

## Submission Data File

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Document Description 2	Amended Articles of Association of Modsys International Ltd.
Document Name 3*	f8k12215ex10i_modernsys.htm
Document Type 3*	EX-10.1
Document Description 3	Securities Purchase Agreement
(End Document Information)	

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM 8-K**

**CURRENT REPORT  
Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported) November 25, 2015

MODSYS INTERNATIONAL LTD.  
(Exact name of registrant as specified in its charter)

Israel	333-06208	N/A
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)
600 University Street, Suite 2409, Seattle, WA		98101
(Address of principal executive offices)		(Zip Code)

Registrant's telephone number, including area code (206) 395-4152

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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### Item 1.01. Entry into Material Definitive Agreement

On November 25, 2015, ModSys International Ltd. (the “Company”) entered into a Securities Purchase Agreement (the “Purchase Agreement”) with Pacific Opportunity Fund, LP, Prescott Group Aggressive Small Cap Master Fund and Mindus Holdings, Ltd. (the “Investors”), providing for the issuance in a private placement to the Investors thereunder an aggregate amount of (1) 500,000 preferred shares (“Preferred Shares”) and (2) warrants to purchase an aggregate of 250,000 ordinary shares of the Company, with an exercise price of \$0.01 per share.

The closing of the purchase and sale of the Preferred Shares and warrants is contingent upon approval of the Company’s shareholders and other customary closing conditions. The Investors will purchase Preferred Shares and warrants as follows:

Investor	Preferred Shares	Warrants	Purchase Price
Columbia Pacific Opportunity Fund, LP	200,000	100,000	\$ 400,000.00
Prescott Group Aggressive Small Cap Master Fund	200,000	100,000	\$ 400,000.00
Mindus Holdings, Ltd.	100,000	50,000	\$ 200,000.00
<b>Total</b>	<b>500,000</b>	<b>250,000</b>	<b>\$1,000,000.00</b>

In addition, concurrent with the closing of the purchase of the Preferred Shares and warrants, the Company shall issue 625,000 ordinary shares to Prescott Group Aggressive Small Cap Master Fund pursuant to the Amended and Restated Securities Purchase Agreement dated as of November 22, 2013 between the Company and Prescott Group Aggressive Small Cap Master Fund, as if such sale and issuance had occurred prior to November 22, 2015.

The foregoing description is only a summary of the terms of the Purchase Agreement. For a full description, please see the Purchase Agreement, which is attached hereto as Exhibit 10.1 and is incorporated herein by reference.

The Preferred Shares shall have the following rights, assuming approval of the Company’s shareholders:

#### *Liquidation Preference*

Upon liquidation, dissolution, or winding up of the Company, the holders of the Preferred Shares shall be first entitled to receive, in preference to the holders of ordinary shares, an amount per share equal to an amount equal to \$3.00 (as adjusted for stock splits and the like with respect to the preferred shares).

Unless, at the request of the Company, the holders of a majority of the then-outstanding Preferred Shares agree otherwise, the occurrence of any of the following events shall be deemed a liquidation: (1) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, other than any such consolidation, merger or reorganization in which the shares of capital stock of the Company immediately prior to such consolidation, merger or reorganization, continue to represent a majority of the voting power of the surviving entity (or, if the surviving entity is a wholly owned subsidiary, its parent) immediately after such consolidation, merger or reorganization; provided that this shall not include any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Company or any successor or indebtedness of the Company is cancelled or converted or a combination thereof, (2) any transaction or series of related transactions to which the Company is a party in which in excess of fifty percent (50%) of the Company’s voting power is transferred; or (3) a sale, lease, exclusive license or other disposition of all or substantially all of the assets of the Company.

#### *Conversion*

The Preferred Shares are convertible into ordinary shares at any time at the option of the holder on a 1:1 basis (subject to adjustment as a result of stock splits, combinations, recapitalizations and the like). In addition, if at any time after the two-year anniversary of the date of issuance of the Preferred Shares, the volume-weighted average sale price per ordinary share equals or exceeds \$5.00 per ordinary share (as adjusted for stock splits, combinations, recapitalizations and the like) for a period of ten consecutive trading days, each then-outstanding Preferred Share will be automatically converted into ordinary shares at the then-applicable conversion rate.

#### *Dividends*

In the event dividends are paid on any ordinary share, the Company shall pay an additional dividend on all outstanding Preferred Shares in a per share amount equal (on an as-if-converted to ordinary share basis) to the amount paid or set aside for each ordinary share. In addition, the holders of Preferred Shares shall be entitled to receive dividends, payable “in kind” by the issuance of additional Preferred Shares, at a rate of eight percent (8%) per annum of the Original Issue Price of the preferred shares. The “Original Issue Price” of the Preferred Shares shall be \$2.00 per share (as adjusted for stock splits, combinations, recapitalizations and the like).

#### *Voting*

Each holder of shares of the Preferred Shares shall be entitled to the number of votes equal to the number of ordinary shares into which such Preferred Shares could be converted immediately after the close of business on the record date fixed for such meeting. Except as required by law, the Preferred Shares shall vote together with the ordinary shares at any annual or special meeting of the shareholders and not as a separate class.

The foregoing is only a summary of the rights of the Preferred Shares. For a full description, please see the proposed amended Memorandum of Association and Articles of Association, which is attached hereto as Exhibit 3.1 and is incorporated herein by reference.

### **Item 3.02. Unregistered Sale of Equity Securities.**

The disclosure in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

The sale of the Preferred Shares, warrants and, if applicable, ordinary shares, by the Company to the Investors pursuant to the Purchase Agreement is being made in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), and Rule 506 of Regulation D (or Regulation D) as promulgated by the Securities and Exchange Commission (the "Commission") under the Securities Act. The offer and sale of such securities do not involve a "public offering" as defined in Section 4(a)(2) of the Securities Act, and the Investors represented to the Company in the Purchase Agreement that it is an "accredited investor" as such term is defined in Rule 501(a) of Regulation D.

### **Item 3.03 Material Modification to Rights of Security Holders.**

The disclosure in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

### **Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year**

The disclosure in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

### **Additional Information and Where to Find It**

In connection with the transactions contemplated by the Purchase Agreement and the attached materials, the Company plans to file a definitive proxy statement with the Commission. **INVESTORS AND SHAREHOLDERS OF THE COMPANY ARE ADVISED TO READ THE PROXY STATEMENT AND ANY OTHER RELEVANT DOCUMENTS FILED WITH THE COMMISSION WHEN THEY BECOME AVAILABLE BECAUSE THOSE DOCUMENTS WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION.** The final proxy statement will be mailed or otherwise made available to shareholders of the Company. Investors and shareholders may obtain a free copy of the proxy statement, when it becomes available, and other documents filed by the Company with the Commission at the Commission's website at <http://www.sec.gov> or at the Company's website at [www.modernsystems.com](http://www.modernsystems.com). Free copies of the proxy statement, when it becomes available, and the Company's other filings with the Commission may also be obtained from the Company by directing a written request to Chief Financial Officer, MDSY International Ltd., 600 University Street, Suite 2409, Seattle, Washington 98101.

The Preferred Shares, warrants and ordinary shares offered to the Investors in the private placement will not be or have not been registered under the Securities Act of 1933, as amended, and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements.

### **Participants in the Solicitation**

The Company and its directors, executive officers and certain other members of its management and employees may be deemed to be soliciting proxies from the Company's shareholders in favor of the transactions contemplated by the purchase agreement and the attached materials. Information regarding the Company's directors and executive officers will be available in the Company's definitive proxy statement for its 2015 annual general meeting of shareholders. Additional information regarding the interests of such potential participants will be included in the proxy statement to be filed in connection with these transactions and the other relevant documents filed with the Commission when they become available.

## **Section 9 - Financial Statements and Exhibits**

### **Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

<b>Exhibit Number</b>	<b>Description</b>
3.1	Amended Articles of Association of Modsys International Ltd.
10.1	Securities Purchase Agreement dated as of November 25, 2015 by and among Modsys International Ltd. and the Purchasers Listed in Exhibit A

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

MODSYS INTERNATIONAL LTD.

(Registrant)

Date December 2, 2015

By /s/ Rick Rinaldo

Rick Rinaldo

CFO

**Exhibit  
Number****Description**

3.1	Amended Articles of Association of Modsys International Ltd.
10.1	Securities Purchase Agreement dated as of November 25, 2015 by and among Modsys International Ltd. and the Purchasers Listed in Exhibit A

**THE COMPANIES LAW, 1999**  
**A PUBLIC COMPANY LIMITED BY SHARES**  
**ARTICLES OF ASSOCIATION**  
**OF**  
**MODSYS INTERNATIONAL LTD. (Formerly known as BLUEPHOENIX SOLUTIONS LTD.)**

**PART A: DEFINITIONS AND INTERPRETATION**

1. Definitions

In these Articles, the following terms shall have the meaning appearing opposite them, unless another interpretation is expressly stated herein:

"Alternate Director"	As defined in Part E below;
"Articles" or "these Articles"	These Articles of Association, as amended from time to time by the General Meeting;
"Board" or "Board of Directors"	The Board of Directors of the Company elected or properly appointed in accordance with the provisions of these Articles; any committee of the Board of Directors to the extent that any of the authorities of the Board of Directors are delegated to it; any person authorized by the Board of Directors, to the extent so authorized, for the purposes of any matter or class of matters;
"business day"	A day on which customer services are provided by a majority of the commercial banks in Israel;
"Companies Law"	The Companies Law, 5759 – 1999, as amended from time to time, or any other law which shall replace it, and any regulations promulgated thereunder;
"Companies Ordinance"	The Companies Ordinance [New Version] 5743 – 1983, as amended from time to time, or any other law which shall replace it and any regulations promulgated thereunder;
"Company"	Modsys International Ltd.;

"Extraordinary Transaction"	A transaction which is not in the ordinary course of business of the Company; a transaction which is not on market terms or a transaction liable to have a material affect on the profitability of the Company, its assets or its liabilities; an arrangement between the Company and an Officer regarding the terms of his office and engagement, including the grant of a release from liability, insurance, and an undertaking to indemnify or an indemnity according to the indemnity permit;
"General Manager"	The person holding this title and any person having the authority of a General Manager, whatever his title;
"Memorandum"	The Memorandum of Association of the Company as amended from time to time;
"Office" or "the Offices of the Company"	The registered office of the Company at the relevant time;
"Officer"	An Office Holder, as such term is defined in the Companies Law;
"Register"	The shareholders register together with any additional shareholders register that the Company may maintain outside Israel;
"security"	Share, debenture, capital note, security, certificate or right entitling membership or participation in the Company or a claim from it (if issued in series), a certificate or right entitling the holder to acquire a security of the Company, in each case whether the security is in name form or bearer form including a debenture or option convertible into shares;
"Securities Law"	The Securities Law, 5728 – 1968, as amended from time to time, or any other law which shall replace it, and any regulations promulgated thereunder;
"simple majority"	A majority of those present and voting at a General Meeting or meeting of the Board of Directors. The vote of any person present at a meeting as aforesaid who does not vote or abstains from voting with respect to any matter on the agenda shall not be included in the number of votes cast;
"transaction"	A contract or an agreement or a unilateral decision to bestow a right or some other benefit;
"Year" or "Month"	According to the Gregorian calendar;

## 2. Interpretation

- 2.1 Subject to the provisions of Article 1 above, and unless the context expressly requires some other interpretation, the terms defined in the Companies Law or in the Companies Ordinance, as the case may be, shall bear the same meaning in these Articles; words in the singular shall include the plural and, vice versa; masculine terms shall include the feminine gender, and words indicating individuals shall include corporations.

- 2.2 Any Article in these Articles which provides for an arrangement which differs in whole or in part from any provision in the Companies Law, the Companies Ordinance or any other provisions of any law, which can be stipulated against, amended or added to, in whole or with regard to specific matters or within specific limitations, in accordance with any law, shall be considered a stipulation against the provision of the Companies Law or Companies Ordinance, as the case may be, even if the actual stipulation is not specified in the said Article, and even if it is expressly stated in the Article (in whatever form) that the effectiveness of the Article is subject to the provisions of any law.
- 2.3 In the event of a contradiction between any Article and the provisions of any law that may not be stipulated against, amended or added to, the provisions of the said law shall prevail, provided that nothing thereby shall nullify or impair the effectiveness of these Articles or any other Article therein.
- 2.4 In interpreting any Article or examining its effectiveness, the interpretation shall be given to that Article which is most likely to achieve its purpose as appearing therefrom or as appearing from the other Articles included within these Articles.

#### **PART B: THE COMPANY, ITS OBJECTS AND THE SHARE CAPITAL**

##### **3. The Company and its Objects**

- 3.1 The Company is a public Company.
- 3.2 The objects of the Company shall be as specified in the Memorandum.
- 3.3 The Company may contribute reasonable amounts for any suitable purpose or categories of purpose even if such contributions do not fall within business considerations of the Company. The Board of Directors may determine the amounts of the contributions, the purpose or category of purposes for which the contribution is to be made, and the identity of the recipients of any contribution.
- 3.4 The Company may at any time undertake any kind of business activity which is permitted to the Company under the terms of these Articles, expressly or by implication, and may refrain from these activities, whether or not the Company has commenced that kind of business activity, all in the absolute discretion of the Board of Directors.

##### **4. Limited Liability**

The liability of the shareholders of the Company for the indebtedness of the Company shall be limited as follows:

- 4.1 If the shares of the Company have a nominal value, the liability of each shareholder for the indebtedness of the Company is limited to payment of the nominal value of the shares of that shareholder.



4.2 If at any time the Company shall issue shares with no nominal value, the liability of the shareholders shall be limited to payment of the amount which the shareholders should have paid to the Company in the respect of each share according to the conditions of issue.

5. Share Capital

The authorized share capital of the Company is NIS 1,040,000 (One million, forty thousand New Israeli Shekels) divided into 25,000,000 ordinary shares of NIS 0.04 nominal value each and 1,000,000 preferred shares of NIS 0.04 nominal value each (the "**Preferred Shares**").

6. Changes in the Share Capital

6.1 The General Meeting of the Company may, from time to time, increase the share capital of the Company or change the class of authorized shares (whether issued or not), by creating new shares, whether or not all of the shares that have been resolved to be issued have in fact been issued at such time, and whether or not all of the shares which have been issued at such time have been paid in full. Such increase or change in share capital shall be in such amount and divided into shares and shall be made subject to such terms and conditions and with such rights and preferences as specified in the resolution creating the shares, and if no such directions are included within the resolution, as the Board of Directors shall determine, and in particular, the shares may be issued with preferred or subordinated rights (or without rights) to dividends, voting, repayment of capital or with respect to any other matters.

6.2 Unless the resolution authorizing the increase in share capital provides otherwise, the new shares shall be issued subject to all of the provisions of these Articles which apply to the existing share capital of the Company.

