

THE COMPANIES ACT 1985

PUBLIC COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

OF

MERCURY HOLDINGS PLC

1. The Company's name is Mecury Holdings plc.¹
2. The Company is a public company.²
3. The Company's registered office is to be situated in England and Wales
4. The Company's objects are:-

(a)(i) To carry on the business as an investment company and holding company and for these purposes, either in the name of the Company or in that of any nominee, to acquire, hold, trade and deal in any shares, stocks, bonds, debentures, debenture stocks, units or sub-units of a unit trust scheme, warrants, certificates of deposit, financial instruments, bills, notes, obligations or securities of any kind issued by any British, foreign or other government, state, province, local authority, undertaking, municipality, public body or building or friendly society or by any company or corporation of whatever nature and wherever constituted or carrying on business and to acquire, hold, trade and deal in any commodities, sterling or foreign currencies or any put or call options written in respect of all or any of the above mentioned categories of investments or any contracts (whether or not futures contracts) or rights relating to all or any of the above-mentioned categories of investments (whether or not dealt in or traded on any established stock, commodity, options or futures exchange, unlisted securities market or over-the-counter market) and including but not by way of limitation any interest rate futures contract by reference to any financial instrument whatsoever and from time to time to vary, transpose, dispose of or otherwise deal with any of the Company's investments or rights as may be considered expedient either for the purpose of acquiring others or otherwise in the attainment of these objects.³

(a)(ii) To carry on all or any of the businesses of general merchants and traders, cash and credit traders, manufacturers' agents and representatives, insurance brokers and consultants, estate and advertising agents, mortgage brokers, financial agents, advisers, managers and administrators, hire purchase and general financiers, brokers and agents,

¹ The company was incorporated under the name Rolerod Limited. Pursuant to a special resolution passed on 30 May 1990, the name of the company was changed on 3 July 1990 to Mecury Airfreight Holdings Limited. Pursuant to a special resolution passed on 2 April 1996, the company was re-registered as a public company limited by shares and the name of the company was changed to Mecury Holdings plc.

² Inserted pursuant to a special resolution passed on 2 April 1996.

³ Inserted pursuant to a special resolution passed on 30 May 1990.



commission agents, importers and exporters, manufacturers, retailers, wholesalers, buyers, sellers, distributors and shippers of, and dealers in all products, goods, wares, merchandise and produce of every description, to participate in, undertake, perform and carry on all kinds of commercial, industrial, trading and financial operations and enterprises; to carry on all or any of the business of marketing and business consultants, advertising agents and contracts, general storekeepers, warehousemen, discount traders, mail order specialists, railway, shipping and forwarding agents, shippers, traders, capitalists and financiers either on the Company's own account or otherwise, printers and publishers; haulage and transport contractors, garage proprietors, operators, hirers and letters on hire of, and dealers in motor and other vehicles, craft, plant, machinery, tools and equipment of all kinds; and to purchase or otherwise acquire and take over any business or undertakings which may be deemed expedient, or to become interested in, and to carry on or dispose of, remove or put an end to the same or otherwise deal with any such businesses or undertakings as may be thought desirable.

(b) To carry on any other trade or business whatever which can in the opinion of the Board of Directors be advantageously carried on in connection with or ancillary to any of the businesses of the Company.

(c) To purchase or by any other means acquire and take options over any property whatever, and any rights or privileges of any kind over or in respect of any property.

(d) To apply for, register, purchase, or by other means acquire and protect, prolong and renew, whether in the United Kingdom or elsewhere any patents, patent rights, brevets d'invention, licences, secret processes, trade marks, designs, protections and concessions and to disclaim, alter, modify, use and turn to account and to manufacture under or grant licences or privileges in respect of the same, and to expend money in experimenting upon, testing and improving any patents, inventions or rights which the Company may acquire or propose to acquire.

(e) To acquire or undertake the whole or any part of the business, goodwill and assets of any person, firm or company carrying on or proposing to carry on any of the businesses which the Company is authorised to carry on and as part of the consideration for such acquisition to undertake all or any of the liabilities of such person, firm or company, or to acquire an interest in, amalgamate with, or enter into partnership or into any arrangement for sharing profits, or for co-operation, or for mutual assistance with any such person, firm or company, or for subsidising or otherwise assisting any such person, firm or company, and to give or accept, by way of consideration for any of the acts or things aforesaid or property acquired, any shares, debentures, debenture stock or securities that may be agreed upon, and to hold and retain, or sell, mortgage and deal with any shares, debentures, debenture stock or securities so received.

(f) To improve, manage, construct, repair, develop, exchange, let on lease or otherwise, mortgage, charge, sell, dispose of, turn to account, grant licences, options, rights and privileges in respect of, or otherwise deal with all or any part of the property and rights of the Company.

(g) To invest and deal with the moneys of the Company not immediately required in such manner as may from time to time be determined and to hold or otherwise deal with any investments made.

(h) To lend and advance money or give credit on any terms and with or without security to any person, firm or company (including without prejudice to the generality of the foregoing any holding company, subsidiary or fellow subsidiary of, or any other company associated in any way with, the Company), to enter into guarantees, contracts of indemnity and suretyships of all kinds, to receive money on deposit or loan upon any terms, and to secure or guarantee in any manner and upon any terms the payment of any sum of money or the performance of any obligation by any person, firm or company (including without prejudice to the generality of the foregoing any such holding company, subsidiary, fellow subsidiary or associated company as aforesaid).

(i) To borrow and raise money in any manner and to secure the repayment of any money borrowed, raised or owing by mortgage, charge, standard security, lien or other security upon the whole or any part of the Company's property or assets (whether present or future), including its uncalled capital, and also by a similar mortgage, charge, standard security, lien or security to secure and guarantee the performance by the Company of any obligation or liability it may undertake or which may become binding on it.

