuance of any new class or series of shares with rights senior to or in parity with the Preferred Shares, with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption, or other securities convertible into such shares, or the grant of rights for the issue or otherwise obligating itself to issue any such shares or securities, or changing any of the rights, preferences or privileges attached to any of the Company's shares which would have the same effect as the creation of such shares<sup>30</sup>
- (iii) any increase of the authorized number of Preferred Shares or the issuance of Preferred Shares<sup>31</sup>;
- (iv) effecting any Liquidation Event;
- (v) the declaration and payment of any dividends or other distributions of cash, securities or other assets;
- (vi) redemption or repurchase of any securities of the Company (other than pursuant to employee share option plan as shall be in effect from time to time);
- (vii) the cessation of all or a substantial part of the Company's business;
- (viii) the creation of any mortgage, pledge or other security interest in all or substantially all of the assets of the Company;
- (ix) transactions with any of the Company's officers, directors, shareholders or other Interested Parties, or any other party related, directly or indirectly, to any of them;
- (x) increase or decrease the authorized number of directors on the Board of Directors; and
- [(xi) any increase of the Company's reserve (including any pool of options) for incentive equity based plans including, and the determination of the exercise price of any such options to be granted thereunder and any change of such exercise price.]

39.2. Notwithstanding anything to the contrary in these Articles, until the earlier to occur of a Qualified IPO or an IPO in connection with which all Preferred Shares convert into Ordinary Shares [and for so long as the holders of the Preferred Shares holds Preferred Shares which constitute at least \_\_\_% of the Company's issued and outstanding share capital on an as

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<sup>30</sup> *Alternative provisions may refer to any issuance: "any creation, authorization or issue of any class or series of shares, or other securities convertible into shares, or the grant of rights for the issue or otherwise obligating itself to issue any shares or securities (except for issuance to employees, officers, directors, consultants, contractors or advisors of the Company under an approved ESOP of up to such number of Ordinary Shares constituting in the aggregate no more than \_\_\_% of the Company's share capital on a fully diluted basis (i.e. after giving effect to the full exercise and conversion of any outstanding options, warrants and other convertible securities));*

<sup>31</sup> *This veto right should not be subject to any minimum threshold percentage holding of the Preferred Shares, and if there are a number of class or series of Preferred Shares, then this veto should be provided to each class or series of Preferred Shares independently.*

converted-basis], the Company shall not, and will exercise its control over its subsidiaries to ensure that its subsidiaries will not, take any action or adopt any resolution with regard to the issues set forth in this Article 39.2 below (either directly or by amendment, merger, consolidation or otherwise) and no such resolution or action shall have any effect without first obtaining the affirmative vote or written consent of the Directors appointed by the Holders of the Preferred Shares:

- (i) approval of the Company's annual operating plan and budget, and any material deviation there from;
- (ii) the appointment or dismissal of, and any change of the employment terms of, the Company's CEO and of any member of the Company's senior management directly reporting to the Company's CEO;
- (iii) the determination of or any change to the signatory rights on behalf of the Company;
- (iv) a material change in the business of the Company [change the Company's current field of business] or the cessation of all or a substantial part of the Company's business;
- (v) any transaction of the Company which is not in the Company's ordinary course of business, including without limitation any acquisition of shares/interests or assets of another company or entity<sup>32</sup>;
- (vi) taking a loan [other than equipment leases or bank lines of credit] or the creation of any mortgage, pledge or other security interest in any asset of the Company;
- (vii) giving guarantees outside the ordinary course of business or making any loans, except for loans to employees in the ordinary course of business;
- (viii) effecting an IPO and determination of the terms and conditions of the IPO; and
- (ix) the establishment of any subsidiary, the transfer of any of the Company's business or activity to a subsidiary, or any decision to do business or otherwise act through a subsidiary and the establishment of a partnership, joint-venture or other entity which is not wholly-owned by the Company;

39.3. The requirements for the above consents and affirmative votes on the issues referred to in sub-Articles 39.1 and 39.2 above shall apply, to the extent that the applicable mandatory law may permit, to actions or decisions taken by subsidiaries of the Company and the Company shall exercise its control of its subsidiaries in order that such subsidiaries shall comply with the above.