6.3 The General Meeting may, from time to time, cancel any of its unissued authorized share capital, unless there is any outstanding obligation on the part of the Company, including a conditional obligation, to issue the shares.

6.4 Subject to the provisions of any law and the provisions of these Articles, the Company shall be entitled, from time to time, to cancel any issued share capital.

7. Rights attached to the Shares and Issuance of Shares

7.1 Unless these Articles provide otherwise, all of the shares shall carry equal rights for all purposes, and each share shall vest in the holder thereof:

- (a) The right to receive an invitation to and to participate in each General Meeting of the Company, annual or special, and the right to one vote in respect of each share that he holds in every vote at each General Meeting of the Company in which he participates (whether in person or by proxy, including through a written ballot), provided that the share is owned by the shareholder on the record date specified in the resolution to convene the General Meeting;
- (b) The right to receive dividends (if and to the extent distributed), the right to receive bonus shares (if and to the extent distributed), in each case in accordance with the nominal value of the shares (without taking into account any premium paid in connection with such shares) that the holder holds in relation to the total nominal value of the shares outstanding, all on the date upon which it is resolved to distribute the dividend or bonus shares or other distribution (as the case may be) or at such later date as shall be provided in the resolution in question and in accordance with the number of shares the holder holds on the said date;

- (c) The right to participate in the distribution of any surplus assets of the Company upon liquidation in accordance with the nominal value of each share in relation to the total nominal value of the shares outstanding.

The provisions of these Articles with respect to General Meetings shall apply to all meetings of any class of shareholders, mutatis mutandis.

- 7.2 The unissued shares forming part of the authorized share capital of the Company shall at all times be under the control of the Board of Directors. Without prejudice to any special rights granted to the current shareholders of the Company prior to such date, if any, the Company (acting through the Board of Directors) may issue shares, whether included within the original capital of the Company or as a result of an increase in capital, with rights that are superior or inferior to the outstanding shares, or may issue shares which are preferred or subordinated with regard to distributions, voting rights, the right to repayment of capital or in connection with any other matter, all as the Company shall determine from time to time.
- 7.3 The Company may issue redeemable securities upon such terms as the Board of Directors shall determine. The Board of Directors may attach to redeemable securities the attributes of shares, including voting rights and the right to participate in profits.
- 7.4 The Board of Directors may pay brokerage, underwriting or agents fees in connection with any issue of securities of the Company, in such a manner as the Board of Directors shall determine, and subject to the provisions of any law.
- 7.5
- 7.5.1 In the event of an issuance of shares or other securities by the Company, the Company will have no obligation to offer such shares or other securities to the Company's shareholders first.
- 7.5.2 Notwithstanding the aforesaid and until the earlier to occur of (a) three years following the date of the closing of the merger contemplated by the Amended and Restated Agreement and Plan entered into October 14, 2014 by and among the Company, Modern Systems Corporation (formerly BluePhoenix Solutions USA, Inc.), BP-AT Acquisition Corporation, Sophisticated Business Systems, Inc., a Texas corporation doing business as "Ateras", Mindus Holdings Ltd ("**Mindus**"), Scott Miller and other stockholders listed therein, (the "**Merger Closing Date**" and the "**Merger Agreement**," respectively); and (b) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, other than any such consolidation, merger or reorganization in which the shares of capital stock of the Company immediately prior to such consolidation, merger or reorganization, continue to represent a majority of the voting power of the surviving entity (or, if the surviving entity is a wholly owned subsidiary, its parent) immediately after such consolidation, merger or reorganization (the "**Pre-Emptive Rights Term**"), Mindus (an "**Entitled Shareholder**") shall have a pre-emptive right to purchase its "pro-rata share" of all New Shares (as defined below) that the Company may, from time to time, propose to sell and issue after the Merger Closing Date (if and insofar as such transaction is in fact closed).

For the purposes of this Section 7.5.2, each Entitled Shareholder's "*pro rata share*" is equal to the ratio of (a) the number of shares of the Company's share capital of which such Entitled Shareholder is deemed to be a holder immediately prior to the issuance of such New Shares to (b) the total number of outstanding shares of the Company's share capital (including all shares of the Company's share capital issuable upon exercise or conversion or otherwise pursuant to any Vested Option that is outstanding or otherwise in effect at such time) immediately prior to the issuance of the New Shares.

The term "*New Shares*" shall mean (a) any ordinary shares of the Company, (b) any other shares of stock issued by the Company, (c) any other securities of the Company convertible into, or exchangeable or exercisable for, such shares, or (d) options, warrants or other rights to acquire any such shares.

The term "*Vested Option*" shall mean any options, restricted stock units, securities convertible into or exchangeable for ordinary shares in the Company outstanding on August 5, 2014, and which remain outstanding, for which the rights of the holders to exercise were fully vested on August 5, 2014, but expressly excluding any warrants or anti-dilution rights (and ordinary shares in the Company issued pursuant to or upon the exercise thereof) held by or for the benefit of Prescott Group Aggressive Small Cap Master Fund G.P., Prescott Group Capital Management LLC or any affiliate, assignee or successor thereof.

- 7.5.3 Until the end of the Pre-Emptive Rights Term and subject to the closing of the Merger Agreement, if the Company proposes to issue any New Shares, it shall give each Entitled Shareholder written notice of its intention, describing the New Shares, the price, the proposed issuance date and the terms and conditions upon which the Company proposes to issue the same and the number of New Shares that the Entitled Shareholder has the right to purchase in connection therewith. Each Entitled Shareholder shall have fifteen (15) days from the giving of such notice to agree to purchase its *pro rata* share of the Equity Securities for the price and upon the terms and conditions specified in the notice by giving written notice to Company and stating therein the quantity of New Shares to be purchased. Notwithstanding the foregoing, Company shall not be required to offer or sell such New Shares to an Entitled Shareholder if such offer or sale would cause Company to be in violation of applicable federal securities laws and/or of the Companies Law and/or any other applicable law and/or these Articles of Association, by virtue of such offer or sale. Notwithstanding anything herein to the contrary, an Entitled Shareholder's rights under this Section 7.5, shall be exercisable only with respect to all (and not a portion of) of an Entitled Shareholder's *pro rata* share.
- 7.5.4 In lieu of giving notice to the Entitled Shareholder prior to the issuance of New Shares as provided in Section 7.5.3 above, Company may elect to give notice to each Entitled Shareholder within ten (10) days after the issuance of New Shares. Such notice shall describe the type, price and terms of the New Shares issued thereby and the number of New Shares that the Entitled Shareholder has the right to purchase in connection therewith. Subject to all applicable law and required consents, each Entitled Shareholder shall have twenty (20) days from the date of receipt of such notice to elect, by written notice to the Company, to purchase up to the number of shares that would, if purchased by such Entitled Shareholder, maintain such Entitled Shareholder's *pro rata* share (as set forth in Section 7.5.2) of the Company's share capital. The closing of such sale shall occur within sixty (60) days of the date of notice to the Entitled Shareholder or at such later date if so required subject to applicable law.

7.5.5 Notwithstanding the aforesaid, the preemptive rights established under this Section 7.5 shall have no application to any of the following:

- (a) ordinary shares and/or options, warrants or other ordinary share purchase rights and the common stock issued pursuant to such options, warrants or other rights issued or to be issued after the Merger Closing Date to employees, officers or directors of, or consultants or advisors to Company or any subsidiary, pursuant to stock purchase or stock option plans, RSU award plans or other arrangements and incentive plans adopted by the Company;
- (b) shares of the Company issued or issuable pursuant to any rights or agreements, options, warrants, restricted share units, or convertible securities outstanding and vested as of August 5, 2014; and shares of the Company issued pursuant to any such rights or agreements granted after the Merger Closing Date, so long as the preemptive rights established by this Section 7.5 were complied with, waived, or were inapplicable pursuant to any provision of this Section 7.5 with respect to the initial sale or grant by Company of such rights or agreements;
- (c) any New Shares issued pursuant to a merger, consolidation, acquisition or similar business combination;
- (d) any New Shares issued in connection with any stock split, stock dividend or recapitalization by the Company;
- (e) any New Shares issued pursuant to any equipment loan or leasing arrangement, real property leasing arrangement, or debt financing from a bank or similar financial or lending institution;
- (f) any New Shares issued in connection with strategic transactions involving the Company and other entities, including, without limitation, (i) joint ventures, manufacturing, marketing or distribution arrangements or (ii) technology transfer or development arrangements, provided such transaction is approved by Company's Board of Directors, including Scott Miller, so long as he is serving on the Board of Directors; and
- (g) any New Shares issued in connection with the Merger Agreement.

7.5.6 Entitled Shareholders may not assign any of their to pre-emptive rights to purchase New Shares as set forth herein

7.5.7 Any notice required or permitted under this Section 7.5 shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, or 48 hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed to the party to be notified at such party's address or facsimile number as set forth below, or as subsequently modified by written notice.

7.6 If at any time the share capital is divided into different classes of shares, the General Meeting may, unless the terms of issue of that class of shares provide otherwise, amend, convert, expand, add to or otherwise alter the rights, preferences, limitations and directions relating to those shares (or which do not relate at such time to one of the classes), provided that the holders of the class of shares that have been issued and whose rights will be affected thereby agree thereto at a meeting of the holders of the shares of the said class.

The special rights of the holders of any shares or class of shares that have been issued, including shares issued with preferred rights or other special rights, shall not be deemed to have been altered or impaired as a result of the creation or issue of additional shares of equal rank or as a result of the cancellation of authorized share capital of the same class which have not yet been issued, unless it is otherwise specified in the conditions of issue of those shares.

The consolidation or division of the share capital of the Company shall not be deemed to amend the rights attached to the shares which are the subject of such consolidation or division.

## 7.7 Special Rights of the Preferred Shares

### 7.7.1 Liquidation Rights.

(a) Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary (a "**Liquidation Event**"), before any distribution or payment shall be made to the holders of any ordinary shares, the holders of Preferred Shares shall be entitled to be paid out of the assets of the Company legally available for distribution (or the consideration received by the Company or its shareholders in an Acquisition) for each Preferred Share held by them, an amount equal to \$3.00 per Preferred Share (as adjusted for stock splits, combinations, recapitalizations and the like). If, upon any such Liquidation Event, the assets of the Company shall be insufficient to make payment in full to all holders of Preferred Shares of the liquidation preference set forth in this Section 7.7.1(a), then such assets (or consideration) shall be distributed among the holders of Preferred Shares at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(b) After the payment of the full liquidation preference of the Preferred Shares as set forth in Section 7.7.1(a) above, the remaining assets of the Company legally available for distribution (or the consideration received by the Company or its shareholders in an Acquisition), if any, shall be distributed ratably to the holders of the ordinary shares.

(c) An Asset Transfer or Acquisition (each as defined below) shall be deemed a Liquidation Event for purposes of this Section 7.7.1.

(i) For the purposes of this Section 7.7.1, unless the holders of a majority of the then-outstanding Preferred Shares agree otherwise: (A) “**Acquisition**” shall mean (1) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, other than any such consolidation, merger or reorganization in which the shares of capital stock of the Company immediately prior to such consolidation, merger or reorganization, continue to represent a majority of the voting power of the surviving entity (or, if the surviving entity is a wholly owned subsidiary, its parent) immediately after such consolidation, merger or reorganization, (provided that, for the purpose of this Section 7.7.1, all ordinary shares issuable upon exercise of options outstanding immediately prior to such consolidation or merger or upon conversion of convertible securities outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of capital stock are converted or exchanged); provided that an Acquisition shall not include any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Company or any successor or indebtedness of the Company is cancelled or converted or a combination thereof or (2) any transaction or series of related transactions to which the Company is a party in which in excess of fifty percent (50%) of the Company’s voting power is transferred; and (B) “**Asset Transfer**” shall mean a sale, lease, exclusive license or other disposition of all or substantially all of the assets of the Company.

(ii) In any Acquisition or Asset Transfer, if the consideration to be received is securities of a corporation or other property other than cash, its value will be deemed its fair market value as determined in good faith by the Board on the date such determination is made.

**7.7.2 Conversion Rights.** The holders of the Preferred Shares shall have the following rights with respect to the conversion of the Preferred Shares into ordinary shares (the “**Conversion Rights**”):

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 7.7.2, any Preferred Shares may, at the option of the holder, be converted at any time into fully paid and nonassessable ordinary shares. The number of ordinary shares to which a holder of Preferred Shares shall be entitled upon conversion shall be the product obtained by multiplying the “Preferred Share Conversion Rate” then in effect (determined as provided in Section 7.7.2(b)) by the number of shares of Preferred Shares being converted.

(b) **Preferred Share Conversion Rate.** The conversion rate in effect at any time for conversion of the Preferred Shares (the “**Preferred Share Conversion Rate**”) shall be the quotient obtained by dividing \$2.00 (as adjusted for stock splits, combinations, recapitalizations and the like) by the “Series Preferred Conversion Price,” calculated as provided in Section 7.7.2(c).

(c) **Preferred Share Conversion Price.** The conversion price for the Preferred Shares shall initially be \$2.00 (as adjusted for stock splits, combinations, recapitalizations and the like) (the “**Preferred Share Conversion Price**”). Such initial Series Preferred Conversion Price shall be adjusted from time to time in accordance with this Section 7.7.2. All references to the Preferred Share Conversion Price herein shall mean the Preferred Share Conversion Price as so adjusted.

(d) **Adjustment for Stock Splits and Combinations.** If at any time or from time to time on or after the date that the first Preferred Share is issued (the “**Original Issue Date**”) the Company effects a subdivision of the outstanding ordinary shares, the Preferred Share Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if at any time or from time to time after the Original Issue Date the Company combines the outstanding ordinary shares into a smaller number of shares, the Preferred Share Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 7.7.2(d) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(e) **Adjustment for Reclassification, Exchange, Substitution, Reorganization, Merger or Consolidation.** If at any time or from time to time on or after the Original Issue Date the ordinary shares issuable upon the conversion of the Preferred Shares is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification, merger, consolidation or otherwise (other than an Acquisition or a subdivision or combination of shares provided for elsewhere in this Section 7.7.2), in any such event each Preferred Share shall thereafter be convertible in lieu of the ordinary shares into which it was convertible prior to such event into the kind and amount of securities, cash or other property that a holder of the number of ordinary shares of the Company issuable upon conversion of one share of Preferred Shares immediately prior to such recapitalization, reclassification, merger, consolidation or other transaction would have been entitled to receive pursuant to such transaction, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 7.7.2 with respect to the rights of the holders of Preferred Shares after the capital reorganization to the end that the provisions of this Section 7.7.2 (including adjustment of the Preferred Share Conversion Price then in effect and the number of shares issuable upon conversion of the Preferred Shares) shall be applicable after that event and be as nearly equivalent as practicable.