(j) To draw, make, accept, endorse, discount, negotiate, execute and issue cheques, bills of exchange, promissory notes, bills of lading, warrants, debentures, and other negotiable or transferable instruments.

(k) To apply for, promote, and obtain any Act of Parliament, order, or licence of the Department of Trade or other authority for enabling the Company to carry any of its objects into effect, or for effecting any modification of the Company's constitution, or for any other purpose which may seem calculated directly or indirectly to promote the Company's interests, and to oppose any proceedings or applications which may seem calculated directly or indirectly to prejudice the Company's interests.

(l) To enter into any arrangements with any government or authority (supreme, municipal, local, or otherwise) that may seem conducive to the attainment of the Company's objects or any of them, and to obtain from any such government or authority any charters, decrees, rights, privileges or concessions which the Company may think desirable and to carry out, exercise, and comply with any such charters, decrees, rights, privileges, and concessions.

(m) To subscribe for, take, purchase, or otherwise acquire, hold, sell, deal with and dispose of, place and underwrite shares, stocks, debentures, debenture stocks, bonds, obligations or securities issued or guaranteed by any other company constituted or carrying on business in any part of the world, and debentures, debenture stocks, bonds, obligations or securities issued or guaranteed by any government or authority, municipal, local or otherwise, in any part of the world.

(n) To control, manage, finance, subsidise, co-ordinate or otherwise assist any company or companies in which the Company has a direct or indirect financial interest, to provide secretarial, administrative, technical, commercial and other services and facilities of all kinds for any such company or companies and to make payments by way of subvention or otherwise and any other arrangements which may seem desirable with respect to any business or operations of or generally with respect to any such company or companies.

(o) To promote any other company for the purpose of acquiring the whole or any part of the business or property or undertaking or any of the liabilities of the Company, or of undertaking any business or operations which may appear likely to assist or benefit the Company or to enhance the value of any property or business of the Company, and to place or guarantee the placing of, underwrite, subscribe for, or otherwise acquire all or any part of the shares or securities of any such company as aforesaid.

(p) To sell or otherwise dispose of the whole or any part of the business or property of the Company, either together or in portions, for such consideration as the Company may think fit, and in particular for shares, debentures, or securities of any company purchasing the same.

(q) To act as agents or brokers and as trustees for any person, firm or company, and to undertake and perform sub-contracts.

(r) To remunerate any person, firm or company rendering services to the Company either by cash payment or by the allotment to him or them of shares or other securities of the Company credited as paid up in full or in part or otherwise as may be thought expedient.

(s) To pay all or any expenses incurred in connection with the promotion, formation and incorporation of the Company, or to contract with any person, firm or company to pay the same, and to pay commissions to brokers and others for underwriting, placing, selling, or guaranteeing the subscription of any shares or other securities of the Company.

(t) To support and subscribe to any charitable or public object and to support and subscribe to any institution, society, or club which may be for the benefit of the Company or its Directors or employees, or may be connected with any town or place where the Company carries on business; to give or award pensions, annuities, gratuities, and superannuation or other allowances or benefits or charitable aid and generally to provide advantages, facilities and services for any persons who are or have been Directors of, or who are or have been employed by, or who are serving or have served the Company, or any company which is a subsidiary of the Company or the holding company of the Company or a fellow subsidiary of the Company or the predecessors in business of the Company or of any such subsidiary, holding or fellow subsidiary company and to the wives, widows, children and other relatives and dependants of such persons; to make payments towards insurance; and to set up, establish, support and maintain superannuation and other funds or schemes (whether contributory or non-contributory) for the benefit of any of such persons and of their wives, widows, children and other relatives and dependants; and to set up, establish, support and maintain profit sharing or share purchase schemes for the benefit of any of the employees of the Company or of any such subsidiary, holding or fellow subsidiary company and to lend money to any such employees or to trustees on their behalf to enable any such purchase schemes to be established or maintained.

(u) Subject to and in accordance with a due compliance with the provisions of Sections 155 to 158 (inclusive) of the Act (if and so far as such provisions shall be applicable), to give, whether directly or indirectly, any kind of financial assistance (as defined in Section 152(1)(a) of the Act) for any such purpose as is specified in Section 151(1) and/or Section 151(2) of the Act.

(v) To distribute among the Members of the Company in kind any property of the Company of whatever nature.

(w) To procure the Company to be registered or recognised in any part of the world.

(x) To do all or any of the things or matters aforesaid in any part of the world and either as principals, agents, contractors or otherwise, and by or through agents, brokers, sub-contractors or otherwise and either alone or in conjunction with others.

(y) To do all such other things as may be deemed incidental or conducive to the attainment of the Company's objects or any of them.

AND so that:-

(1) None of the objects set forth in any sub-clause of this Clause shall be restrictively construed but the widest interpretation shall be given to each such object, and none of such objects shall, except where the context expressly so requires, be in any way limited or restricted by reference to or inference from any other object or objects set forth in such sub-clause, or by reference to or inference from the terms of any other sub-clause of this Clause, or by reference to or inference from the name of the Company.

(2) None of the sub-clauses of this Clause and none of the objects therein specified shall be deemed subsidiary or ancillary to any of the objects specified in any other such sub-clause, and the Company shall have as full a power to exercise each and every one of the objects specified in each sub-clause of this Clause as though each such sub-clause contained in the objects of a separate Company.

(3) The word "Company" in this Clause, except where used in reference to the Company, shall be deemed to include any partnership or other body of persons, whether incorporated or unincorporated and whether domiciled in the United Kingdom or elsewhere.