## **THE BOARD OF DIRECTORS**

### **40. Board Members**

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<sup>32</sup> *In earlier rounds this veto can refer to any transaction which exceeds a certain pre-determined amount.*

The Board of Directors shall be comprised of up to \_ (\_\_\_\_) members and in no event less than \_ (\_\_\_\_) members. The following provisions shall govern the appointment and removal to and from the Board of Directors<sup>33</sup>:

- (a) The \_\_\_\_\_ shall be entitled to appoint, dismiss and replace \_ (\_\_\_\_) Director(s) to the Board;
- (b) The holders of \_\_\_\_\_ shall be entitled to appoint, dismiss and replace \_ (\_\_\_\_) Director(s) to the Board ; and
- (c) One (1) Director shall be \_\_\_\_\_.
- (d) Any Director(s) may only be removed from office, and any vacancy, however created, in the Board may only be filled in the same manner and subject to the same requirements required for the appointment of such Director(s).
- (e) The appointment of any Director, and the dismissal or replacement of any such Director, shall be by written notice given to the Company by the Shareholder(s) entitled to so appoint, dismiss and replace such Director, and shall become valid and effective upon the day on which said written notice was received by the Company, or upon such later date as may be noted in the notice, without the need for any other corporate procedure or action.

40A. **[Subsidiaries' Boards**

The size and composition of the board of directors of each subsidiary of the Company shall be equivalent to that of the Company as set forth in Article 40 above, and accordingly the rights of the persons and entities to appoint Directors to the Board of Directors of the Company as set forth in Article 40 above, shall also apply to the appointment of directors to each subsidiary.

The provisions of Article 47 below shall apply to any committee of the board of directors of each subsidiary of the Company *mutatis mutandis*.]

41. **Qualification of Directors**

The Directors shall not be required to hold any shares in the Company to qualify them for their role as Directors.

42. **Vacating of Office**

The office of a Director shall be vacated in any of the following events, ipso facto:

- (i) if he resigns his office by notice in writing to the Company. Such resignation shall become effective on the date fixed therein, or upon the delivery thereof to the Company, whichever is later;
- (ii) upon his death, or by reason of mental disorder or if he becomes legally incompetent;

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<sup>33</sup> *The rights of the Founders and of the investors to appoint directors and the size of the board are the subject of vast negotiations; it is common to structure the board also to include the chief executive officer of the Company and an expert director.*

- (iii) he was declared bankrupt or, if a legal entity - it adopted a resolution of voluntary liquidation, or a liquidation order was issued with respect thereto;
- (iv) if pursuant to any provision of the Companies Law he is prohibited from being a Director;
- (v) if appointed under Articles 40(a), 40(b) or 40(c) – (i) upon dismissal or replacement carried out by the persons and entities appointing such Director, or (ii) at such time as the persons and entities appointing such Director is/are no longer entitled to appoint such Director; and with respect to the CEO Director – at such time he ceases to serve as the CEO of the Company.

43. **Continuing Directors in the Event of Vacancies**

In the event of one or more vacancies on the Board, the continuing Directors may continue to act in every matter, in any number whatsoever.

44. **Remuneration Of Directors**

No Director shall be paid any remuneration by the Company for his services as a Director.

The Company shall reimburse directors for reasonable traveling, including hotel and incidental expenses as they may incur in attending meetings of the Board, or of committees of the Board, or General Meetings, in accordance with such criteria determined in a resolution of the Board adopted with the affirmative vote or written consent of the Preferred Director.