(f) **Optional Conversion Notice.** Each holder of Preferred Shares who desires to convert the same into ordinary shares pursuant to this Section 7.7.2 shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of Preferred Shares being converted. Thereupon, the Company shall promptly issue the number of shares of ordinary shares to which such holder is entitled, rounded to the closest whole ordinary share.

(g) **Mandatory Conversion.** If at any time after the two-year anniversary of the Original Issue Date, the VWAP equals or exceeds \$5.00 per ordinary share (as adjusted for stock splits, combinations, recapitalizations and the like) for a period of ten consecutive trading days, each then-outstanding Preferred Share will be automatically converted into ordinary shares at the then-applicable Preferred Share Conversion Rate. For purposes of this Section 7.7.2(g), “**VWAP**” shall mean (i) the volume-weighted average sale price per ordinary share on the Principal Market in respect of the period from the open of trading until the close of trading on the Principal Market on such date of determination or (ii) if such volume-weighted average price described in clause (i) is unavailable or not provided for any reason, or there is no Principal Market for the ordinary shares, the market price per ordinary share on such date, determined using a volume-weighted average method by an independent investment bank. “**Principal Market**” means, with respect to any day on which the ordinary shares are listed or admitted to trading or quoted on any securities exchange or quotation facility (whether U.S. national or regional or non-U.S.), the principal such exchange or facility on which the ordinary shares are so listed or admitted or so quoted.

### 7.7.3 Dividend Rights.

(a) In the event dividends are paid on any ordinary share, the Company shall pay an additional dividend on all outstanding Preferred Shares in a per share amount equal (on an as-if-converted to ordinary share basis) to the amount paid or set aside for each ordinary share.

(b) The holders of Preferred Shares shall be entitled to receive dividends at a rate of eight percent (8%) per annum of the Original Issue Price of the Preferred Shares. The “**Original Issue Price**” of the Preferred Shares shall be \$2.00 per share (as adjusted for stock splits, combinations, recapitalizations and the like). Such dividends shall accrue on an annual basis, commencing on the date of original issuance of such shares, whether or not earned or declared by the Board. All dividends payable on the Preferred Shares in accordance with this Section 7.7.3(b) shall be paid

“in kind” by issuing additional fully paid and nonassessable Preferred Shares at the rate of one share for each \$2.00 (as adjusted for stock splits, combinations, recapitalizations and the like). The issuance of such shares of Series Preferred shall constitute full payment of such dividend and all such Preferred Shares which may be issued in payment of such dividend shall, upon issuance, be duly authorized, validly issued, fully paid and nonassessable. No fractional shares will be issued by the Company for the purposes of paying dividends. In lieu of any fractional share that would otherwise be issued in respect of a dividend payment, the number of Preferred Shares issued to each holder of Preferred Shares shall be rounded up to the closest whole Preferred Share.

7.7.4 Voting Rights. Each holder of shares of the Preferred Shares shall be entitled to the number of votes equal to the number of ordinary shares into which such Preferred Shares could be converted (pursuant to Section 7.7.2 hereof) immediately after the close of business on the record date fixed for such meeting. Except as required by law, the Preferred Shares shall vote together with the ordinary shares at any annual or special meeting of the shareholders and not as a separate class.

## 8. Shareholders

- 8.1 Unless otherwise specified in any law or in these Articles, the Company shall be entitled to treat the registered holder of any share, including a shareholder registered as holding a share on trust, as the absolute owner, and accordingly shall not, except as ordered by a court of competent jurisdiction, or as required under any law, be bound to recognize any equitable or other claim to, or interest in, such share of any other person.



- 8.2 The Company will be entitled, in accordance with its absolute discretion, to transfer and to pay any amount (in any manner of payment that it selects), any asset of any sort, including bonus shares, to shareholders of the Company whose shares are not registered in their name in the Register, by executing such transfer to a Registration Company or to members of the stock exchange on which the shares of the Company are traded or to a trustee that the Company shall appoint for such matter. As long as the Company has acted based upon information that appears to have been provided to the Company by the shareholders thereof (including information provided by a Registration Company or a member of the stock exchange), the Company shall not be responsible for any unpaid amount or any asset that was not transferred to such shareholder, and the Company shall be deemed as if it has paid the said amounts and transferred the said assets, as the case may be, in full, on the date such amounts or assets were transferred to such Registration Company, member of the stock exchange or trustee.
- 8.3 The Board of Directors of the Company may, from time to time, settle procedures in connection with determining the identity of shareholders and in connection with the manner in which any right, benefit, asset or amount should be transferred to or distributed among them, including, without limitation, with respect to the distribution of dividends or bonus shares, and with respect to the grant of any right, asset or other benefit to the shareholders of the Company in their capacity as such. Any amounts, bonus shares, rights or property of any kind that are transferred to a shareholder (including to his agent, attorney or to any other person that the shareholder directs) whose identity has been authenticated in accordance with the procedures as aforesaid shall be deemed settlement in full and release of the indebtedness of the Company towards any person claiming a right to such payment, transfer, distribution or grant of right, as the case may be.

### **PART C: THE SHARES**

#### **9. Share Certificates**

- 9.1 Share certificates shall be signed by two directors of the Company, or by any other person authorized by the Board of Directors, alongside the name of the Company.
- 9.2 Each shareholder whose name appears in the Register shall be entitled to receive one share certificate in respect of the shares registered in his name, or, if the Board of Directors so authorizes (and after payment of the amount which the Board of Directors shall determine from time to time) a number of share certificates, each one in respect of one or more of these shares. Each share certificate shall indicate the name of the shareholder, the number of shares in respect of which it has been issued, and any additional information as shall be determined by the Board of Directors.
- 9.3 A certificate in respect of a share registered in the names of two or more persons shall be delivered to such person as all of the registered shareholders of that share shall direct, and in the absence of agreement, to the person whose name appears first on the Register from among the names of the joint owners.
- 9.4 If a share certificate is defaced, lost or destroyed, it may be replaced, upon payment of such fee, and upon the furnishing of such evidence of ownership and such indemnity, as the Board of Directors may think fit.

9.5 The Company shall not issue shares other than shares that are paid in full. Shares shall be deemed to have been paid in full if the full amount of the nominal value and any premium thereon has been paid, in accordance with the terms of issue of the shares.

9.6 The Company may issue bearer shares or exchange a bearer certificate for a bearer share certificate.

10. Transfer of Shares

10.1 A transfer of shares shall be effected by way of delivery of a share transfer deed in the form set forth below, which shall include all of the details and bear the signature of the transferor and the transferee and of the witnesses to their signatures.

10.2 The transferor shall be deemed to have remained a shareholder until the name of the transferee is registered in the Register in respect of the share that is transferred.

10.3 The Company is entitled to require payment for the registration of a transfer of shares in the Register (including registration of a transfer of shares registered in the name of a Registration Company to the names of the owner of those shares) in such amount as the Board of Directors shall determine from time to time.

10.4 The Board of Directors or any other person authorized thereto by the Board of Directors for such purpose, is entitled:

(a) to refuse to recognize a share transfer unless the certificate of the transferred shares is being presented, and the transferor provides any additional details necessary to prove his or her entitlement to transfer the shares. The share transfer deeds that are registered shall remain with the Company. Any share transfer deed that the Board of Directors refuses to register shall be returned to the person delivered it to the Company, at his request;

(b) to refuse to recognize any share transfer until receipt of payment in respect of registration of the transfer.

10.5 The share transfer deed shall be substantially in the form set forth below, or in such regular or customary form as shall be approved by the Board of Directors:

"The undersigned, I.D. Number/Company Number \_\_\_\_\_ (hereinafter "the Transferor") in consideration for the payment of NIS \_\_\_\_\_ that has been paid to me by \_\_\_\_\_, whose address is at \_\_\_\_\_, (hereinafter "the Transferee") hereby transfer to the Transferee \_\_\_\_\_ shares of NIS \_\_\_\_\_ each, numbered from \_\_\_\_\_ until \_\_\_\_\_ inclusive, in BluePhoenix Solutions Ltd., so that the Transferee shall hold the same in accordance with the terms upon which the undersigned held the shares immediately prior to signature of this deed;

and the Transferee, agrees to receive the abovementioned shares upon the abovementioned terms.

IN WITNESS WHEREOF the parties have executed this deed, the \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
 Transferor

\_\_\_\_\_  
 Transferee

\_\_\_\_\_  
 Witness to the signature of Transferor

\_\_\_\_\_  
 Witness to the signature of Transferee"

- 10.6 Notwithstanding other provisions of these Articles, the Company shall amend the Register by order of the court, or if the Board of Directors is satisfied that the legal requirements for the assignment or transmission of the right to shares are fulfilled.
- 10.7 The provisions of this Article shall apply also a transfer of a right to a share held by a number of holders jointly, mutatis mutandis.
- 10.8 The Company may destroy share transfer deeds seven years after registration of the transfer, and share certificates that have been cancelled three years after cancellation, and there shall be a presumption that all share transfer deeds and certificates that have been destroyed were in full force and that the transfers and cancellations and the registrations that were effected based thereon were lawfully carried out.

11. Decedents' Shares

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 of Directors 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 member in respect of such share, or may, transfer such share.

12. Receivers and Liquidators

The Company may recognize the receiver or liquidator of any corporate member in winding-up or dissolution, or the receiver or trustee in bankruptcy of any member, as being entitled to the shares registered in the name of such member. The receiver or liquidator of a corporate member in winding-up or dissolution, or the receiver or trustee in bankruptcy of any member, upon producing such evidence as the Board of Directors deems 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 of Directors (which the Board of Directors may grant or refuse in its absolute discretion), be registered as a member in respect of such shares, or may, subject to the regulations as to transfer herein contained, transfer such shares.

**PART D – GENERAL MEETINGS**

13. Annual General Meeting

The Company shall hold an Annual General Meeting once every year and no later than fifteen months following the last Annual General Meeting held. The Agenda for the Annual Meeting shall be determined by the Chairman of the Board of Directors in accordance with the instructions of the Board of Directors and shall include, inter alia, discussing the Financial Statements, any matter to be discussed at such meeting according to these Articles or any law, and any other matter that the Board of Directors may determine. To the extent required, the agenda may include appointment of directors, appointment of an auditor, receipt of report from the Board of Directors regarding the fees of the auditor in connection with the audit and any other matter that may require the convening of a Special Meeting.

14. Special Meeting

All General Meetings other than Annual General Meetings shall be called "Special Meetings". The Board of Directors may, whenever it deems fit, and it shall, within 21 days after receiving a demand in writing by shareholders or directors, as provided in the Companies Law, convene a Special Meeting, at such time and place, as may be determined by the Board of Directors. Any such demand must state the purpose for which the meeting is to be convened, be signed by the petitioners, and deposited at the Office.

15. Record Date

Notwithstanding any provision of these Articles to the contrary, and to allow the Company to determine the shareholders entitled to notice of, or to vote at, any General Meeting, or to express consent to or dissent from any corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of, or to take or be the subject to, any other action, the Board of Directors may fix, a record date, which shall not be more than forty (40) days (or any longer period permitted under the Companies Law), nor less than four (4) days before the date of such meeting or other action. A determination of holders of record entitled to notice of or to vote at a meeting shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

16. Convening the Meeting

16.1 The time and place of each General Meeting shall be determined by the Board of Directors or by the Chairman thereof. If no location for the convening of the meeting is specified by the Board of Directors or by the Chairman of the Board of Directors, the meeting shall convene at the Offices of the Company.

16.2 The Board of Directors may, in its absolute discretion, resolve to enable persons entitled to attend a General Meeting to do so by simultaneous attendance and participation at the principal meeting place and a satellite meeting place or places anywhere in the world and the shareholders present in person, by proxy or by written ballot at satellite meeting places shall be counted in the quorum for and entitled to vote at the General Meeting in question, and that meeting shall be duly constituted and its proceedings valid, provided that the Chairman of the General Meeting is satisfied that adequate facilities are available throughout the General Meeting to ensure that all shareholders attending at the meeting place are able to:

- (a) participate in the business for which the meeting has been convened;
- (b) hear all persons who speak (whether by the use of microphones, loudspeakers audio-visual communications equipment or otherwise) at the principal meeting place and any satellite meeting place, and
- (c) be heard by all other persons so present in the same way.

The Chairman of the General Meeting shall be present at, and the meeting shall be deemed to take place at, the principal meeting place.

16.3 Unless otherwise expressly directed by a court of competent jurisdiction, the provisions of these Articles shall apply, with such changes as required in the circumstances, to the convening, conduct and proceedings of a General Meeting convened by order of a court of competent jurisdiction and of a General Meeting lawfully convened other than by the Board of Directors, and to any vote at such meeting.

16.4 The Company shall not be required to give notice under Section 69(b) of the Companies Law.

17. Proceedings at General Meetings

17.1 No discussion shall be commenced at a General Meeting unless a quorum is present at the commencement of the meeting.

Other than where a different rule is provided in these Articles or by any law or by a court of competent jurisdiction, a quorum shall be two or more shareholders present in person or by proxy or by written proxy, who hold an aggregate of at least 35% (thirty five percent) of the voting rights in the Company.

17.2 If within an hour from the time set for the General Meeting no quorum is present, the meeting shall automatically be adjourned to the same day and same time one week thereafter (unless such day shall fall on a public holiday either in Israel or the United States, in which case the General Meeting will be adjourned to the first day, not being Friday, Saturday or Sunday, which follows such public holiday), at the same place fixed for the original meeting (with no need for any notice to the shareholders) or until such other later time if such time is specified in the original notice convening the General Meeting, or if the Company gives notice to the shareholders no less than 72 hours before the date fixed for the adjourned meeting.

17.3 If at an adjourned meeting there is no quorum present half an hour after the time set for the meeting, any two shareholders present in person or by proxy, shall constitute a quorum.

17.4 Notwithstanding any other provision in these Articles, if the convening of a Special Meeting is demanded other than by resolution of the Board of Directors of the Company, the adjourned meeting shall take place only if there are present at least two shareholders holding voting rights in an amount no less than the amount required in order to convene the original meeting. If there is no quorum as aforesaid at the adjourned meeting, the meeting shall not be adjourned to another date and all of the proposed resolutions on the agenda shall be deemed to have been rejected by the meeting.

17.5 The Chairman of the Board of Directors of the Company shall act as Chairman of every General Meeting of the Company. If there is no Chairman of the Board of Directors and the Board of Directors has not determined that another individual shall act as Chairman of the meeting as aforesaid, or if the proposed Chairman is not present fifteen minutes after the time set for the meeting, or if that person does not wish to act as Chairman of the meeting, the shareholders present at the meeting shall in person or by their proxies elect a shareholder or a proxy present at the meeting to act as Chairman of the meeting.