(4) In this Clause the expression "the Act" means the Companies Act 1985, but so that any reference in this Clause to any provision of the Act shall be deemed to include a reference to any statutory modification or re-enactment of that provision for the time being in force.

5. The liability of the Members is limited.

6. The Company's share capital is £2,144,361.60 divided into 1,500,000 preference shares of £1 each, 1,899,999 'A' ordinary shares of 10p each, 1,500,000 'B' ordinary shares of 10p each and 3,043,617 ordinary shares of 10p each.⁴

⁴ The company was incorporated with a share capital of £1,000 divided into 1,000 shares of £1 each. By a special resolution passed on 30 May 1990, the authorised share capital of the company was increased to £1,994,111.60 by the creation of 3,031,117 ordinary shares of 10p each, 1,899,999 'A' ordinary shares of 10p each and 1,500,000 preference shares of £1 each and each of the existing shares in the capital of the company was divided into 10 ordinary shares of 10p each. By a special resolution passed on 15 December 1995, the authorised share capital of the company was increased to £2,144,111.60 by the creation of 1,500,000 'B' ordinary shares of 10p each. By a further special resolution passed on 15 December 1995,

We, the subscribers to this Memorandum of Association, wish to be formed into a Company pursuant to this Memorandum; and we agree to take the number of shares shown opposite our respective names.

Names and addresses of Subscribers	Number of shares taken by each Subscriber
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1. Instant Companies Limited, 2, Braches Street, London N1 6UB.	- One
2. Swift Incorporations Limited, 2, Braches Street, London N1 6UB.	- One
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Total shares taken - Two	

Dated the 1st day of August, 1989.

Witness to the above Signatures:- Terry Jayne,
2, Braches Street,
London N1 6UB

the authorised share capital of the company was further increased to £2,144,361.60 by the creation of a further 2,500 ordinary shares of 10p each.

THE COMPANIES ACT 1985

PUBLIC COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

MERCURY HOLDINGS PLC

(Adopted by special resolution passed on 30 May 1990
and amended by special resolution passed on 15 December 1995)

PRELIMINARY

1. The regulations contained or incorporated in Table A of the Schedule to the Companies (Tables A-F) Regulations 1985 (as amended) (such table being hereinafter referred to as 'Table A') shall apply to the Company save in so far as they are excluded or varied hereby.

The following regulations of Table A shall not apply to the company: 40, 50, 53, 54, 65 to 69 (inclusive), 73 to 78 (inclusive), 80, 81, 84, 87, 89 and 93 to 98 (inclusive). In addition to the remaining regulations of Table A as varied hereby, the following shall be the regulations of the Company.

Words importing the singular number only include the plural number and vice versa.

Words importing the masculine, feminine or neuter genders shall each include the others. References to persons shall include bodies corporate, unincorporated associations and partnerships.

DEFINITIONS

2. In these Articles unless the context otherwise requires the following expressions shall bear the following meanings:-

Expression

Meaning

'A' Ordinary Shares'

means the 'A' Ordinary Shares of 10p each in the share capital of the Company;

'B' Ordinary Shares'

means the 'B' Ordinary Shares of 10p each in the share capital of the Company;

'Auditors'

means the auditors for the time being of the Company;

'Employee Share Option Scheme'

means the employee share option in the terms approved by the Investment Group prior to the adoption of these articles;

'Flotation'

means the admission of the whole of the issued ordinary share capital of the Company to the Official List of the London Stock Exchange, and such admission becoming effective;

'the Founders'

means Donald Sidney Rothwell, Christopher Henry Thomas, Brian Leslie Goldsmith, Anthony John Robinson, Michael John Brownrigg Butterfield, Peter Frederick Brown and Roy Patrick Buckley or any of them as the context so requires for as long as they remain shareholders in the Company;

'Group'

means the Company and any subsidiary of the Company from time to time;

'the Investment Agreement'

means the Investment Agreement proposed to be entered into between the Company (1), the Founders (2 - 8), the Investment Group (9 - 10) and any agreement supplemental thereto;

'Investment Group'

means 3i plc, and Barclays Industrial Development Limited in each case so long as it remains a party to the Investment Agreement and any assignee who becomes a party to the Investment Agreement pursuant to its terms for so long as it remains such a party;

'Ordinary Shares'

means the Ordinary Shares of 10p each in the share capital of the Company;

'Preference Shares'

means the Preference Shares of £1 each in the share capital of the Company;

'the Share Warrants'

means the Share Warrants issued by the Company to the members of the Investment Group;

'VAA'

means Virgin Atlantic Airways Limited (registered no. 1600117);

'VAS'

means Virgin Aviation Services Limited (registered no. 1927016);

'VMD'

means the mailing, wrapping and distribution business formerly carried on by VAA and VAS.

ALLOTMENT OF SHARES

3. Subject to any direction to the contrary which may be given by ordinary or other resolution of the Company, and subject to any statutory provision, any unissued shares of the Company (whether forming part of the original or any increased capital) shall be at the disposal of the directors who may offer, allot, grant options over or otherwise dispose of them to such persons, at such times and for such consideration and upon such terms and conditions as the directors may determine.
4. The directors are by this Article authorised to exercise all powers of the Company to allot relevant securities (within the meaning of s.80 of the Companies Act 1985). Such authority shall be for the general and unconditional exercise of such power and the maximum amount of relevant securities that may be the subject of allotment (within the meaning of the said s.80) under such authority shall be £1,994,111.60. Unless renewed, such authority will expire on the date five years from the date of the adoption of these Articles save that the Company may before such expiry make an offer or agreement which would or might require relevant securities to be allotted after such expiry and the directors may allot the relevant securities in pursuance of such offer or agreement accordingly. The amount of a relevant security shall in the case of a share in the Company mean its nominal amount, and in the case of a right to subscribe for or to convert any security into shares in the Company mean the nominal amount of shares in the Company which will be required to satisfy such right (assuming full exercise).