45. **Personal Interest**

All transactions and actions in which a Director or other Officer in the Company has a personal interest shall be approved in accordance with the provisions of the Companies Law, provided that such transaction does not prejudice the interests of the Company.

46. **Powers of Directors**

46.1. **In General.** Subject to the provisions of the Companies Law and to the provisions of these Articles, including the provisions of Article 39, the determination of the Company's policies, strategies and directions as well as the control and supervision over the business of the Company and over the General Manager or the CEO shall be vested with the Board, which may exercise all such powers and do all such acts and things as the Company is authorized to exercise and do, and are not hereby explicitly or by law required to be exercised or done by the Company in General Meeting.

46.2. **Borrowing Power.** Subject to the provisions of these Articles, including the provisions of Article 39, the Board may from time to time, in its discretion, cause the Company to borrow or secure the payment of any sum or sums of money for the purposes of the Company, and may secure or provide for the repayment of such sum or sums in such manner, at such times and upon such terms and conditions in all respects as it thinks fit, and, in particular, by the issuance of bonds, perpetual or redeemable debentures, debenture stock, or any mortgages, charges, or other securities on the undertaking or the whole or any part of the property of the Company, both present and future, including its uncalled or called but unpaid capital for the time being.

46.3. Reserves. Subject to the provisions of these Articles, including the provisions of Article 39, the Board may, from time to time, set aside any amount(s) out of the profits of the Company as a reserve or reserves for any purpose(s) which the Board, in its absolute discretion, shall think fit, and may invest any sum so set aside in any manner and from time to time deal with and vary such investments, and dispose of all or any part thereof, and employ any such reserve or any part thereof in the business of the Company without being bound to keep the same separate from other assets of the Company, and may subdivide or redesignate any reserve or cancel the same or apply the funds therein for another purpose, all as the Board may from time to time think fit.

47. Delegation of Powers

47.1. Subject to the Companies Law, the Board may delegate any of its powers to committees consisting of at least 2 (two) or more Directors, provided that the Preferred Director shall be one of such Directors (unless such director shall have waived his or her right to membership in such committee), and it may from time to time revoke such delegation or alter the composition of any such committee, subject to the right of the Preferred Director to be a member of any committee. The meetings and proceedings of any such committee shall, *mutatis mutandis*, be governed by the provisions herein contained for regulating the meetings of the Board, so far as not superseded by any regulations adopted by the Board. Unless otherwise expressly provided by the Board in delegating powers to such committee, such committee shall not be empowered to further delegate such powers.

All resolutions, minutes of meetings and other documents produced by any committee of the Board shall be delivered to all the members of the Board promptly following any such committee meeting or resolution.

47.2. The Board may, subject to the provisions of these Articles, from time to time, appoint a Secretary to the Company, as well as officers, agents, employees and independent contractors, as the Board of Directors may think fit, and may terminate the service of any such person. The Board of Directors may, subject to the provisions of these Articles and the Companies Law, determine the powers and duties, as well as the salaries and emoluments, of all such persons, and may require security in such cases and in such amounts as it thinks fit.

47.3. Subject to the provisions of the Companies Law and the provisions of these Articles, including the provisions of Article 39, the Board may from time to time, by power of attorney or otherwise, appoint any person, company, firm or body of persons to be the attorney or attorneys of the Company at law or in fact for such purpose(s) and with such powers, authorities and discretions, and for such period and subject to such conditions, as it thinks fit, and any such power of attorney or other appointment may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit, and may also authorize any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

48. Alternate Directors

48.1. Subject to the Companies Law, a Director may, by written notice to the Company, appoint an alternate for himself (in these Articles referred to as "**Alternate Director**"), remove such Alternate Director and appoint another Alternate Director in place of any Alternate Director appointed by him whose office has been vacated for any reason whatsoever. The Alternative Director may be a Person who currently serves as a Director or as an Alternative Director. Unless the appointing Director, by the instrument appointing an Alternate Director or by written



notice to the Company, limits such appointment to a specified period of time or restricts it to a specified meeting or action of the Board, or otherwise restricts its scope, the appointment shall be for an indefinite period, and for all purposes.