- 17.6 The Chairman of the meeting may, with the consent of a meeting at which a quorum is present, postpone the meeting from time to time and from place to place, and he must postpone the meeting as aforesaid if the meeting directs him to do so. At a resumption of the meeting that has been adjourned as aforesaid, only those matters which were on the agenda of the original meeting and the discussion of which was not completed or commenced, shall be discussed. Notwithstanding anything in these Articles to the contrary, if a meeting is adjourned for twenty-one (21) days or more, a notice shall be given of the adjourned meeting as in the case of an original meeting. Except as aforesaid, no shareholder shall be entitled to receive any notice of an adjournment or of the business to be transacted at the adjourned meeting.
- 17.7 At any General Meeting, a resolution, in respect of any business put to a vote at the meeting shall be decided by a poll. Such poll shall be held in the manner and at the time and place as the Chairman of the General Meeting directs (including the use of ballots or tickets), whether immediately or after an interval or postponement, or in any other way, and, subject to the other provisions of these Articles and the Companies Law, the results of the poll shall be deemed to be a resolution of the General Meeting. The holding of a poll shall not prevent the continued business of the General Meeting.
- 17.8 Unless specified otherwise under any law, each resolution of the General Meeting (including a resolution with respect to the amendment, alteration or addition to these Articles or replacement thereof) shall be carried by a simple majority.
- 17.9 The announcement by the Chairman that a resolution has been carried unanimously or by a certain majority or has been rejected shall be prima facie evidence of that fact. An announcement as aforesaid and a notification to this effect that has been recorded in the minute books of the Company shall be prima facie evidence of the matter stated therein and there shall be no need to prove the number of votes or the proportion of the votes cast in favor or against the proposed resolution.

18. Voting

- 18.1 Each share shall entitle the holder thereof to one vote for a share which held by him and to which a voting right is attached without regard to the nominal value of that share, unless the terms of issue of the share provide otherwise.
- 18.2 A corporation which is a shareholder may authorize an officer in the corporation to be its representative at any meeting of the Company. A person authorized as aforesaid shall be entitled to use, on behalf of the corporation that he represents, the same powers which the corporation itself could have used if it was an individual shareholder.
- 18.3 A shareholder who is a minor and a shareholder who has been declared legally incompetent by a court of competent jurisdiction may vote only through his guardian, and the said guardian may vote by proxy.
- 18.4 In the case of joint owners of a share, the vote of the principal joint owner shall be accepted by the Company, whether given in person or by proxy, and the vote of the remaining joint owners shall not be accepted. For the purpose of this Article, the principal joint owner shall be deemed to be the shareholder whose name first appears in the Register with respect to the relevant shares.

19. Voting by Proxy

- 19.1 A shareholder may appoint a proxy to vote in his place and the proxy need not be a shareholder in the Company. The appointment of a proxy shall be in writing signed by the person making the appointment or by an attorney authorized for this purpose, and if the person making the appointment is a corporation, by a person or persons authorized to bind the corporation.
- 19.2 The document appointing the proxy to vote (the "Appointment") and power of attorney (if any) pursuant to which the Appointment has been signed, or a copy thereof certified to the satisfaction of the Board of Directors, shall be deposited in the Office (or at such other place in Israel or abroad as the Board of Directors may direct from time to time) or at the location set for the meeting not less than 2 (two) hours (or not less than 24 (twenty four) hours with respect to a meeting to be held outside of Israel), before the time of the meeting, or shall be delivered by hand to the Chairman at the commencement of the meeting, provided that the Chairman of the meeting may waive this requirement for any meeting. Any question that may be raised concerning the eligibility of an Appointment will be decided by the Chairman of the meeting and his decision will be final.
- 19.3 A shareholder holding more than one share may appoint more than one proxy, subject to the following provisions:
- (a) The Appointment shall indicate the class and number of shares in respect of which it is given;
  - (b) If the number of the shares of any class specified in the Appointments that have been given by one shareholder exceeds the number of shares of that class held by him, all of the Appointments given by that shareholder shall be void;
  - (c) If only one proxy is appointed by the shareholder and the Appointment does not indicate the number and class of shares in respect of which it is given, the Appointment shall be deemed to have been given with respect to all of the shares owned by the shareholder at the time for determining the entitlement to participate and vote at the meeting (if the Appointment is given for a specific meeting) or in respect of all of the shares held by the shareholder at the date of depositing the Appointment with the Company or on the date of delivery to the Chairman of the meeting, as the case may be. In the event that an Appointment is given with respect to a number of shares less than the number of shares held by the shareholder, the shareholder shall be deemed to have abstained from voting with respect to the remainder of the shares that he owns and the Appointment shall be valid with respect to the number of shares specified therein.
- 19.4 Each appointment of a proxy, whether for a specific meeting or otherwise, shall, to the extent that the circumstances permit, be substantially in the following form:

"I, \_\_\_\_\_ (I.D. Number/Company Number \_\_\_\_\_) of \_\_\_\_\_, in my capacity as shareholder of BluePhoenix Solutions Ltd., hereby appoint \_\_\_\_\_ (I.D. Number/Company Number \_\_\_\_\_) of \_\_\_\_\_, or in his/her absence, \_\_\_\_\_ (I.D. Number/Company Number \_\_\_\_\_) of \_\_\_\_\_, to vote on my behalf and in my name with respect to \_\_\_\_\_ Class \_\_ shares held by me at the (annual/special) meeting of the Company that shall be held on the \_\_\_ day of \_\_\_\_\_, and at any adjournment of such meeting.

In witness whereof I have signed hereon this \_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Name and Signature"

- 19.5 A vote cast pursuant to an Appointment appointing a proxy shall be valid notwithstanding the death of the person making the Appointment or the cancellation of the power of attorney or the transfer of the share in respect of which the vote is cast as aforesaid, unless notice in writing of the death, cancellation or transfer as aforesaid has been received in the Offices of the Company or by the Chairman of the meeting, by the time of the vote.
- 19.6 Subject to the provisions of the Companies Law and any other regulations that may be enacted from time to time pursuant thereto, the Board of Directors is entitled, from time to time, at its absolute discretion, to determine which resolutions may also be approved at the general meeting or any other type of meeting (whether applying generally or applying one-time only) by proxy and to change the said matters determined by the General Meeting and also to determine from time to time any administrative provisions with respect to any matter connected with the proxies or position papers.
- Should the Board of Directors formulate procedures and matters as specified above, such procedures and matters will be brought to the attention of the shareholders such that they will be available for review by the shareholders at any reasonable time at the Office or at any other place or in any other manner to be determined by the Board of Directors.
- 19.7 Subject to the provisions of any law, resolutions approved by a General Meeting, at which the shareholders are entitled to vote by proxy, will not be invalidated if the Company, in error:
- (a) did not send to the shareholders a proxy, notice of convening the General Meeting or a notice regarding the possibility of voting at that General Meeting by way of proxy or if it did not send any position paper or any other document to the shareholders;
  - (b) sent documents and notices late or to an incorrect address;
  - (c) did not count the shareholders votes or counted the votes as said but in an incorrect or imprecise manner, provided that such counting of votes did not result in a change of the resolutions passed at the General Meeting or in the derogation of the validity of the General Meeting or of the validity of the passed resolution had the votes for such resolution been counted precisely.



- (d) did not act in accordance with the provisions of the law or procedures prescribed by the Board of Directors with regard to voting by way of proxies and the sending of position papers.

20. Powers of the General Meeting

The Company's decisions on the following matters shall be adopted by the General Meeting in accordance with the required majority provided by with any law and any provision of these Articles:

- 20.1 Changes in the Articles.
- 20.2 Changes in the Memorandum with respect to the Company's name and its purposes only.
- 20.3 Appointment of the Company's auditor and the termination of his service.
- 20.4 Appointment of directors, including outside directors, and the termination of their service, all as provided in these Articles.
- 20.5 The increase and reduction of the registered share capital and a change of the rights attached to the existing shares, all in accordance with the provisions of any law.
- 20.6 A merger, in accordance with the provisions of any law.
- 20.7 Approval of acts and transactions that require the approval of the General Meeting under the provisions of any law or of these Articles.
- 20.8 Exercise of the powers of the Board of Directors in the events prescribed under the law.

**PART E: THE BOARD OF DIRECTORS**

21. Appointment and Dismissal of Directors

- 21.1 Until such time as the General Meeting decides otherwise, the number of members of the Board of Directors shall be set by the Board from time to time, provided, however, that such number shall be not less than three (3) and not more than six (6).
- 21.2 The directors will be elected by the General Meeting (whether at the Annual General Meeting or at a Special Meeting) on the agenda of which will be the appointment of directors.
- 21.3 For as long as the Company is required in accordance with any law, to appoint outside directors, the Company's General Meeting (whether the Annual General Meeting or Special Meeting) shall appoint any number of outside directors, on any conditions in a manner prescribed by law.

- 21.4 In addition to the directors who are appointed by the General Meeting as aforesaid, the Board of Directors of the Company may at its discretion appoint additional directors, provided that the number of members of the Board of Directors after such appointment shall not exceed the maximum number of directors fixed in these Articles.
- 21.5 Subject to the provisions of any law regarding the cessation of the service of outside directors, the General Meeting is entitled to dismiss a director, including a director that was not appointed by the General Meeting, before the completion of his service for any reason, provided that the director is given a reasonable opportunity to bring his position before the General Meeting.
- 21.6 Any dismissal, replacement, appointment or re-appointment of a director that was appointed by the Board of Directors shall be approved by the majority of directors present and voting at a meeting of the Board of Directors, in which the agenda includes the appointment.
- 21.7 An organ that is entitled to appoint a director will be entitled to determine the commencement of his service that will either be at the time of the appointment of that director or at a later time.
- 21.8 The service of a director that was appointed by the General Meeting will cease (if he has not been dismissed earlier by the General Meeting, as described above) at the end of the first Annual General Meeting held after the said date of appointment (without a need to give the director an opportunity to present his position).
- 21.9 Subject to the provisions of any law, a director who has ceased to serve as a director is eligible to be re-appointed.
- 21.10 Subject to the provisions of any law, the office of a director (including the office of an Alternate Director) shall be vacated automatically in each of the following events:
- (a) upon his death;
  - (b) if he is declared to be legally incompetent;
  - (c) if he is declared bankrupt, and if the director is a corporation, if a liquidator, receiver, special manager or trustee (in each case temporary or permanent) is appointed for the corporation or its assets within the context of a creditors scheme of arrangement or an order of stay of proceedings;
  - (d) if he resigns from office by written notice to the Company, to the Chairman of the Board of Directors or to the Board of Directors, in which case the office of the director shall be vacated on the date of service of notice or at such later date as specified in the notice as the effective date of resignation;
  - (e) if his term of office was terminated in accordance with the provisions of these Articles;
  - (f) if the director is convicted in a final judgment of an offence of a nature which disqualifies a person from serving as a company director;

- (g) if a court of a competent jurisdiction decides to terminate his office in a decision or judgment for which no stay of enforcement granted.

21.11 Notwithstanding anything stated in these Articles, the appointment of a director or an Alternate Director, as the case may be, (together "the Appointee") shall not come into effect before the Appointee has delivered to the Company a notice in writing in which the Appointee declares that he is lawfully competent to be appointed as a director of the Company and that he agrees to be appointed as a director of the Company. The notice shall include the personal details of the appointee required by law. The form of the aforesaid notice shall be set down by the Board of Directors from time to time and may be in the form of an affidavit prepared and authenticated in accordance with the law.

21.12 If any director is not appointed, or if the appointment of any director does not come into effect, or if the office of a director becomes vacant, the remaining directors may act in any manner provided that their number does not fall below the minimum number specified in these Articles. If the number of directors falls below the minimum number as aforesaid, the directors shall not be able to act other than in emergencies, or for the purpose of convening a General Meeting, or for the purpose of the appointment of additional directors by the Board of Directors.

22. Alternate Director

22.1 A director may at any time appoint an alternate ("the Alternate Director"), who is competent to serve as director of the Company and complies with the provisions of the Companies Law. A person who at that time is serving as a director or an Alternate Director of another director may not serve as an Alternate Director. The Alternate Director shall have all of the duties, rights and authorities (other than the authority to appoint an alternate for himself) which the director who appointed him has, provided, however, than an Alternate Director shall have no standing in any meeting in which the director who appointed him is present.

22.2 The appointment of an Alternate Director and the cancellation thereof shall be by a written notice to be delivered by the appointing director to the Company. The appointment and cancellation of an appointment shall come into effect on the date of delivery of the notice to the Company or at the date specified in the notice, whichever is later.

22.3 A director who appoints an Alternate Director may at any time cancel the appointment. In addition, the office of an Alternate Director shall be vacated whenever the Alternate Director notifies the Company in writing of his resignation, with effect from the date of his notice or whenever the director who has appointed the Alternate Director ceases to be a director of the Company for whatever reason.

22.4 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.

23. Reserved.

24. Chairman of the Board of Directors

- 24.1 The Board of Directors may appoint one of the directors (other than an Alternate Director) to act as a Chairman of the Board of Directors, remove such Chairman from office and appoint another person in his or her place. The Chairman of the Board of Directors shall not have an additional vote at meetings of the Board of Directors, but shall have a casting vote in case of even votes. An Alternate Director shall not have a casting vote.
- 24.2 The service of the Chairman of the Board of Directors continues even after the convening of the General Meeting at which directors are appointed or dismissed and will cease upon the occurrence of any of the following events:
- (a) the completion of the period of service that was determined in the appointment resolution;
  - (b) where the Chairman of the Board of Directors resigns such position by a written notice to the Board of Directors. In such a case, his service will cease on the date upon which the notice is delivered or on the date prescribed in the notice to be the effective date of the resignation, whichever is later.
  - (c) the Chairman of the Board of Directors ceases to serve as a director for any reason;
  - (d) the Chairman is dismissed by the Board of Directors.
- 24.3 The Chairman of the Board of Directors may, from time to time by a written notice to the Board of Directors, appoint another director to act as a Deputy Chairman of the Board of Directors, to dismiss the Deputy Chairman and to appoint another in his place, provided that the tenure of the Deputy Chairman of the Board of Directors shall not cease even if the person who appointed him ceases to act as Chairman of the Board of Directors or as a director, unless the Board of Directors decides otherwise. If the Chairman of the Board of Directors is not present 15 minutes after the beginning of a meeting of the Board of Directors, or if he does not wish to sit as Chairman of the meeting, the Deputy Chairman or in the absence of a Deputy Chairman, any other director chosen by the Board of Directors to be the Chairman of such meeting, shall conduct the meeting and may exercise all of the authorities vested in the Chairman of the Board of Directors.
- 24.4 The Chairman of the Board of Directors shall have all of the powers, rights and authorities granted to him under these Articles or by law. Without prejudice to the generality of the aforesaid, the Chairman of the Board of Directors shall have all power and authority necessary in order to carry out his functions and to exercise his rights and authorities in an efficient manner, including the authority to act in the name of the Company and on its behalf in the matters referred to above and to give directions to the General Manager of the Company and to employees and consultants of the Company for this purpose.
- 24.5 If both the Chairman of the Board of Directors and the Deputy Chairman are absent 15 minutes after the beginning of a meeting of the Board of Directors, or they do not wish to act as Chairman, or no Chairman of the Board of Directors has been appointed for the Company, the Board of Directors shall appoint one of its members (including an Alternate Director) to be the Chairman of such meeting.