SHARES

5. The share capital of the Company at the date of the passing of the resolution amending this first sentence of Article 5 is £2,144,361.60 divided into 1,500,000 Preference Shares of £1 each, 1,899,999 'A' Ordinary Shares of 10p each, 1,500,000 'B' Ordinary Shares of 10p each and 3,043,617 Ordinary Shares of 10p each.

The rights attaching to the respective classes of shares shall be as follows:-

(a) Income

The profits of the Company in respect of each financial year shall be applied as follows:-

- (i) first in paying to the holders of the Preference Shares a fixed cumulative preferential net cash dividend exclusive of the Associated Tax Credit (hereinafter in these Articles referred to as 'the Preference Dividend') of 12 pence per annum on each share accruing from the date of subscription for the Preference Shares payable half yearly on the 28 February and the 31 August;
- (ii) second in paying to the holders of the 'A' Ordinary Shares a fixed cumulative preferential net cash dividend exclusive of the Associated Tax Credit (hereinafter in these Articles referred to as 'the Fixed Dividend') of 2.52 pence per annum on each share accruing from the date of subscription for the 'A' Ordinary Shares and payable half yearly on the 28 February and the 31 August;
- (iii) third in paying to the holders of the 'A' Ordinary Shares as a class in respect of each financial year of the Company a cumulative preferential net cash dividend exclusive of the Associated Tax Credit (hereinafter in these Articles referred to as 'the Participating Dividend') of a sum which when added to the total of the Fixed Dividend paid in respect of that year is equal to 8% of the Net Profit (calculated as hereinafter provided) of the Company and its subsidiaries for the relevant financial year. The Participating Dividend (if any) shall be paid not later than four months after the end of each successive accounting reference period of the Company or not later than 14 days after the audited accounts of the Company for such period are signed by the Company's auditors whichever is earlier.

For the purpose of calculating the Participating Dividend, the expression 'Net Profit' shall mean the net profit before taxation of the Company and its subsidiaries calculated on the historical cost accounting basis and shown in the audited consolidated profit and loss account of the Company and its subsidiaries for the relevant financial year (to the nearest £1) but adjusted by:-

- (A) adding back any payment or provision for any dividend on any share in the capital of the Company or any of its subsidiaries or for any other distribution or for the transfer of any sum to reserve and any amortisation of goodwill;
 - (B) disregarding extraordinary items;
 - (C) adding back any amount in excess of £450,000 in the aggregate in respect of emoluments (including amounts referred to in paragraph 22(3) of Schedule 5 of the Companies Act 1985) payable to the Company's and any subsidiary's directors and former directors where such directors are interested in shares in the Company but excluding any Special Director (as hereinafter defined) and their connected persons (as defined by Section 839 Income and Corporation Taxes Act 1988) (all such directors and connected persons being hereinafter together referred to as 'Relevant Directors') such sum to be adjusted annually on 31st December each year commencing on 31st December 1990 by a percentage equal to the percentage increase in the retail price index published by the Government to 30th November in the year in question from the 30th November in the previous year;
- (iv) fourth in paying to the holders of the 'A' Ordinary Shares in respect of each financial year of the Company a cumulative preferential net cash dividend exclusive of the Associated Tax Credit (hereinafter in these articles referred to as 'the Additional Dividend') on each share of an amount which, when added to the Fixed and Participating Dividend paid for the same financial year, shall equal the aggregate of:-
- (A) any dividend paid in such financial year pursuant to article 5(v)(A) below on all of the Ordinary Shares held by or on behalf of Relevant Directors (hereinafter in these articles referred to as the 'Directors Shares'); and
 - (B) the Excess Remuneration (as hereinafter defined)

divided by the number of Directors shares in issue on the date of adoption of these articles of association.

For the purpose of calculating the Additional Dividend the expression 'Excess Remuneration' shall mean emoluments (including amounts referred to in paragraph 22(3) of schedule 5 of the Companies Act 1985) in excess of £450,000 in the aggregate (increased as hereinafter provided) (or such other higher sum as may be agreed in writing from time to time by the holders of more than 50% of the 'A' Ordinary Shares) payable in respect of the relevant financial year to Relevant Directors after deducting income tax at the basic rate on such excess sum. The said sum of £450,000 shall be adjusted annually on 31st December each year commencing on 31st December 1990 by a percentage equal to the percentage increase in the retail price index published by the Government to 30th November in the year in question from 30th November in the previous year. The Additional Dividend (if any) shall be paid on the due date for payment of the Participating Dividend.

- (v) Save with the prior written consent of a majority of the holders of the 'A' Ordinary Shares no dividend shall be paid to the holders of the Ordinary Shares in respect of the financial years of the Company ending 31 December 1990 or 31 December 1991 and thereafter no dividend shall be paid to the holders of Ordinary Shares in respect of any financial year of the Company unless and until:-

- (1) the Fixed Dividend, the Participating Dividend (if any) and the Additional Dividend (if any) has been paid in full in respect of that financial year and in respect of all previous financial years of the Company; and
- (2) all Preference Shares falling due for redemption in that financial year and all previous financial years of the Company have been duly redeemed and the redemption moneys have been paid in full to the persons entitled thereto;

but subject thereto the profits which the Company may determine to distribute in respect of any financial year shall be applied:-

- (A) first in paying to the holders of the Ordinary Shares a dividend for such year on each share of an amount up to but not exceeding the aggregate of the Fixed and the Participating Dividend paid on each 'A' Ordinary Share for such year
- (B) secondly, with the prior written consent of a majority of the holders of the 'A' Ordinary Shares in distributing the balance of such profits amongst the holders of the 'A' Ordinary Shares and the Ordinary Shares (pari passu as if the same constituted one class of share).