48.2. Any notice given to the Company pursuant to Article 48.1 shall become effective on the date fixed therein, or upon the delivery thereof to the Company, whichever is later.

48.3. Subject to the Companies Law, an Alternate Director shall have all the rights and obligations of the Director who appointed him; provided, however, that he may not in turn appoint an alternate for himself, and provided further that an Alternate Director shall have no standing at any meeting of the Board or any committee thereof while the Director who appointed him is present.

48.4. Subject to the Companies Law, an Alternate Director shall alone be responsible for his own acts and defaults, and he shall not be deemed the agent of the Director who appointed him.

48.5. The office of an Alternate Director shall be vacated under the circumstances, *mutatis mutandis*, set forth in Article 42, and such office shall ipso facto be vacated if the Director who appointed such Alternate Director ceases to be a Director.

## **PROCEEDINGS OF THE BOARD OF DIRECTORS**

### **49. Board Meetings**

49.1. The Board may meet and adjourn its meetings and otherwise regulate such meetings and proceedings as the Directors think fit.

Subject to all of the other provisions of these Articles concerning meetings of the Board, the Board may meet by video or telephone conference or other means of telecommunications so long as each Director participating in such call can hear, and be heard by, each other Director participating in such call and participation in such manner shall constitute a presence in person at such meeting.

49.2. The Chairman of the Board may at any time, and upon the request of a Director, shall, convene a meeting of the Board, but not less than 3 (three) days' prior written notice shall be given of any meeting, unless such notice is waived in writing by all of the Directors as to a particular meeting; provided however, that if the Chairman of the Board has decided that it is necessary to convene an urgent meeting of the Board, even shorter notice may be given as determined by the Chairman of the Board.

49.3. Any notice with regard to a meeting of the Board as aforesaid, may be given orally by telephone, or in writing by facsimile, e-mail or otherwise. The time and place at which the meeting will be convened will be specified in the notice in reasonable detail, in addition to the items on the agenda of said meeting. A Director shall be entitled to waive a prior notice requirement. The attendance of a Director at a meeting of the Board shall itself constitute a waiver.

49.4. All Board meetings shall take place in the State of Israel, unless otherwise determined by the Board.

49.5. Notice of the meeting of the Board shall be given to each Director at his last address (or number) provided by him to the Company.

50. **Quorum**

A quorum at a meeting of the Board shall be constituted by the presence of a majority of the Directors then in office who are lawfully entitled to participate in the meeting (as conclusively determined by the Chairman of the Board)[, which majority includes the Director appointed by the holders of the Preferred Shares (if appointed)]. If within one-half hour from the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to the same day on the next week, at the same time and place, or to such day and place as determined by the majority of the Board members present. No business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting as originally called. At such adjourned meeting, if no quorum is present within one-half hour of the time arranged, the Director(s) present shall be deemed a quorum.

51. **Chairman of the Board**

The Board may from time to time elect one of its members to be the Chairman of the Board, remove such Chairman from office and appoint another in its place. The Chairman of the Board shall preside at every meeting of the Board, but if there is no such Chairman, or if at any meeting he is not present within 15 (fifteen) minutes of the time fixed for the meeting, or if he/she is unwilling to take the chair, the Directors present shall choose one of their number to be the chairman of such meeting. The Chairman of the Board will not have an additional or casting vote.

52. **Voting and Adoption of Resolutions**

52.1. Each Director shall have 1 (one) vote.

52.2. Subject to the provisions of these Articles, including the provisions of Article 39, a resolution proposed at any meeting of the Board shall be adopted if approved by a simple majority of the Directors present when such resolution is put to a vote and voting thereon.