25. Convening and Conduct of Meetings of the Board of Directors

- 25.1 The Board of Directors shall convene as often as the needs of the Company require and shall do so at least once every three months.
- 25.2 The Board of Directors shall be convened as follows:
- (a) In accordance with a decision of the Chairman of the Board of Directors;
  - (b) At the request of two directors, but if the Board of Directors comprises up to five members, at the request of one director;
  - (c) By the Chairman of the Board of Directors if and when a notice or a report from the General Manager is received requiring the action of the Board of Directors or a notice from the auditor regarding substantial defects in the audit of the Company.
  - (d) In any other case in which it is required by law to convene a meeting of the Board of Directors.
- 25.3 If a meeting of the Board of Directors is convened by the Chairman of the Board of Directors or by a majority of the members of the Board of Directors, the meeting shall be convened no earlier than the next business day following delivery of a notice of the meeting to all of the members of the Board of Directors, unless the Chairman of the Board of Directors or a majority of the members of the Board of Directors determine that because of the urgent nature of any matter on the agenda, the meeting must be convened within a shorter time. In such a case, the meeting shall be convened in the manner which allows the participation of the maximum number of members of the Board of Directors in the meeting.
- 25.4 The Board of Directors may hold meetings using any means of communication, provided that all of directors participating can hear one another at the same time, as well as in any other manner permitted by law. Such a meeting will be considered for the purposes of any matter, including the matters of sending notices, legal quorums and the recording of protocols, as an ordinary meeting of the Board of Directors.
- 25.5 Until otherwise unanimously decided by the Board of Directors, a quorum at a meeting of the Board of Directors shall be constituted by the presence of a majority of the directors then in office who are lawfully entitled to participate in the meeting, but shall not be less than two.
- 25.6 The Board of Directors may make a decision without actually convening, provided that all of the directors entitled to participate in the discussion and vote on the matter brought for decision agree thereto. A resolution in writing signed unanimously by all the directors then in office and lawfully entitled to vote thereon or to which all of the directors have given their unanimous written consent (by letter, e-mail, facsimile or otherwise) shall be deemed to have been adopted by a meeting of the Board of Directors duly convened and held.
- 25.7 Other than expressly provided in these Articles, the minutes of each meeting of the Board of Directors, shall be signed by the Chairman of the Board of Directors, or the Chairman of the meeting, as the case may be.

- 25.8 At a vote of the Board of Directors, each director shall have one vote.
- 25.9 Resolutions of the Board of Directors shall be carried by a simple majority of the directors voting on any matter on the agenda.
- 25.10 Any action taken by or in accordance with a resolution of the Board of Directors or by or in accordance with a decision of a Committee of the Board of Directors or by a director acting in his capacity as director is valid and effective even if it is subsequently discovered that there was a defect in the appointment of the directors or the election of the directors or if all or one of them was disqualified, in each case as if each of the directors had been lawfully elected and as if he was fully qualified to act as director, Alternate Director or member of the said Committee, as the case may be.

26. Notice of Meetings of the Board of Directors

- 26.1 Notice of a meeting of the Board of Directors shall be delivered to each director verbally, by telephone, in writing or by any other means of communication. If a director has appointed an Alternate for himself, notice shall be delivered to the Alternate.
- 26.2 A notice convening a meeting of the Board of Directors shall include reasonable particulars of all of the matters on the agenda, as well as the place and time fixed for the meeting.
- 26.3 All of the directors may agree to waive prior notice of a meeting of the Board of Directors.

27. Authorities of the Board of Directors

- 27.1 The Board of Directors shall set the policy guidelines for the Company and shall supervise the performance and activities of the General Manager, and as part thereof it:
- (a) shall determine the Company's plans of activity, the principles of financing them and the order of priority among them;
  - (b) shall examine the Company's financial situation and set a framework of credit which the Company may take;
  - (c) shall determine the organizational structure and the wage policy;
  - (d) may decide to issue a series of debentures;
  - (e) is responsible for the preparation and approval of the financial reports;
  - (f) shall appoint and dismiss the General Manager of the Company;
  - (g) shall decide on the acts and transactions that require its approval in accordance with these Articles or the Companies Law;

- (h) may allocate shares and securities convertible into shares up to the limit of the Company's registered share capital;
  - (i) may decide on a distribution;
  - (j) shall express its opinion on a special purchase offer.
- 27.2 Without prejudice to the generality of the aforesaid, the Board of Directors shall be entitled to use all of its authorities and powers and to carry out all the actions vested in it by law or by these Articles.
- 27.3 The Board of Directors may exercise any authority of the Company which has not been delegated by these Articles or by law to the General Manager or to the General Meeting, and such authority shall be deemed to have been delegated to the Board of Directors by these Articles.
- 27.4 The power of the Board of Directors shall be subject to the provisions of any law, and to any article that shall be adopted by the Company in General Meeting, provided that no such article shall invalidate any action taken prior thereto by the Board of Directors or pursuant to a decision thereof which would have been legally valid but for the adoption of the said article.
- 27.5 The General Meeting may assume the authority vested in the Board of Directors (including the authorities vested in the Board of Directors in the absence of a General Manager) for a specific matter or for a specific period of time.
- 27.6 For the purpose of exercising the general authorities vested in the Board of Directors and without limiting or restricting in any way whatsoever the said authorities or any of them, it is hereby expressly stated that the Board of Directors shall have the following authorities:
- (a) From time to time to appoint one or more persons (whether or not that person is a member of the Board of Directors) as a General Manager or another Officer of the Company, either for a fixed period of time or for an unlimited period of time, and from time to time (bearing in mind the terms of any contract between the Company and such person or persons) to dismiss him or them from office and appoint another person or persons in his or their place.
  - (b) Subject to any rule of law, to fix the remuneration of the General Manager or of any other Officer from time to time (bearing in mind the terms of any contract between the Company and such person). Such remuneration may be in the form of a fixed salary, payment based on the profits or turnover of the Company or of any other company in which the Company is interested, or by way of participation in such profits, or by way of receipt of securities of the Company, or in one or more of these ways, or in any other manner which the Board of Directors deems fit.
  - (c) To determine the remuneration of the auditor of the Company.
- 27.7 For the purpose of setting the policy guidelines for the Company and supervising its activities, any director may examine the documents and records of the Company and receive copies thereof, examine the assets of the Company and receive professional advice at the expense of the Company if the Board of Directors or the court approves the covering of this expense.

28. Reserved.

29. Committees of the Board of Directors

- 29.1 The Board may delegate all or any of its powers, authorities and responsibilities (except for those powers, authorities and responsibilities which, under the Companies Law, the Board is unable to delegate) to any committee consisting of such members of the Board as the Board may, from time to time, think fit, subject to the Companies Law, widen, curtail or revoke such delegation of powers, authorities and responsibilities.
- 29.2 To the fullest extent permitted by law, the Board, after determining a number of shares reserved for the issuance of shares, options or warrants to the Company's employees, directors, and consultants, may delegate the power to issue such options and shares to a committee of the Board.
- 29.3 Any committee of the Board shall in the exercise of the power, authorities and responsibilities so delegated conform to any regulations that may be lawfully imposed on it by the Board.
- 29.4 The meetings and proceedings of a Committee of the Board shall be governed by the provisions herein contained for regulating the meetings and proceedings of the Board, so far as the same are applicable thereto and are not lawfully suspended or superseded by any regulations imposed by the Board.
- 29.5 The Board shall appoint an audit committee consisting of at least three (3) members, the members of which and the authorities, powers and responsibilities of which shall be governed by the Companies Law and any other applicable law or rule.

**PART F: THE GENERAL MANAGER AND OTHER OFFICERS**

30. The General Manager

- 30.1 The Board of Directors of the Company shall appoint one or more General Manager for the Company. If more than one General Manager is appointed, the Board of Directors may determine that the authorities of a General Manager be divided between the General Managers.
- 30.2 The General Manager shall have full managerial and operational authority to carry out all of the activities which the Company may carry on by law and under these Articles and which have not been vested by law or by these Articles in any other organ of the Company. The General Manager shall be subject to the supervision of the Board of Directors.
- 30.3 The General Manager may, with the approval of the Board of Directors, delegate his authority to another person who is subordinate to him.



30.4 The Board of Directors may decide to transfer any authority vested in the General Manager to the Board of Directors, in a specific instance or for a specific period of time.

31. Secretary and Officers

31.1 The Board of Directors may appoint a Secretary for the Company and determine his duties and authorities. The Secretary, if appointed, shall be subject to the Board of Directors and shall report to it.

31.2 Officers of the Company, except directors and the General Manager, will be appointed and dismissed by the Board of Directors. The conditions of service, employment and retirement of the said Officers will be determined by the General Manager with the approval of the relevant committee of the Board of Directors, unless it is determined otherwise in any law or by the Board of Directors.

32. Personal Interest in Transactions of the Company

Any transaction which is not an Extraordinary Transaction and which is (i) a transaction with an Officer or (ii) a transaction of the Company with another person in which an Officer has a personal interest, may be approved by the same organ authorized to approve such a transaction, assuming that no party has a personal interest in it.

33. Indemnity, Insurance And Exemption of Officers

33.1 Exemption From Liability

Subject to the provisions of the Companies Law, the Company may exempt an Officer in advance from all or part of such Officer's responsibility or liability for damages caused to the Company due to any breach of such Officer's duty of care towards the Company to the maximum extent permitted by law. Notwithstanding, the Company shall not exempt a director in advance from its responsibility or liability towards the Company due to a breach of such director's duty of care in distribution.

33.2 Indemnification

(a) Subject to the provisions of the Companies Law and the Securities Law, the Company may indemnify an Officer to the fullest extent permitted by the Companies Law and the Securities Law, with respect to the following liabilities, expenses and payments, provided that such liabilities, expenses and payments were incurred by such Officer in such Officer's capacity as an Officer of the Company:

(i) a financial obligation imposed on an Officer in favor of another person by a court judgment, including a compromise judgment or an arbitrator's award approved by a court of law;

(ii) reasonable litigation expenses, including legal fees, incurred by an Officer as a result of Criminal Inquiry or an investigation or proceeding instituted against such Officer by a competent authority, which inquiry or investigation or proceeding has ended without the filing of an indictment and without an imposition of financial liability in lieu of a criminal proceeding, or has ended in the imposition of a financial obligation in lieu of a criminal proceeding without the filing of an indictment for an offence that does not require proof of mens rea or in connection with financial sanction (the phrases "proceeding that has ended without the filing of an indictment" and "financial obligation in lieu of a criminal proceeding" shall have the meanings ascribed to such phrases in Section 260 (a)(1a) of the Companies Law;

(iii) expenses, including reasonable litigation expenses and legal fees, incurred by and Officer as a result of a proceeding instituted against such Officer in relation to (A) infringements that may impose financial sanction pursuant to the provisions of Chapter H'3 of the Securities Law; or (B) administrative infringements pursuant to the provisions of Chapter H'4 of the Securities Law; or (C) infringements pursuant to the provisions of Chapter I'1 of the Securities Law;

(iv) reasonable legal expenses, including attorney's fees, which the Officer incurred or with which the Officer was charged by a court of law, in a proceeding brought against the Officer, by the Company or on its behalf or by another person, or in a criminal prosecution in which the Officer was acquitted, or in a criminal prosecution in which the Officer was convicted of an offense that does not require proof of mens rea (criminal intent); and

(v) payments to an injured party of infringement under Section 52(54)(a)(1)(a) of the Securities Law.

(b) Subject to the provisions of the Companies Law and the Securities Law, the Company may undertake to indemnify an Officer in advance with respect to (i) financial obligations as specified in Article 33.2 (a)(i), provided, that the undertaking is limited to categories of events which, in the opinion of the Board of Directors can be foreseen, based on the company's actual activities at the time the undertaking to indemnify is given, and in amounts set by the Board of Directors as reasonable; and (ii) expenses, fees and payments as specified in Sub-Sections 33.2 (a)(ii), (iii), (iv) and (v). Subject to the provisions of the Companies Law and the Securities Law, the Company may also undertake to indemnify an Officer retroactively for expenses, fees and payments as specified in Section 33.2.

### 33.3 Insurance

(a) Subject to the provisions of the Companies Law and the Securities Law, the Company may enter into a contract to insure an Officer for all or part of the liability that may be imposed on such Officer in connection with an act performed by such Officer in such Officer's capacity as an Officer of the Company, with respect to each of the following:

(i) breach of his duty of care to the Company or to another person;

(ii) breach of his duty of loyalty to the Company, provided that the Officer acted in good faith and had reasonable grounds to assume that the action in question would not prejudice the interests of the Company; and

(iii) a financial obligation imposed on him in favor of another person.

(b) Subject to the provisions of the Companies Law and the Securities Law, the Company may also enter into a contract to insure an Officer for (i) expenses, including reasonable litigation expenses and legal fees, incurred by the Officer as a result of a proceeding instituted against such Officer in relation to (A) infringements that may impose financial sanction pursuant to the provisions of Chapter H'3 of the Securities Law; or (B) administrative infringements pursuant to the provisions of Chapter H'4 of the Securities Law; or (C) infringements pursuant to the provisions of Chapter I'1 of the Securities Law; and (ii) payments made to the injured parties of such infringement under Section 52(54)(a)(1)(a) of the Securities Law.

33.4 (a) The Company shall not indemnify, exculpate or insure any Officer under any of the following circumstances:

- (i) a breach of duty of loyalty, except, with respect to indemnification and insurance, to the extent that the Officer acted in good faith and had a reasonable basis to believe that the act would not prejudice the company;
- (ii) a breach of duty of care committed intentionally or recklessly, excluding a breach arising out of the negligent conduct of the Officer;
- (iii) an act or omission committed with intent to derive illegal personal benefit; or
- (iv) a fine, civil fine, financial sanction or levied against the Officer.

(b) The Company shall not indemnify or insure any Officer for a proceeding instituted against such Officer pursuant to the provisions of Chapter H'3, H'4 and I'1 under the Securities Law.

33.5 Any amendment to the Companies Law and the Securities Law adversely affecting the right of any Officer to be indemnified or insured pursuant to this Article shall be prospective in effect, and shall not affect the Company's obligation or ability to indemnify or insure an Officer for any act or omission occurring prior to such amendment, unless otherwise provided by the Companies Law and the Securities Law.