Every dividend shall be distributed to the appropriate shareholders pro rata according to the amounts paid up or credited as paid up on the shares held by them respectively and shall accrue on a daily basis.

Unless the Company has insufficient profits available for distribution and the Company is thereby prohibited from paying dividends by the Companies Act 1985 the Preference Dividend the Fixed Dividend the Participating Dividend the Additional Dividend shall (notwithstanding Regulations 102 to 108 inclusive contained in Table A of the Companies (Tables A - F) Regulations 1985 or any other provision of these Articles and in particular notwithstanding that there has not been a recommendation of the directors or resolution of the Company in general meeting) be paid immediately on the due date and if not then paid shall be a debt due by the Company and be payable in priority to any other dividend. Provided that if due to delays in the preparation of the audited accounts of the Company the Participating Dividend cannot be calculated by the date it is due for payment then there shall be paid forthwith an interim dividend in respect of the Participating Dividend of a sum equal to the last Participating Dividend payable.

The Company shall procure that each of its subsidiaries which has profits available for distribution shall from time to time declare and pay to the Company such dividends as are necessary to permit lawful and prompt payment by the Company of the Preference Dividend the Fixed Dividend the Participating Dividend and the Additional Dividend.

If any dividends on the 'A' Ordinary Shares or the Preference Shares are not paid on the dates specified for payment in these articles then the amount of such overdue dividends will be increased by 12% per annum such increase to accrue from the date the dividend in question becomes a debt due pursuant to this article (in the case of the 'A' Ordinary Shares) and from the date specified for payment in this article (in the case of the Preference Shares).

(b) Capital

On a return of assets on liquidation or otherwise the assets of the Company remaining after the payment of its liabilities shall be applied as follows:-

- (i) first in paying to the holders of the Preference Shares the subscription price per share together with a sum equal to any arrears, deficiency or accruals of the dividends on the Preference Shares calculated down to the date of the return of capital and payable whether such dividend has been declared or earned or not;
- (ii) second in paying to the holders of the 'A' Ordinary Shares the subscription price per share together with a sum equal to any arrears, deficiency or accruals of the dividends on the 'A' Ordinary Shares calculated down to the date of the return of capital and payable whether such dividend has been declared or earned or not;
- (iii) third in paying to the holders of the Ordinary Shares and the 'A' Ordinary Shares any arrears, deficiencies or accruals of the Ordinary Top-Up Dividend and any resulting Additional Dividend;
- (iv) fourth in paying to the holders of 'B' Ordinary Shares any arrears, deficiencies or accruals of the VMD Dividend;
- (v) fifth in paying to the holders of the Ordinary Shares and the 'A' Ordinary Shares any Ordinary Top-Up Dividend and any resulting Additional Dividend payable as a result of the payment pursuant to Article 5(b)(iv);
- (vi) sixth in paying to the holders of the 'B' Ordinary Shares and the Ordinary Shares a sum per share equal to the amount of capital paid on each 'A' Ordinary Share pursuant to Article 5(b)(ii).

The balance of such assets shall be distributed among the holders of the 'A' Ordinary Shares, the 'B' Ordinary Shares and the Ordinary Shares (pari passu as if the same constituted one class of share) in proportion to the amounts paid up or credited as paid up on the 'A' Ordinary Shares, the 'B' Ordinary Shares and the Ordinary Shares held by them respectively.

(c) Conversion of 'A' Ordinary Shares

The holders of the 'A' Ordinary Shares may at any time convert the whole of their 'A' Ordinary Shares into a like number of Ordinary Shares and the following provisions shall have effect:-

- (i) the conversion shall be effected by notice in writing given to the Company signed by the holders of a majority of the 'A' Ordinary Shares and the conversion shall take effect immediately upon the date of delivery of such notice to the Company;
- (ii) forthwith thereafter the holders of the Ordinary Shares resulting from the conversion shall send to the Company the certificates in respect of their respective holdings of 'A' Ordinary Shares and the Company shall issue to such holders respectively certificates for the Ordinary Shares resulting from the conversion;
- (iii) the Ordinary Shares resulting from the conversion shall rank from the date of conversion pari passu in all respects with the remaining Ordinary Shares in the capital of the Company;
- (iv) on the date of conversion the Company shall pay a dividend to the holders of the 'A' Ordinary Shares of a sum equal to any arrears, deficiency or accruals of the dividends on the 'A' Ordinary Shares calculated on a daily basis to the date of conversion and the Participating Dividend shall be calculated pro rata according to the profits of the Company and its subsidiaries for the relevant financial year down to the date of such conversion such profits to be agreed between the 'A' ordinary shareholders and the Company but in default of agreement calculated and certified by the Company's auditors for the time being whose decision shall be final and binding on the Company and the holders of the 'A' Ordinary Shares.