52.3. The Board may adopt resolutions without convening an actual meeting of the Board, provided that all Directors entitled to participate in the meeting and to vote on the issue brought for resolution have agreed not to convene for discussion on such issue. A resolution in writing signed by all Directors then in office and lawfully entitled to vote thereon (as conclusively determined by the Chairman of the Board) or to which all such Directors have given their written consent (by letter, telegram, telex, facsimile, e-mail or other manner of written communication) shall be deemed to have been unanimously adopted by a meeting of the Board duly convened and held. Any such resolution may consist of several signed counterparts of like form.

53. **Reserved**

## **GENERAL MANAGER**

### **54. General Manager and CEO**

Subject to the Companies Law and the provisions of these Articles, including the provisions of Article 39, the Board may from time to time appoint one or more persons, whether or not Directors, as General Manager(s) or CEO of the Company and may confer upon such person(s), and from time to time modify or revoke, such title(s) (including Managing Director, Director General, CEO or any similar or dissimilar title) and such duties and authorities as the Board may deem fit, subject to such limitations and restrictions as the Board may from time to time prescribe. Such appointment(s) may be either for a fixed term or without any limitation of time, and the Board may from time to time (subject to the provisions of the Companies Law and of any contract between any such person and the Company) fix his or their salaries and emoluments, remove or dismiss him or them from office and appoint another or others in his or their place or places.

## **MINUTES**

### **55. Minutes**

55.1. Minutes of each General Meeting and of each meeting of the Board shall be recorded and duly entered in books provided for that purpose, and shall be distributed to the members of the Board. Such minutes shall, in all events, set forth the names of the persons present at the meeting and all resolutions adopted thereat.

55.2. Any minutes as aforesaid, if purporting to be signed by the chairman of the meeting or by the chairman of the next succeeding meeting, shall constitute prima facie evidence of the matters recorded therein.

## **ACCOUNTS; RECORDS**

### **56. Books of Account; Registers**

56.1. The Directors shall cause accounting records to be kept and such other books and registers as are necessary to comply with the provisions of the Companies Law and any other applicable law.

56.2. The accounting records shall be kept at the Office or subject to the provisions of the Companies Law, at such other place as the Board thinks fit, and shall at all times be open to inspection by all Directors. No Shareholder, in such capacity, shall have any right of inspecting any account or book or document of the Company, except as expressly conferred by the Companies Law or authorized by the Board or as conferred by virtue of any agreement to which such Shareholder and the Company are party.

### **57. Audit**

Subject to the Companies Law, at least once in every fiscal year the accounts of the Company shall be audited and the correctness of the profit and loss account and balance sheet certified by one or more duly qualified auditors.

### **58. Auditors**

The appointment, authorities, rights and duties of the auditor(s) of the Company, shall be regulated by applicable law; provided, however, that in exercising its authority to fix the

remuneration of the auditor(s), the Shareholders in General Meeting may, act (and in the absence of any action in connection therewith shall be deemed to have so acted), to authorize the Board to fix such remuneration subject to such criteria or standards, if any, as may be provided in such General Meeting, and if no such criteria or standards are so provided, such remuneration shall be fixed in an amount commensurate with the volume and nature of the services rendered by such auditor(s).

### **DIVIDENDS AND RESERVES**

59. Subject to the provisions of the Companies Law and the provisions of these Articles, including the provisions of Article 39, the Board may declare and cause the Company to pay dividends and/or issue bonus shares.

59.1. A Shareholder shall be entitled to receive only such dividends and/or bonus shares as the Company may resolve to distribute, if any.

59.2. The distribution of dividends and the issuance of bonus shares shall be within the authority of the Board.

60. Subject to the provisions of these Articles, including the provisions of Articles 7.1 and 7.3, dividends distributed by the Company will be distributed to the Shareholders, pro rata to the respective number of their issued and outstanding shares, on an as-converted basis.

61. The Shareholders entitled to a dividend and/or bonus shares, as the case may be, shall be those Shareholders who are Shareholders at the time of the adoption of the resolution to distribute such dividend or bonus shares, or at such later date as may be provided in such resolution (hereinafter: the “**Ex-dividend Date**”).