33.6 The provisions of this Article are not intended, and shall not be interpreted so as to restrict the Company, in any manner, in respect of the procurement of insurance and/or indemnification and/or exculpation, in favor of any person who is not an Officer, including, without limitation, any employee, agent, consultant or contractor of the Company who is not an Officer ("Person"), provided, that the Company shall not indemnify or insure a Person, for a proceeding instituted against such Person pursuant to the provisions of Chapter H'3, H'4 and I'1 of the Securities Law and shall not indemnify and shall not pay any financial sanction imposed on such Person.

34. Signature Rights

The signature rights in the name of the Company shall be determined by the Board of Directors, generally, for a class of matters or for a specific matter. Any signature in the name of the Company shall be accompanied by the name of the Company. The authorized signatories do not have to be directors.

**PART G: MINUTES, REGISTERS AND BOOKS OF ACCOUNTS**

35. Minutes

- 35.1 The Board of Directors shall ensure that records of the following matters are duly maintained in books that shall be prepared for this purpose:
- (a) The names of members of the Board of Directors who are present at any meeting of the Board of Directors and at any meeting of a Committee of the Board of Directors (including any decision of the Board of Directors or of its Committees which is adopted without actually convening).
  - (b) The names of the registered shareholders participating in any General Meeting.
  - (c) The instructions given by the Board of Directors to the Committees of the Board of Directors.
  - (d) The proceedings at General Meetings, meetings of the Board of Directors, and meetings of the Committees of the Board of Directors, including resolutions adopted without actually convening these meetings.
- 35.2 Any minute of a meeting of the Board of Directors or of any Committee of the Board of Directors or of the General Meeting of the Company which purports to be signed by the Chairman of the meeting or by the Chairman of the next following meeting shall be prima facie evidence of the matters stated therein.

36. Books and Registers of the Company

- 36.1 Each book, register and registration that the Company must maintain in accordance with the provisions of the Companies Law or these Articles shall be made in regular books or by electronic means, as the General Manager shall determine, provided that the persons entitled to inspect them are able to receive copies of the documents.
- 36.2 The Company may destroy any request for entering any change in the Register seven years after the date of the change in the Register, and there shall be a prima facie assumption that all requests for changes in the Register were valid and that any action taken by virtue or as a result thereof was lawfully taken.
- 36.3 Subject to any provision of law, the Company may determine the manner and form in which documents which shareholders are entitled to inspect are presented to them, and may decide that copies of documents be provided against payment.

**PART H: AUDIT**37. **Auditor**

- 37.1 At least once in each calendar year, the financial statements of the Company shall be audited by an auditor or auditors who will express their opinion as to the financial statements.
- 37.2 The Company shall appoint at the Annual Meeting an auditor or auditors to serve in this capacity until the following Annual Meeting, but the General Meeting may appoint an auditor to serve for a longer period, not extending beyond the end of the third Annual Meeting after the appointment.
- 37.3 Subject to the provisions of the Companies Law, any act of the auditor of the Company shall be valid with regard to any person acting in good faith with the Company, notwithstanding any defect in the appointment or qualification of the auditor.
- 37.4 The fees of the auditor shall be fixed by the Board of Directors. The Board of Directors shall report at the Annual Meeting the fees of the auditor so fixed.
- 37.5 The Board of Directors will notify the auditor of General Meetings and of meetings of the Board of Directors in which the financial statements audited by the auditor are presented, and the auditor shall be entitled to attend such meetings.

38. **Internal Auditor**

- 38.1 As long as the Company is a public company, the Company will have an internal auditor, to be appointed by the Board of Directors in accordance with the proposal of the Audit Committee.
- 38.2 The role and authorities of the internal auditor shall be as provided in the Companies Law.

**PART I: RESERVES, DISTRIBUTIONS AND BONUS SHARES**39. **Reserves**

- 39.1 The Board of Directors may at any time allocate such amounts as it sees fit from the surpluses (as defined in the Companies Law) to a reserve for any purpose determined by it. Likewise, the Board of Directors may direct the management of, and the uses to which, any reserve or part thereof is put, including using of any reserve or part thereof for the business of the Company, without need to maintain such amount separate from the remaining assets of the Company.
- 39.2 The Board of Directors may from time to time, subject to the provisions of any law and the provisions of these Articles, change the purpose for which any capital reserve has been designated or the manner in which it is managed, to combine or split reserves and to transfer the amount of any capital reserve to the surplus account or to any other account in the accounting records of the Company. Notwithstanding the aforesaid, the Board of Directors may not transfer any amount from the share premium account other than to the share capital of the Company or for the purposes of a distribution that does not satisfy the profit test.

40. Distribution of Dividends and Bonus Shares

- 40.1 Subject to these Articles (including the requirements of Section 7.7.3), the Company may declare and pay any dividend or decide on a distribution permitted under the Companies Law.
- 40.2 No dividend shall bear interest or linkage against the Company.
- 40.3 A dividend may be paid, in whole or in part, by way of distribution of assets of any kind. A distribution of assets as aforesaid shall be made by a transfer, assignment, transfer of title, grant of a contractual or proprietary right or in any other manner as the Board of Directors directs.
- 40.4 If the Board of Directors decides to distribute a dividend, in whole or in part by way of an allotment of shares in the Company to those shareholders entitled to the dividend, at a price lower than the nominal value of those shares or to distribute bonus shares, the Company shall convert to share capital a portion of its profits or of its share premiums or of any other source included in the equity in its last financial statements (all as defined in the Companies Law) in an amount equal to the difference between the nominal value of the said shares and the price paid therefor.
- 40.5 The Board of Directors may allot from time to time bonus shares and determine the source of such distribution. Such bonus shares shall form part of the share capital of the Company and shall be considered to be fully paid in such amount, being not less than the nominal value of the shares, as the Board of Directors shall direct. The said bonus shares shall be allotted without payment to the shareholders of the Company who would have been entitled to receive the amount converted to share capital for the purpose of distribution of the bonus shares if that amount had been distributed by way of cash dividend and in the same proportion.
- 40.6 The Board of Directors may decide that bonus shares shall be of the same class of shares as these shares which entitle the holders thereof to participate in the distribution of bonus shares, or that all bonus shares shall be of a single class which shall be distributed to all persons entitled thereto without taking into account the class of shares which they hold, or that bonus shares be a combination of classes of shares.
- 40.7 The Board of Directors may from time to time issue to the holders of the Company's securities that are convertible into the Company's shares, bonus shares or dividends as if the said securities had been converted into shares prior to the distribution in question, in each case subject to the terms of issue of the said securities.

The Board of Directors may make any arrangement and take any action necessary for the efficient and speedy implementation of the provisions of this Article, to determine the rights which the holders of convertible securities receive and the manner in which they receive these rights, and to carry out any necessary adjustment with respect to the rights of the holders, in this respect. The Board of Directors may exercise any authority granted to it in connection with the distribution of a dividend or bonus shares or rights to the shareholders in the Company, *mutatis mutandis*, all in the absolute discretion of the Board of Directors.

In order to implement any resolution regarding the distribution of a dividend or bonus shares or in connection with the acquisition of securities of the Company, the Board of Directors may sign any document and effect any arrangement which is, in the opinion of the Board of Directors, necessary in order to enable or facilitate the distribution, including the issuance of certificates for partial shares or to decide that shares in the Company which entitle the holder thereof to partial shares in an amount lower than the level fixed by the Board of Directors shall not entitle the holder to participate in that distribution, or to sell the partial shares and to pay the net proceeds of sale (after deduction of the expenses of sale and any tax that shall be payable in respect of the sale) to the persons entitled thereto;

- 40.8 The Board of Directors may appoint a trustee or trustees ("the Trustee") to hold dividends, bonus shares or any other right (together "the Benefit") which the Company has issued or distributed to its shareholders and which was not demanded by any of the shareholders. Any action taken by the Trustee, and any agreement between the Board of Directors and the Trustee shall be valid and shall bind the shareholders in connection with the Benefit to which they are entitled and for which the Trustee has been appointed.
- 40.9 The Trustee shall be appointed for the purpose of exercising, collecting, receiving or depositing the Benefit, but the Trustee shall not be entitled to transfer the Benefit or part thereof or to grant any right in the Benefit or to make any use thereof. The Trustee shall not be entitled to vote in respect of any securities of the Company which are included in the Benefit.
- 40.10 The Trustee shall transfer the Benefit, including any income arising thereon, less the Trustee's fee as settled by the Board of Directors, to the shareholders entitled to the Benefit as soon as possible after he receives the first written demand from the shareholders, subject to authentication of the identity of any shareholder and details of the Benefit to which he is entitled.
- 40.11 If the payment of the dividend is not demanded within seven (7) years from the date of the decision to distribute that dividend, the person entitled thereto shall be deemed to have waived the dividend, and ownership thereof shall return to the Company.
- 40.12 The Board of Directors may pay all dividends or money due in respect of shares by sending checks in the mail, and if the Benefit is, in whole or in part, an asset or a right, by sending by mail any document confirming or creating the said right. Any check or document sent to the address of the shareholder as appearing in the Register shall be dispatched at the risk of the shareholder.
- 40.13 The transferee of any shares shall not be entitled to any dividend or any other distribution with respect to such shares, which has been declared after the date of transfer but before registration of the transfer in the Register, and in the event of the transfer of shares which is subject to the approval of the Board of Directors, before the date of said approval.
- 40.14 The Board of Directors may deduct from any dividend, distribution or other amounts which are to be paid to a shareholder (including to a person who is one of the joint holders of a share) any amounts due from such a person to the Company in his capacity as shareholder.

40.15 If there is a number of persons registered as joint holders of a share, each one may give a valid receipt to the Company for any Benefit granted in respect of that share.

41. Buy-Back

A decision regarding the acquisition of securities which have been issued by the Company and the manner in which these securities shall be dealt with by the Company shall be taken by the Board of Directors.

**PART J: NOTICES**

42. Notices

42.1 Subject to these Articles, any notice to shareholders of the Company shall be given in accordance with the provisions of the law.

42.2 Any written notice or other document may be served by the Company upon any shareholder either personally or by sending it by prepaid mail (air mail if sent internationally) or by cablegram, telex, facsimile or email addressed to such shareholder at his address as described in the Register or such other address as he may have designated in writing for the receipt of notices and other documents. Such designation may include a broker or other nominee holding shares at the instruction of the shareholder. Proof that an envelope containing a notice was properly addressed, stamped and posted shall be conclusive evidence that notice is given. A declaration of an authorized person on behalf of the stock transfer agent of the Company or other distribution agent stating that a notice was mailed to a shareholder will suffice as proof of notice for purposes of this Article.

42.3 Any written notice or other document may be served by any shareholder upon the Company by tendering the same in person to the Secretary or the General Manager at the Offices of the Company or by sending it by any of the means provided for in Article 42.2 to the Company at its Office.

42.4 Any notice or other document referred to above shall be deemed to have been served 48 hours after it has been posted (seven days if sent internationally), or 24 hours after sent by cablegram, telex, facsimile or email. The date of mailing, publication or other method of sending a notice and the date of the meeting shall be counted as part of the days comprising any notice period. If a notice is, in fact, received by the addressee, it shall be deemed to have been duly served when received, notwithstanding that it was received sooner than provided herein, defectively addressed or failed, in some other respect, to comply with the provisions of this Article.

42.5 All notices to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the Register, and any notice so given shall be sufficient notice to the holders of such share.

42.6 Any shareholder whose address is not described in the Register, and who shall not have designated in writing an address for the receipt of notices, shall not be entitled to receive any notice from the Company.



- 42.7 Notwithstanding anything to the contrary herein, notice by the Company of a General Meeting which is published:
- (i) in two daily newspapers in the State of Israel shall be deemed to have been duly given on the date of such publication to any shareholder whose address as registered in the Register (or as designated in writing for the receipt of notices and other documents) is located in the State of Israel.
  - (ii) in one daily newspaper in the City of New York and in one international wire service shall be deemed to have been duly given on the date of such publication to any shareholder whose address as registered in the Register (or as designated in writing for the receipt of notices and other documents) is located outside the State of Israel.

## C O N T E N T S

**Part A: Definitions and Interpretation**

1. Definitions
2. Interpretation

**Part B: The Company, its Objects and the Share Capital**

3. The Company and its Objects
4. Limited Liability
5. Share Capital
6. Changes in the Share Capital
7. Rights attached to the Shares and Issuance of Shares
8. Shareholders

**Part C: The Shares**

9. Share Certificates
10. Transfer of Shares
11. Decedents' Shares
12. Receivers and Liquidators

**Part D: General Meetings**

13. Annual a General Meeting
14. Special Meeting
15. Record Date
16. Convening the Meeting
17. Proceedings at General Meetings
18. Voting
19. Voting by Proxy
20. Powers of the General Meeting

**Part E: The Board of Directors**

21. Appointment and Dismissal of Directors
22. Alternate Director
23. Reserved
24. Chairman of the Board of Directors
25. Convening and Conduct of Meetings of the Board of Directors
26. Notice of Meetings of the Board of Directors
27. Authorities of the Board of Directors
28. Remuneration of Directors
29. Committees of the Board of Directors

**Part F: The General Manager and Other Officers**

30. The General Manager
31. Secretary and Officers
32. Personal Interest in Transactions of the Company
33. Indemnity, Insurance and Exemption of Officers
34. Signature Rights

**Part G: Minutes, Registers and Books of Accounts**

35. Minutes
36. Books and Registers of the Company

**Part H: Audit**

37. Auditor
38. Internal Auditor

**Part I: Reserves, Distributions and Bonus Shares**

39. Reserves
40. Distribution of Dividends and Bonus Shares
41. Buy-Back

**Part J: Notices**

42. Notices

**Annex A**

The Companies Law 5759-1999

Public Company Limited by Shares

**ARTICLES OF ASSOCIATION  
OF  
Modsys International Ltd.**

SECURITIES PURCHASE AGREEMENT

**Dated as of November 25, 2015**

**by and among**

**MODSYS INTERNATIONAL LTD.**

**and**

**THE PURCHASERS LISTED IN EXHIBIT A**

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## SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT dated as of November 25, 2015 (this "Agreement") by and among Modsys International Ltd., an Israeli company (the "Company"), and each of the purchasers whose names are set forth on Exhibit A attached hereto (each a "Purchaser" and collectively, the referred to herein as the "Purchaser").

WHEREAS, subject to the terms and conditions set forth in this Agreement, the Company desires to issue and sell to each Purchaser, and each Purchaser desires to purchase from the Company, securities of the Company as more fully described in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Company and the Purchaser agrees as follows:

### ARTICLE I

#### PURCHASE AND SALE OF SECURITIES

##### Section 1.1 Purchase and Sale of Securities.

(a) Upon the following terms and conditions, the Company shall issue and sell to the Purchasers, and the Purchasers shall purchase (in the amounts set forth as Exhibit A hereto) from the Company, 500,000 preferred shares of the Company, par value NIS 0.04 per share (the "Preferred Shares", and the Preferred Shares purchased pursuant to the terms hereof, the "Shares") at a price per share equal to \$2.00 ("Price Per Share") amounting to an aggregate purchase price of US \$1,000,000 (the "Purchase Price").