(d) Redemption of Preference Shares

- (i) Subject to the provisions of the Companies Act 1985 the Preference Shares shall be redeemed in the proportions and on the dates set out below:-

<u>Redemption Date</u>	<u>Number of Shares Redeemable</u>
31 December 1992	300,000
31 December 1993	300,000
31 December 1994	300,000
31 December 1995	300,000
31 December 1996	300,000

- (ii) Subject as aforesaid all of the Preference Shares shall (unless the holders of a majority of the Preference Shares give notice in writing to the Company to the contrary) be redeemed immediately upon any of the following dates:-
- (1) the date upon which any of the equity share capital of the Company is admitted to the Official List of the Stock Exchange or permission for any of the equity share capital of the Company to be dealt in on the Unlisted Securities Market or any other recognised investment exchange (as defined in section 207 of the Financial Services Act 1986) becomes effective; or
 - (2) the date upon which an offer to purchase 90% or more of the issued equity share capital of the Company (or all such capital other than any such already held by the offeror) becomes unconditional, or, if later, the date upon which such offer is due to be completed in accordance with its terms.
- (iii) On the dates fixed for any redemption the Company shall pay to each registered holder of Preference Shares the amount payable in respect of such redemption and upon receipt of that amount each such holder shall surrender to the Company the certificate for his shares which are to be redeemed in order that they may be cancelled provided that if any certificate so surrendered includes any shares not redeemable at that time the Company shall issue a fresh certificate for the balance of the shares not redeemable to the holder. If there is more than one holder of Preference Shares any redemption shall be made among such holders pro rata (as nearly as may be) to their respective holdings.
- (iv) The Company shall pay on each of the Preference Shares so redeemed the sum of £1 together with a sum equal to any arrears, deficiency or accruals of the cumulative dividends thereon calculated to the date of redemption whether such dividends have been declared or earned or not and the cumulative dividends thereon shall cease to accrue from that date unless upon surrender of the certificate for such shares payment of the redemption monies shall be refused.

(e) 'B' Ordinary Shares

- (i) Subject only to the rights of the holders of the Preference Shares to receive the Preference Dividend and to the rights of the holders of the 'A' Ordinary Shares to receive the Fixed Dividend and the Participating Dividend (but not, for the avoidance of doubt, the Additional Dividend), the profits of the Company available for distribution in respect of the financial year ending 31st December 1996 and in respect of each financial year thereafter shall be applied in paying to the holders of the 'B' Ordinary Shares a fixed cumulative preferred net cash dividend exclusive of the Associated Tax Credit (hereinafter in these Articles referred to as 'the VMD Dividend') of an amount per share equal to:-

$$\frac{X}{Y}$$

where X is the lower of:-

- (A) £500,000; and
- (B) the amount shown by the Company as being the actual cash flow (calculated in accordance with financial reporting standard no. 1) which VAS and VAA would have received in the year ending 31st October 1996 had VMD remained owned by them (the "Hypothetical Cash Flow")

and Y is the number of 'B' Ordinary Shares which would be issued if the £7.5 million interest free unsecured convertible loan notes 1996 of Mercury SDS Limited were converted in full in accordance with the provisions of condition 2 thereof and the ordinary shares in the capital of Mercury SDS Limited issued on such conversion were exchanged for 'B' Ordinary Shares in accordance with the provisions of condition 3 thereof

PROVIDED THAT the amount of the VMD Dividend for any financial year shall be reduced pro rata in the event that a 'B' Ordinary Share is converted into an Ordinary Share during the course of that financial year pursuant to the provisions of sub-paragraph (vi) below and PROVIDED FURTHER THAT if Flotation should occur during the course of a financial year, no VMD Dividend shall be payable in respect of that financial year, and the holders of the 'B' Ordinary Shares shall only be entitled to be paid the same dividend per share for that financial year as the holders of Ordinary Shares, but immediately prior to Flotation, any accrued but unpaid VMD Dividend in respect of any prior financial year shall be paid in full.

The VMD Dividend shall be paid at the same time as the Participating Dividend, and the provisions of the third last and

second last paragraphs of paragraph (a) of this Article 5 shall apply to the VMD Dividend as if the same were referred to therein in the same manner as the Preference Dividend, the Fixed Dividend, the Participating Dividend and the Additional Dividend.

For the avoidance of doubt, no dividend shall be paid in respect of the Ordinary Shares in respect of any financial year unless and until the VMD Dividend has been paid in full in respect of that financial year.

If the Company believes that the Hypothetical Cash Flow is sufficiently below £500,000 as to make it worthwhile to attempt to show that the Hypothetical Cash Flow is below £500,000, it shall, prior to 31 December 1996, deliver to the holders of the £7.5 million interest free unsecured convertible loan notes 1996 of Mercury SDS Limited a statement to that effect, containing the figures which, in the reasonable opinion of the Company, justify such belief. Within 14 days after the delivery of such statement to such noteholders, the noteholders shall deliver a notice to the Company either confirming their acceptance of the same or rejecting the same, giving, in the case of a rejection, reasonable details of the points in dispute (and failure to deliver such notice shall be deemed conclusive evidence of acceptance by the holders of the 'B' Ordinary Shares of the statement delivered by the Company as aforesaid). If the noteholders should notify the Company that they reject the statement delivered by the Company, then, in default of agreement on the points in dispute within 14 days after the Company's receipt of the notice delivered by the noteholders (and the Company shall negotiate in good faith with the noteholders with a view to resolving the points in dispute), each point remaining in dispute shall, if so requested by the Company or the noteholders, be referred for determination by an independent firm of chartered accountants agreed upon by the Company and the noteholders or, in the absence of agreement within 21 days after the Company's receipt of the notice delivered by the noteholders, by such other firm of chartered accountants as is nominated at the request of the Company or the noteholders by the President for the time being of the Institute of Chartered Accountants in England and Wales (or his duly appointed deputy). In making such determination, any such firm of chartered accountants shall act as experts and not as arbitrators and their decision shall (in the absence of manifest error) be final and binding on the Company and the holders of the 'B' Ordinary Shares. The cost of any referral to a firm of chartered accountants shall be borne by the Company and the holders of the 'B' Ordinary Shares in the proportions the firm may direct or, in the absence of direction, equally between the Company on the one part and the holders of the 'B' Ordinary Shares on the other part.