62. In the event that a Shareholder has not made payment to the Company in full of the consideration then due to the Company for the Shares issued to him, he will be entitled to a dividend and/or bonus shares with respect only to a number of shares proportionate to the amount paid or credited as of the Ex-Dividend Date, *pro rata temporis*, on account of the consideration then due.

63. Where a share with respect to which a dividend is to be distributed is jointly owned, any dividend distributed by the Company with respect to such jointly-owned share will be paid to that joint owner whose name appears first in the Shareholders’ Register.

### **SIGNATORY RIGHTS, STAMP AND SEAL**

64. (a) The Board will determine the stamp and/or seal of the Company.

(b) The Board shall be entitled to authorize any person or persons (who need not be Directors) to act and sign on behalf of the Company, and the acts and signature of such person(s) on behalf of the Company shall bind the Company insofar as such person(s) acted and signed within the scope of his or their authority.

## COMMISSION

65. The Company may pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the Company, or procuring or agreeing to procure subscription, whether absolute or conditional, for any shares in the Company, and such commission may be paid in cash or fully or partly paid shares of the Company, or partly in one way and partly in another.

## NOTICES

66. In addition to specific requirements and arrangements set forth herein, any notice or document may be served by the Company on any Shareholder either by personal delivery or by sending it through the post in a prepaid letter addressed to such Shareholder at his address in the Shareholders' Register. In the case of joint holders of a share all notices shall be given to that one of the joint holders whose name stands first in the Shareholders' Register, and notice so given shall be sufficient notice to all the joint holders.

67. If a Shareholder has not supplied to the Company an address for the delivery of notices, a notice addressed to him at his last known address shall be deemed to be duly given to him according to these Articles. If no known address exists - such a Shareholder shall not be entitled to receive any notice from the Company.

67.1. Any notice or other document, if sent by certified mail, postage prepaid, shall be deemed to have been served within 7 (seven) days following the date on which it was posted, by whatever class of post in the event that the addressee is in the same country in which the notice was posted; and within 10 (ten) days in the event that the addressee is in any other country. If the notice is served by federal express or similar overnight carrier, the notice shall be deemed to have been served within 3 (three) business days. In proving that such service was made, it shall be sufficient to show that the letter containing the notice or document was properly addressed, stamped and posted.

67.2. Notice may also be sent by telefax, telex, e-mail or other electronic means, provided that a confirmation copy is sent by post or by courier as aforesaid, unless the addressee has waived the right to receive a confirmation copy, and provided further that if such waiver is not received than such notice shall be deemed to be delivered in accordance with Article 78.1, or when it was actually received, whichever is earlier. If a notice was actually received, it shall be deemed to have been duly served when received, notwithstanding that it was mistakenly addressed or that it failed to comply with the provisions of this Article 78.

68. Any notice delivered to any Shareholder pursuant to these Articles shall, notwithstanding that such Shareholder has then been deceased or bankrupt, and whether or not the Company has notice of his death or bankruptcy, be deemed to have been duly served in respect of any Share held by such Shareholder, whether solely or jointly with other persons, until another person is registered in his stead as holder or joint holder thereof, and such service shall for all purposes be deemed a sufficient service of such notice or document on all persons interested, whether jointly with or as claiming through or under him, in such share.

69. Every person who by operation of law, transfer or other means whatsoever shall become entitled to any Share shall be bound by every notice previously sent in respect of such

Share, prior to his name and address being entered in the Shareholders' Register, which shall have been duly given to the person from whom he derives his title to such Share.

## INSURANCE AND INDEMNITY

### 70. Insurance and Indemnity

70.1. For purposes of these Articles, the term "**Office Holder**" shall mean every Director and every officer of the Company, including, without limitation, each of the persons defined as "Nosei Misra" in Section 1 of the Companies Law.