(b) Upon the following terms and conditions, the Company shall issue to each Purchaser a warrant in substantially the form attached hereto as Exhibit B (each a "Warrant") and collectively the "Warrants" and together with the Shares, the "Closing Securities") to purchase the number of ordinary shares of the Company par value NIS 0.04 per share (the "Ordinary Shares", and the Ordinary Shares issuable upon exercise of the Warrant, the "Exercise Shares") set forth on Exhibit A hereto.

Section 1.2 Closing. The closing of the purchase and sale of the Closing Securities to be acquired by the Purchasers from the Company under this Agreement, shall take place at the offices of the Company at 600 Union Street, Suite 2409, Seattle, Washington (the "Closing") at 10:00 a.m., PST or such other location as mutually agreed by the Parties on the date of this Agreement (the "Closing Date"). Subject to the fulfillment or waiver of all of the other conditions set forth in Article IV hereof, at the Closing the Company shall deliver or cause to be delivered to the Purchaser the Closing Securities and, concurrently, the Purchaser shall deliver the Purchase Price by wire transfer to the Company.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the Company. The Company hereby represents and warrants to the Purchasers, as of the date hereof and the Closing Date, as follows:

(a) Organization and Good Standing. The Company is a company duly incorporated or otherwise organized and validly existing under the laws of the State of Israel and has the requisite power to own, lease and operate its properties and assets and to conduct its business as it is now being conducted. Each subsidiary of the Company ("Subsidiary") is duly qualified to do business and is in good standing (if applicable) in every jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary except for any jurisdiction(s) (alone or in the aggregate) in which the failure to be so qualified will not have a Material Adverse Effect. For the purposes of this Agreement, "Material Adverse Effect" means any material adverse effect on the business, operations, properties or financial condition of the Company and its Subsidiaries taken as a whole (other than effects resulting from conditions affecting the Company's or its Subsidiaries' markets generally or from general economic conditions) and/or any condition, circumstance or situation that would prohibit or otherwise materially interfere with the ability of the Company to perform any of its obligations under the Transaction Documents (as defined in Section 2.1 (b) below)) in any material respect.

(b) Power; Authorization; Enforcement. The Company has the requisite power and authority to enter into and perform its obligations under this Agreement, and to issue and sell the Closing Securities and, insofar as applicable, the Exercise Shares in accordance with the terms of the Warrants and the Ordinary Shares issuable upon conversion of the Shares (such Ordinary Shares, together with the Exercise Shares and the Closing Securities, the "Securities"). The execution, delivery and performance of this Agreement and any other documents and agreements executed in connection with the transactions contemplated hereunder (the "Transaction Documents") by the Company and the consummation by it of the transactions contemplated thereby have been duly and validly authorized by all necessary action, and, except as set forth on Schedule 2.1(b),<sup>1</sup> no further consent or authorization of the Company, its board of directors or shareholders is required. When executed and delivered by the Company, each of the Transaction Documents shall constitute a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except (i) as such enforceability may be limited by applicable bankruptcy, reorganization, moratorium, liquidation, conservatorship, receivership or similar laws relating to, or affecting generally the enforcement of, creditor's rights and remedies or by other equitable principles of general application, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies; and (iii) insofar as indemnification provisions may be limited by applicable law.

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<sup>1</sup> Schedule 2.2(b) to identify the required shareholder approval.

(c) Issuance of Securities. The Securities and the Exercise Shares are duly authorized, and when issued and paid in accordance with the terms hereof, shall be duly and validly issued, fully paid, non-assessable, and free and clear of all liens.

(d) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company, the performance by the Company of its obligations and the consummation by the Company of the transactions contemplated hereby and thereby (including the issuance of the Securities as contemplated hereby) do not and will not (i) violate any provision of the Company's memorandum or articles of association as amended to date, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement or obligation to which the Company is a party or by which the Company's properties or assets are bound, or (iii) result in a violation of any federal, state, local or foreign statute, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations) applicable to the Company or by which any property or asset of the Company is bound or affected, except, with respect to clauses (ii) and (iii) above for such conflicts, defaults, terminations, amendments, acceleration, cancellations and violations as would not, individually or in the aggregate, have a Material Adverse Effect.

(e) SEC Documents, Financial Statements. The Company has filed all reports, schedules forms, statements and other documents required to be filed in the last 12 months by the Company under the Securities Act of 1933, as amended and the rules and regulations promulgated thereunder (the "Securities Act") and the Securities Exchange Act of 1934, as amended and the rules and regulations promulgated thereunder (the "Exchange Act"), all of the foregoing including filings incorporated by reference therein being referred to as the "SEC Documents"). At the times of its filing, the SEC Documents complied in all material respects with the requirements of the Exchange Act and the Securities Act, as applicable. As of their respective dates, the financial statements of the Company included in any SEC Documents filed by the Company in the last 12 months have been prepared in accordance with accounting principles generally accepted in the United States ("GAAP") applied on a consistent basis during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto or (ii) in the case of unaudited interim statements, to the extent they may not include footnotes or may be condensed or summary statements), and fairly present in all material respects the financial position of the Company and its Subsidiaries as of the dates thereof and the results of operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments).

(f) No Material Adverse Change. Since the filing date of the latest audited financial statements included within the SEC Documents, the Company has not experienced or suffered any Material Adverse Effect, except as disclosed in its SEC Documents.

(g) No Undisclosed Liabilities. Except as disclosed in the SEC Documents, since September 30, 2015, the Company has not incurred any liabilities, obligations, claims or losses (whether liquidated or unliquidated, secured or unsecured, absolute, accrued, contingent or otherwise) other than those incurred in the ordinary course of the Company's or its Subsidiaries

respective businesses or which, individually or in the aggregate, are not reasonably likely to have a Material Adverse Effect.

(h) Actions Pending. Except as set forth in the SEC Documents, there is no action, suit, claim, investigation, arbitration, alternate dispute resolution proceeding or other proceeding pending or, to the knowledge of the Company, threatened against or involving the Company or any of its respective properties or assets, which individually or in the aggregate, would reasonably be expected, if adversely determined, to have a Material Adverse Effect. There are no outstanding orders, judgments, injunctions, awards or decrees of any court, arbitrator or governmental or regulatory body against the Company or any officers or directors of the Company in their capacities as such, which individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(i) Compliance with Law. The business of the Company has been and is presently being conducted in accordance with all applicable federal, state, local and foreign governmental laws, rules, regulations and ordinances, except as set forth in the SEC Documents or such that, individually or in the aggregate, the noncompliance therewith could not reasonably be expected to have a Material Adverse Effect.

(j) Taxes. Except for matters that would not, individually or in the aggregate, have or reasonable expected to have a Material Adverse Effect, the Company has prepared and filed all material federal, state, foreign and other tax returns required by law to be filed by it, has paid or made provisions for the payment of all taxes shown to be due and all additional assessments, and adequate provisions have been and are reflected in the financial statements of the Company and the Subsidiaries for all current taxes and other charges to which the Company or any Subsidiary is subject and which are not currently due and payable. The Company has no knowledge of any additional assessments, adjustments or contingent tax liability of any nature whatsoever, whether pending or threatened against the Company for any period, nor of any basis for any such assessment, adjustment or contingency, which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(k) Disclosure. All disclosure furnished by or on behalf of the Company to the Purchasers regarding the Company, its business and the transactions contemplated hereby, including the Disclosure Schedules to this Agreement, is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The Company acknowledges and agrees that the Purchasers do not make or have not made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 2.2 hereof.

(l) Transactions with Affiliates. Except as set forth in the SEC Documents, none of the officers or directors of the Company or, to the knowledge of the Company, none of the employees of the Company is presently a party to any transaction with the Company (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, providing for the borrowing of money from or lending of money to or otherwise requiring payments to or from any officer, director or such employee or, to the



knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, stockholder, member or partner, in each case in excess of 5% other than for (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.

(m) Investment Company Act Status. The Company is not, and as a result of and immediately upon the Closing will not be, an “investment company” or, to the Company’s knowledge, a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

(n) Title to Assets. The Company and the Subsidiaries have valid land use rights for all real property that is material to their respective businesses and good and marketable title in all personal property owned by them that is material to their respective businesses, in each case free and clear of all liens, except for liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries. Any real property and facilities held under lease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases of which the Company and the Subsidiaries are in compliance, except as could not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect.

(o) Accounting Controls. The Company has established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the Company and designed such disclosure controls and procedures to ensure that material information relating to the Company, including its Subsidiaries, is made known to the certifying officers by others within those entities. The Company’s certifying officers have evaluated the effectiveness of the Company’s controls and procedures in accordance with Item 4 of the Quarterly Report on Form 10-Q for the Quarter Ended September 30, 2015 (the “10-Q”). The Company presented in the 10-Q the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of as of September 30, 2015. Since such date, there have been no significant changes in the Company’s internal controls (as such term is defined in Rule 13a-15(e) of the Exchange Act) or, to the Company’s knowledge, in other factors that could significantly affect the Company’s internal controls.

(p) Application of Takeover Protections. The Company has no knowledge of any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company’s Articles of Association or the laws of the state of Israel that is or could become applicable to the Purchasers as a result of the Purchasers and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including without limitation the Company’s issuance of the Securities and the Purchasers’ ownership of the Securities.

(q) No Additional Agreements. The Company does not have any agreement or understanding with any Purchaser with respect to the transactions contemplated by the Transaction Documents other than as specified in the Transaction Documents.

(f) Foreign Corrupt Practices Act. Neither the Company, nor to the knowledge of the Company, any agent or other person acting on behalf of any of the Company has, directly or indirectly, (i) used any funds, or will use any proceeds from the sale of the Shares, for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company or any Subsidiary (or made by any person acting on their behalf of which the Company is aware) which is in violation of law, or (iv) has violated in any material respect any provision of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

(g) Money Laundering Laws. The operations of the Company is and has been conducted at all times in compliance with the applicable money laundering statutes of the United States and the state of Israel, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any applicable governmental agency (collectively, the "Money Laundering Laws") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

(h) OFAC. Neither the Company nor, to the knowledge of the Company, any director, officer, agent, employee, Affiliate or person acting on behalf of the Company is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC"); and the Company will not directly or indirectly use the proceeds of the sale of the Securities, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other person or entity, towards any sales or operations in Cuba, Iran, Syria, Sudan, Myanmar or any other country sanctioned by OFAC or for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(i) Acknowledgment Regarding Purchasers' Purchase of Securities. The Company acknowledges and agrees that each of the Purchasers is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by any Purchaser or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchasers' purchase of the Securities.

Section 2.2 Representations, Warranties and Agreements of the Purchasers. Each of the Purchasers hereby represents, warrants and agrees to the Company as follows as of the date hereof and as of the Closing Date:

(a) Organization and Standing of the Purchasers. Each Purchaser is a corporation, limited liability company or partnership duly incorporated or organized, validly

existing and in good standing under the laws of the jurisdiction of its incorporation or organization.

(b) Authorization and Power. Each Purchaser has the requisite power and authority to enter into and perform its obligations under the Transaction Documents and to purchase the Securities being sold to it hereunder. The execution, delivery and performance of the Transaction Documents by each Purchaser and the consummation by it of the transactions contemplated hereby have been duly authorized by all necessary corporate or partnership action, and no further consent or authorization of such Purchaser or its board of directors, shareholders, or partners, as the case may be, is required. When executed and delivered by the Purchasers, the other Transaction Documents shall constitute valid and binding obligations of each of the Purchasers enforceable against such Purchaser in accordance with their terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation, conservatorship, receivership or similar laws relating to, or affecting generally the enforcement of, creditor's rights and remedies or by other equitable principles of general application.

(c) No Conflict. The execution, delivery and performance of the Transaction Documents by the Purchaser and the consummation by the Purchaser of the transactions contemplated thereby and hereby do not and will not (i) violate any provision of the Purchaser's charter and organizational documents, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, mortgage, deed of trust, indenture, note, bond, license, lease agreement, instrument or obligation to which the Purchaser is a party or by which the Purchaser's respective properties or assets are bound, or (iii) result in a violation of any federal, state, local or foreign statute, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations) applicable to the Purchaser or by which any property or asset of the Purchaser are bound or affected, except, with respect to clauses (ii) or (iii) (other than with respect to federal and state securities laws) for such conflicts, defaults, terminations, amendments, acceleration, cancellations and violations as would not, individually or in the aggregate, materially and adversely affect the Purchaser's ability to perform its obligations under the Transaction Documents.

(d) Acquisition for Own Account. Each Purchaser is purchasing the Securities solely for its own account and not with a view to, or for sale in connection with, public sale or distribution thereof. Each Purchaser does not have a present intention to sell any of the Securities, nor a present arrangement (whether or not legally binding) or intention to effect any distribution of any of the Securities to or through any person or entity.

(e) Experience. Each Purchaser acknowledges that it (i) has such knowledge and experience in financial and business matters such that Purchaser is capable of evaluating the merits and risks of Purchaser's investment in the Company, (ii) is able to bear the financial risks associated with an investment in the Securities and (iii) has been given full access to such records of the Company and the Subsidiaries and to the officers of the Company and the Subsidiaries as it has deemed necessary or appropriate to conduct its due diligence investigation.

(f) General. Each Purchaser understands that the Securities are being offered and sold in reliance upon the truth and accuracy of the representations, warranties, agreements, acknowledgments and understandings of such Purchaser set forth herein in order to determine the applicability of such exemptions and the suitability of such Purchaser to acquire the Securities.

(g) No General Solicitation. Each Purchaser acknowledges that the Securities were not offered to such Purchaser by means of any form of general or public solicitation or general advertising, or publicly disseminated advertisements or sales literature, including (i) any advertisement, article, notice or other communication published in any newspaper, magazine, Internet website or similar media, or broadcast over television or radio, or (ii) any seminar or meeting to which such Purchaser was invited by any of the foregoing means of communications. Each Purchaser, in making the decision to purchase the Securities, has relied upon independent investigation made by it and has not relied on any information or representations made by third parties.

(h) Accredited Investor. Each Purchaser is an “accredited investor” (as defined in Rule 501 of Regulation D), and such Purchaser has such experience in business and financial matters that it is capable of evaluating the merits and risks of an investment in the Securities. Such Purchaser is not required to be registered as a broker-dealer under Section 15 of the Exchange Act and such Purchaser is not a broker-dealer or an “associated person” of a broker-dealer. Each Purchaser acknowledges that an investment in the Securities is speculative and involves a high degree of risk.

(i) Certain Fees. No Purchaser has employed any broker or finder or incurred any liability for any brokerage or investment banking fees, commissions, finders’ structuring fees, financial advisory fees or other similar fees in connection with the Transaction Documents or the transactions contemplated thereby.