- (ii) If the aggregate dividends per Ordinary Share (exclusive of the Associated Tax Credits) paid in respect of any financial year of the Company should be less than the VMD Dividend paid in respect of

that financial year, then a net cash dividend exclusive of the Associated Tax Credit (hereinafter in these Articles referred to as 'the Ordinary Top-Up Dividend') of an amount equal to the aggregate of the excess of the VMD Dividend over the aggregate dividends paid per Ordinary Share and interest on the amount of such excess (calculated at the base rate from time to time of Barclays Bank plc from (and including) the date of payment of the relevant VMD Dividend to (but excluding) the date of payment of the Ordinary Top-Up Dividend) shall be paid (in priority of any further VMD Dividend) in respect of each Ordinary Share as soon as the distributable reserves of the Company allow the same to be paid and the directors resolve that the same should be so paid.

Any Ordinary Top-Up Dividend shall be taken into account for the purposes of calculating any Additional Dividend to be paid in respect of the 'A' Ordinary Shares, and for this purpose shall be deemed to have been paid under the provisions of Article 5(a)(v)(A) as referred to in Article 5[(a)](iv)(A).

Immediately prior to Flotation, any accrued but unpaid Ordinary Top-Up Dividend and any resultant Additional Dividend shall be paid in full.

Upon a sale of the whole of the issued ordinary share capital of the Company, the Ordinary Top-Up Dividend (if any) and the resultant Additional Dividend (if any) shall be paid (to the maximum extent that the distributable reserves of the Company so permit) to the holders of Ordinary Shares and 'A' Ordinary Shares entitled thereto, and, to the extent that the distributable reserves of the Company do not permit the Ordinary Top-Up Dividend and the resultant Additional Dividend (if any) to be paid in full, the consideration which would otherwise be payable by the purchaser for the ordinary share capital of the Company shall be apportioned among the holders thereof in such manner as, as nearly as practicable, puts the holders of the Ordinary Shares and the holders of the 'A' Ordinary Shares, viz a viz the holders of the 'B' Ordinary Shares, in the same position as they would have been in had the Top-Up Ordinary Dividend (and the resultant Additional Dividend, if any) been paid in full and, to the extent that any holder of shares receives consideration in respect of the shares in the capital of the Company sold by him in excess of the amount due to be received by him in accordance with the provisions of this Article 5(e)(ii), he shall hold the excess on trust for those holders of shares in the capital of the Company who received less than the consideration due to be received by them in accordance with the provisions of this Article 5(e)(ii) and shall account therefor forthwith upon demand.

- (iii) If it is proposed that any dividend be paid in respect of the Ordinary Shares (hereinafter in these Articles referred to as the 'proposed ordinary dividend') such that the aggregate dividends per Ordinary

Share (exclusive of the Associated Tax Credits) paid in respect of any financial year of the Company would exceed the VMD Dividend paid in respect of the same financial year, then the proposed ordinary dividend (if necessary) shall be reduced to such amount as would enable the Company to pay, at the same time as the (reduced, if such be the case) proposed ordinary dividend, both the resulting Additional Dividend (if any) payable in respect of the 'A' Ordinary Shares and a further net cash dividend exclusive of the Associated Tax Credit (hereinafter in these Articles referred to as 'the VMD Top-Up Dividend') of an amount which, when added to the VMD Dividend paid for the same financial year, shall equal the aggregate dividends per share paid in respect of the Ordinary Shares for the same financial year. The VMD Top-Up Dividend shall be paid at the same time as the (reduced, if such be the case) proposed ordinary dividend.

- (iv) For so long as Virgin Associates (as defined in Article 10(h)) together hold not less than 10 per cent of the issued share capital of the Company, the holders of the 'B' Ordinary Shares shall have the right at any time and from time to time by a memorandum signed by or on behalf of the holders of a majority of the 'B' Ordinary Shares to appoint one person to be a director of the Company and may in like manner remove any director so appointed and appoint another in his place. Any such appointment or dismissal shall take effect from the later of the time when the memorandum is lodged at the registered office of the Company and the time when the memorandum is first produced to a meeting of the directors of the Company.

Any such memorandum of appointment or removal of a director which is required to be signed by a corporate shareholder may be signed on its behalf by any one of its directors or its company secretary.

If any director appointed pursuant to this sub-paragraph (iv) is removed by the Company otherwise than by a resolution proposed by a holder of 'B' Ordinary Shares, or on which the holders of a majority of the 'B' Ordinary Shares vote in favour, then the Company shall be responsible for, and shall hold harmless, the holders of the 'B' Ordinary Shares and each of them from and against any claim for loss of office as director arising out of such removal and any reasonable costs and expenses incurred by the holders of the 'B' Ordinary Shares in defending such proceedings including, without prejudice to the generality of the foregoing, legal costs actually incurred without reference to any basis for calculating costs provided in the Rules of the Supreme Court.

- (v) Immediately prior to Flotation, the rights attaching to the 'B' Ordinary Shares shall automatically be varied to the effect that each of such shares is converted into one Ordinary Share.

- (vi) Upon an issued 'B' Ordinary Share ceasing to be held by a Virgin Associate (as defined in Article 10(h)), the rights attaching to that 'B' Ordinary Share shall automatically be varied to the effect that such share is converted into one Ordinary Share PROVIDED THAT, notwithstanding any other provision of these Articles, the holder of such resulting Ordinary Share shall not be entitled to receive any Ordinary Top-Up Dividend payable as a result of any VMD Dividend which has already been paid.
- (vii) Save as expressly otherwise provided in these Articles, the 'B' Ordinary Shares shall rank *pari passu* in all respects with, and shall be treated as shares of the same class as, the Ordinary Shares."

CLASS RIGHTS

6. Whenever the capital of the Company is divided into different classes of shares the special rights attached to any class may be varied or abrogated either whilst the Company is a going concern or during or in contemplation of a winding-up only with the consent in writing of the holders of a majority of the issued shares of that class.