70.2. Insurance: Subject to the provisions of the Companies Law, the Company may enter into a contract for the insurance of all or part of the liability of any Office Holder, in respect of an act (including an omission to act) performed in his or hers capacity as an Office Holder, in respect of one of the following:

- (i) a breach of the Office Holder's duty of care to the Company or to another person;
- (ii) a breach of the Office Holder's fiduciary duty to the Company, provided that the Office Holder acted in good faith and had reasonable cause to assume that such act would not prejudice the interests of the Company;
- (iii) a financial liability imposed on the Office Holder in favor of another person.

70.3. Indemnification: Subject to the provisions of the Companies Law, including the receipt of all approvals as required therein or under any other applicable law, the Company may

(1) indemnify any Office Holder to the fullest extent permitted by the Companies Law retrospectively; and

(2) undertake, in advance, to indemnify any Office Holder to the fullest extent permitted by the Companies Law, with respect to an obligation or expense imposed upon him as a result of an action taken by virtue of him being an Office Holder as follows:

- (i) a monetary liability imposed on an Office Holder pursuant to a judgment in favor of another person, including a judgment imposed on such Office Holder in a compromise or in an arbitration decision approved by a competent court, provided that the undertaking to indemnify will be limited to: **(a)** such events, which in the opinion of the Board, are to be expected in the light of the Company's actual activities at the time the undertaking to indemnify is given; and **(b)** such amounts or criteria which the Board determines as being reasonable under the circumstances; and further provided that the undertaking to indemnify shall state the events which in the opinion of the Board, are to be expected in the light of the Company's actual activities at the time the undertaking to indemnify is given, and the amounts and criteria referred to in (b) above;
- (ii) reasonable litigation expenses, including attorney's fees, which the Office Holder has incurred in consequence of an investigation or procedure conducted

against him by an authority competent to conduct an investigation or procedure, and which was concluded without an indictment against him and without any monetary obligation imposed on him in lieu of a criminal proceeding, or which ended without an indictment against him, but with a monetary obligation imposed on him in lieu of a criminal proceeding for an offense that does not include a *mens rea* element. The terms “which ended without an indictment against him” in a matter in which a criminal investigation was commenced and “monetary obligation imposed in lieu of a criminal proceeding” shall have the meaning specified in section 260(a)(1A) of the Companies Law.

- (iii) reasonable litigation expenses, including attorneys' fees, expended by an Office Holder or charged to him by a court, in a proceeding instituted against him by the Company or on its behalf or by another person, or in a criminal charge from which he was acquitted, or a criminal charge for which he was convicted which does not require *mens rea*.
71. Granting a Release: Subject to the provisions of the Companies Law, the Company may grant an Office Holder a release in advance from his liability, in whole or in part, for damages suffered as a result of breach of his duty of care to the Company, except for willful or reckless breach of duty of care.
72. The provisions of Articles 71.1, 71.2, 71.3 and 71.4 above are not intended, and shall not be interpreted, to restrict the Company in any manner in respect of the procurement of insurance and/or in respect of indemnification (i) in connection with any person who is not an Office Holder, including, without limitation, any employee, agent, consultant or contractor of the Company who is not an Office Holder, and/or (ii) in connection with any Office Holder to the extent that such insurance and/or indemnification is not specifically prohibited under law.
73. In any case where insurance of liability of an Office Holder of the Company or indemnification of such Office Holder is prohibited by any applicable law, the Company shall not insure the liability of such Office Holder of the Company, nor shall it indemnify such Office Holder.

#### **WINDING UP**

74. Subject to applicable law and to the rights of the holders of shares with special rights and preference distribution rights as set forth in these Articles (including without limitation under Article 7.1), upon winding up or liquidation, the assets of the Company available for distribution shall be distributed among the Shareholders in proportion to the nominal value of their respective holdings of the shares in respect of which such distribution is being made.