(j) No Trading. Each Purchaser has not directly or indirectly, nor has any person acting on behalf of or pursuant to any understanding with such Purchaser, engaged in any transactions in the securities of the Company (including, without limitations, any Short Sales involving the Company’s securities) since the time that such Purchaser was first contacted by the Company regarding the consummation of this transaction. Such Purchaser covenants that neither it nor any person or entity acting on its behalf or pursuant to any understanding with it will engage in any transactions in the securities of the Company (including Short Sales) prior to the time that the transactions contemplated by this Agreement are announced in a press release pursuant to Section 3.3 hereof. For purposes of this Section 2.2(k), “Short Sales” shall include, without limitation, all “short sales” as defined in Rule 200 promulgated under Regulation SHO under the Exchange Act and all types of direct and indirect stock pledges, forward sale contracts, options, puts, calls, swaps and similar arrangements (including on a total return basis), and sales and other transactions through non-US broker dealers or foreign regulated brokers.

(k) Restricted Securities.

(i) Each Purchaser understands that none of the Securities have been registered under the Securities Act. Each Purchaser also understands that the Securities are being offered and sold pursuant to an exemption from registration contained in the Securities Act based in part upon such Purchaser's representations contained in the Agreement.

(ii) Each Purchaser acknowledges and agrees that the Securities are "restricted securities" as defined in Rule 144 promulgated under the Securities Act as in effect from time to time and must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Each Purchaser has been advised or is aware of the provisions of Rule 144, which permits limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions, including, among other things: the availability of certain current public information about the Company, the resale occurring following the required holding period under Rule 144 and the number of shares being sold during any three-month period not exceeding specified limitations.

(iii) Certificates evidencing the Securities shall bear any legend as required by the "blue sky" laws of any state and a restrictive legend in substantially the following form until such time as they are not required (and a stock transfer order may be placed against transfer of the certificates for the Securities):

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OR (B) AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY.

(iv) Each Purchaser hereunder acknowledges its primary responsibilities under the Securities Act and accordingly will not sell or otherwise transfer the Securities or any interest therein without complying with the requirements of the Securities Act.

### ARTICLE III

#### COMPANY COVENANTS

The Company covenants with each Purchaser as follows, which covenants are for the benefit of each Purchaser and their respective permitted assignees.

Section 3.1 Other Agreements. The Company shall not enter into any agreement in which the terms of such agreement would restrict or impair the right or ability to perform of the Company under any Transaction Document.

Section 3.2 Reservation of Shares. The Company shall take all action necessary to at all times have authorized and reserved for the purpose of issuance of the aggregate number of Ordinary Shares issuable upon exercise of the Warrants or upon conversion of the Shares.

Section 3.3 Certain Transactions and Confidentiality. Each Purchaser covenants that neither it, nor any Affiliate acting on its behalf or pursuant to any understanding with it will execute any purchases or sales, including Short Sales, of any of the Company's securities during the period commencing with the execution of this Agreement and ending at such time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 3.4. Each Purchaser covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company pursuant to the initial press release as described in Section 3.4, such Purchaser will maintain the confidentiality of the existence and terms of this transaction and the information included in the Transaction Documents and the Disclosure Schedules.

## ARTICLE IV

### CONDITIONS

Section 4.1 Conditions Precedent to the Obligation of the Company to Close and to Sell the Closing Securities. The obligation hereunder of the Company to close and issue and sell the Closing Securities to the Purchasers at the Closing is subject to the satisfaction or waiver, at or before the Closing of the conditions set forth below. These conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion.

(a) Accuracy of the Purchasers' Representations and Warranties. The representations and warranties of the Purchasers shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality, which shall be true and correct in all respects) as of the date when made and as of the Closing Date as though made at that time, except for representations and warranties that are expressly made as of a particular date, which shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality or Material Adverse Effect, which shall be true and correct in all respects) as of such date.

(b) Performance by the Purchasers. Each Purchaser shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Purchasers at or prior to the Closing Date.

(c) Delivery of Purchase Price. The Purchasers shall have delivered to the Company the Purchase Price for the Shares to be purchased by the Purchasers.

(d) Delivery of Transaction Documents. The Transaction Documents shall have been duly executed and delivered by the Purchasers to the Company.

(e) Shareholder Approval. The required approval of the shareholders of the Company shall have been obtained.

(f) Amended Articles. The amended Articles of Association of the Company in the form attached hereto as Exhibit C shall have been filed.

Section 4.2 Conditions Precedent to the Obligation of the Purchasers to Close and to Purchase the Closing Securities. The obligation hereunder of the Purchasers to purchase the Closing Securities and consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver, at or before the Closing, of each of the conditions set forth below.

(a) Accuracy of the Company's Representations and Warranties. Each of the representations and warranties of the Company in this Agreement and the other Transaction Documents shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality or Material Adverse Effect, which shall be true and correct in all respects) as of the date when made and as of the Closing Date as though made at that time, except for representations and warranties that are expressly made as of a particular date, which shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality or Material Adverse Effect, which shall be true and correct in all respects) as of such date.

(b) Performance by the Company. The Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company at or prior to the Closing Date.

(c) Material Adverse Effect. No Material Adverse Effect shall have occurred from the date hereof until the Closing Date.

(d) Shareholder Approval. The required approval of the shareholders of the Company shall have been obtained.

(e) Amended Articles. The amended Articles of Association of the Company in the form attached hereto as **Exhibit C** shall have been filed.

(f) Prescott Anti-Dilution Shares. Concurrent with the Closing, the Company shall issue 625,000 Ordinary Shares to Prescott Group Aggressive Small Cap Master Fund pursuant to the Amended and Restated Securities Purchase Agreement dated as of November 22, 2013 between the Company and Prescott Group Aggressive Small Cap Master Fund, as if such sale and issuance had occurred prior to November 22, 2015.

## ARTICLE V

### INDEMNIFICATION

Section 5.1 Company Indemnity. Subject to the provisions of this Section 5.1, the Company will indemnify and hold each Purchasers and its directors, officers, shareholders, members, managers, partners, employees and agents (and any other persons with a functionally equivalent role of a persons holding such titles notwithstanding a lack of such title or any other title), each person who controls such Purchaser (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, shareholders, agents, members, managers, partners or employees (and any other persons with a functionally equivalent role of a persons holding such titles notwithstanding a lack of such title or any other title) of such controlling persons (each, a "Purchaser Party") harmless from any and all losses, damages, costs and expenses, including all judgments, amounts paid in settlements, court costs and reasonable attorneys' fees and costs of investigation that any such Purchaser Party may suffer or incur as a result of or relating to any breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents. If any action shall be brought against any Purchaser Party in respect of which indemnity may be sought pursuant to this Agreement, such Purchaser Party shall promptly notify the Company in writing, and the Company shall have the right to assume the defense thereof with counsel of its own choosing reasonably acceptable to the Purchaser Party. Any Purchaser Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the reasonable fees and expenses of such counsel shall be at the expense of such Purchaser Party except to the extent that (i) the employment thereof has been specifically authorized by the Company in writing, (ii) the Company has failed after a reasonable period of time to assume such defense and to employ counsel or (iii) in such action there is, in the reasonable opinion of such separate counsel, a material conflict on any material issue between the position of the Company and the position of such Purchaser Party, in which case the Company shall be responsible for the reasonable fees and expenses of no more than one such separate counsel. The Company will not be liable to any Purchaser Party under this Agreement (i) for any settlement by a Purchaser Party effected without the Company's prior written consent, which shall not be unreasonably withheld or delayed; or (ii) to the extent, but only to the extent that a loss, claim, damage or liability is attributable to any Purchaser Party's breach of any of the representations, warranties, covenants or agreements made by such Purchaser Party in this Agreement or in the other Transaction Documents.

## ARTICLE VI

### MISCELLANEOUS

#### Section 6.1 Specific Performance; Consent to Jurisdiction; Venue.

(a) The Company and the Purchasers acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement or the other Transaction Documents were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or



injunctions to prevent or cure breaches of the provisions of this Agreement or the other Transaction Documents and to enforce specifically the terms and provisions hereof or thereof, this being in addition to any other remedy to which any of them may be entitled by law or equity.

(b) All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. The parties agree that venue for any dispute arising under this Agreement will lie exclusively in the state or federal courts located in New York County, New York, and the parties irrevocably waive any right to raise *forum non conveniens* or any other argument that New York is not the proper venue. The parties irrevocably consent to personal jurisdiction in the state and federal courts of the state of New York. The Company and each Purchaser consent to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing in this Section 6.1 shall affect or limit any right to serve process in any other manner permitted by law. **THE PARTIES HEREBY WAIVE ALL RIGHTS TO A TRIAL BY JURY.** If either party shall commence an action or proceeding to enforce any provisions of the Transaction Documents, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

Section 6.2 Entire Agreement. This Agreements contain the entire understanding and agreement of the parties with respect to the matters covered hereby and, except as specifically set forth herein, neither the Company nor any Purchaser make any representation, warranty, covenant or undertaking with respect to such matters, and they supersede all prior understandings and agreements with respect to said subject matter, all of which are merged herein.

Section 6.3 Notices. Any notice, demand, request, waiver or other communication required or permitted to be given hereunder shall be in writing and shall be effective (a) upon (i) hand delivery at the address designated below, (ii) delivery by telecopy or facsimile at the number designated below or (iii) delivery by e-mail at the e-mail address designated below (in each case, if delivered on a business day during normal business hours where such notice is to be received), or, in each case, the first business day following such delivery (if delivered other than on a business day during normal business hours where such notice is to be received) or (b) on the third business day following the date of mailing by express courier service, fully prepaid, addressed to such address, or upon actual receipt of such mailing, whichever shall first occur. The addresses for such communications shall be:

If to the Company: Modsys International Ltd.

600 Union Street, Suite 2409  
Seattle, Washington  
Attention: Rick Rinaldo  
Tel. No.: (206) 395-4152

If to Purchasers: Columbia Pacific Opportunity Fund, LP  
c/o Columbia Pacific Advisors, LLC  
Attn: [Alex Washburn]  
1910 Fairview Avenue East, Suite 200  
Seattle, Washington 98102  
Tel. No.: [( ) \_\_\_\_\_]  
Fax No.: [( ) \_\_\_\_\_]

Prescott Group Capital Management, L.L.C.,  
1924 S. Utica Ave., Suite 1120  
Tulsa, Oklahoma 74104  
Attention: Matt Dunham  
Tel. No.: (918) 747-3412  
Fax No.: (918) 742-7303

Mindus Holdings, Ltd.  
P.O. Box 12451  
Dallas, Texas 75225  
Tel. No.: [( ) \_\_\_\_\_]  
Fax No.: [( ) \_\_\_\_\_]

Any party hereto may from time to time change its address for notices by giving written notice of such changed address to the other party hereto pursuant to the provisions of this Section 6.3.

Section 6.4 Amendments and Waivers. No provision of this Agreement may be amended or waived except in a written instrument signed by the Company and Purchasers. Any amendment or waiver effected in accordance with this Section 6.4 shall be binding upon the Purchasers (and their permitted assigns) and the Company. No waiver by either party of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right accruing to it thereafter.

Section 6.5 Headings. The article, section and subsection headings in this Agreement are for convenience only and shall not constitute a part of this Agreement for any other purpose and shall not be deemed to limit or affect any of the provisions hereof.

Section 6.6 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns. After the Closing, the

assignment by a party to this Agreement of any rights hereunder shall not affect the obligations of such party under this Agreement.

Section 6.7 No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

Section 6.8 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to any of the conflicts of law principles which would result in the application of the substantive law of another jurisdiction. This Agreement shall not be interpreted or construed with any presumption against the party causing this Agreement to be drafted.

Section 6.9 Survival. The representations and warranties of the Company and the Purchasers shall survive the execution and delivery hereof and the Closing hereunder for the applicable statute of limitations period.

Section 6.10 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and shall become effective when counterparts have been signed by each party and delivered to the other parties hereto, it being understood that all parties need not sign the same counterpart.

Section 6.11 Severability. The provisions of this Agreement are severable and, in the event that any court of competent jurisdiction shall determine that any one or more of the provisions or part of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement and this Agreement shall be reformed and construed as if such invalid or illegal or unenforceable provision, or part of such provision, had never been contained herein, so that such provisions would be valid, legal and enforceable to the maximum extent possible.

Section 6.12 Further Assurances. From and after the date of this Agreement, upon the request of the Purchasers or the Company, the Company and the Purchasers shall execute and deliver such instruments, documents and other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.

Section 6.13 Waiver of Conflicts. Each party to this Agreement acknowledges that Cooley LLP (“Cooley”), outside general counsel to the Company, has in the past performed and is or may now or in the future represent one or more Purchasers or their affiliates in matters unrelated to the transactions contemplated by this Agreement (the “Financing”), including representation of such Purchasers or their affiliates in matters of a similar nature to the Financing. The applicable rules of professional conduct require that Cooley inform the parties hereunder of this representation and obtain their consent. Cooley has served as outside general counsel to the Company and has negotiated the terms of the Financing solely on behalf of the Company. The Company and each Purchaser hereby (a) acknowledge that they have had an opportunity to ask for and have obtained information relevant to such representation, including

disclosure of the reasonably foreseeable adverse consequences of such representation; (b) acknowledge that with respect to the Financing, Cooley has represented solely the Company, and not any Purchaser or any stockholder, director or employee of the Company or any Purchaser; and (c) gives its informed consent to Cooley's representation of the Company in the Financing.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

MODSYS INTERNATIONAL LTD.

By: /s/ Matt Bell

Name: Matt Bell

Title: CEO

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK  
SIGNATURE PAGES FOR PURCHASERS FOLLOW]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

**Columbia Pacific Opportunity Fund, LP**

By: /s/ Alex Washburn

Name: Alex Washburn

Title: Manager

**Prescott Group Aggressive Small Cap Master Fund, G.P.**

By: /s/ Jeffrey D Watkins

Name: Jeffrey D. Watkins

Title: President

**Mindus Holdings, Ltd.**

By: /s/ Scott D Miller

Name: Scott D Miller

Title: President

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**EXHIBIT A  
LIST OF PURCHASERS**

<b>Purchaser</b>	<b>Preferred Shares</b>	<b>Warrants to Purchase Ordinary Shares</b>	<b>Total Purchase Price</b>
Columbia Pacific Opportunity Fund	200,000	100,000	\$400,000
Prescott Group Aggressive Small Cap Master Fund, G.P.	200,000	100,000	\$400,000
Mindus Holdings, Ltd.	100,000	50,000	\$200,000
<b>TOTAL</b>	<b>500,000</b>	<b>250,000</b>	<b>\$1,000,000</b>

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**EXHIBIT B**

**Form of Warrant**

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**EXHIBIT C**

**Amended Articles of Association**

[Intentionally Omitted]

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