Without prejudice to the generality of this Article, the special rights attached to the Preference Shares and 'A' Ordinary Shares shall be deemed to be varied:-

- (a) by the grant of any option (other than under the Employee Share Option Scheme) or other right to subscribe for shares or by any alteration or increase or reduction or sub-division or consolidation of the authorised or issued capital of the Company or of any of its subsidiaries, or any variation of the rights attached to any of the shares for the time being in the capital of the Company or of any of its subsidiaries; or
- (b) by the disposal of the undertaking of the Company or of any of its subsidiaries or any substantial part thereof; or
- (c) by the disposal of any share in the capital of any subsidiary of the Company; or
- (d) by the acquisition of any interest in any share in the capital of any Company by the Company or any of its subsidiaries;
- (e) by any alteration of the restrictions on the powers of the directors of the Company and its subsidiaries to borrow give guarantees or create charges; or
- (f) by the application by way of capitalisation of any sum in or towards paying up any debenture or debenture stock of the Company; or

- (g) by the winding up of the Company; or
 - (h) by the redemption of any of the Company's shares (other than pursuant to these Articles) or the entering into of a contract by the Company or any subsidiary to purchase any of its own shares; or
 - (i) by the entering into of a written service agreement with any director or connected person (as defined by section 839 Income and Corporation Taxes Act 1988) or the material variation of any such existing service agreement with any such person; or
 - (j) by any amendment to the Company's memorandum or amending or adopting new articles of association of the Company; or
 - (k) by any amendment to the Employee Share Option Scheme; or
 - (l) by any alteration of the Company's accounting reference date; or
 - (m) by the calling of a meeting of the Company to effect or approve any matter which would by virtue of this article be a variation of the class rights of the 'A' Ordinary or Preference Shares.
7. Subject to the provisions of Part V of the Companies Act 1985 and subject to any rights attaching to any class of share of the Company the Company may:-
- (a) issue shares which are to be redeemed or are liable to be redeemed at the option of the Company or the shareholders concerned;
 - (b) purchase its own shares (including any redeemable shares); and
 - (c) make payment in respect of the redemption or purchase under Sections 159 and 160 or (as the case may be) Section 162 of the Companies Act 1985 and the relevant power under (a) or (b) above, of any of its own shares, otherwise than out of distributable profits of the Company or the proceeds of a fresh issue of shares to the extent permitted by Sections 171 and 172 of the Companies Act 1985.

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

8.B. Each share in the capital of the Company shall bear a distinguishing number.

FURTHER ISSUE OF SHARES

9. Notwithstanding any other provisions of these articles the directors shall be bound to offer to each member of the Investment Group for the time being holding shares in the

capital of the Company such a proportion of any shares forming part of the equity share capital of the Company which the directors determine to issue as the aggregate nominal value of shares in the equity share capital of the Company for the time being held by such member of the Investment Group bears to the total issued equity share capital of the Company immediately before the issue of the shares. Any shares issued to a member of the Investment Group pursuant to such offer shall be issued upon no less favourable terms and conditions than those issued to any other person and so that such shares shall at the request of the member of the Investment Group be registered in the name or names of any person or company to whom shares may be transferred in accordance with the terms of article 10.

TRANSFER AND TRANSMISSION OF SHARES

10. Notwithstanding any other provision of these Articles but subject as hereinafter provided:-
- (a) a transfer of any share in the Company held by any member of the Company which is itself a company and is also a member of the Investment Group may be made between that member and any subsidiary company of any such member or to any holding company of any such member or to another subsidiary of such holding company without restriction as to price or otherwise provided that such transferee shall prior to such transfer taking place first enter into a Supplemental Agreement in accordance with the provisions of the Investment Agreement and provided always that if subsequently such transferee ceases to be a subsidiary of the original Transferor or the holding company of the original Transferor or a subsidiary of such holding company, such transferee shall forthwith notify the directors in writing that such event has occurred and shall be bound to give a Transfer Notice (as defined in these Articles) in respect of such shares;
 - (b) a transfer of any shares in the Company by any member of the Company which is a member of the Investment Group and which is held by such member as a nominee or on trust for one or more beneficial owners may be made between that member and any other nominee or trustee (whether direct or indirect) or to the beneficial owner for the time being without restriction as to price or otherwise provided that such transferee shall prior to such transfer taking place enter into a Supplemental Agreement in accordance with the provisions of the Investment Agreement; and

- (c) a transfer of any shares in the Company held by any member of the Company as a nominee or on trust, whether directly or indirectly, for an approved scheme or schemes as defined in Section 612(1) of the Income and Corporation Taxes Act 1988, may be made between that member and any other nominee or trustee whether direct or indirect for the same approved scheme or schemes without restriction as to price or otherwise provided that such trustee shall before such transfer is effected first enter into a Supplemental Agreement in accordance with the provisions of the Investment Agreement.
- (d) a transfer of any shares in the Company held by any member of the Company made or to be made (or to be by will bequeathed or otherwise disposed of on death):
 - (i) to a privileged relation; or
 - (ii) to trustees to be held upon a family trust.
- (e) Where such shares are held by trustees upon a family trust:
 - (i) on any change of trustees such shares may be transferred to the new trustees of that family trust;
 - (ii) such shares may be transferred at any time to any person to whom under article 10(d) the same could have been transferred by the settlor if he had remained the holder thereof; and
 - (iii) if and whenever any such shares cease to be held upon a family trust (otherwise than in consequence of a transfer authorised by article 10(e)(ii)) the trustees shall forthwith give a Transfer Notice (as hereinafter defined) in respect of the relevant shares (as hereinafter defined) and such shares may not otherwise be transferred;
 - (iv) for the purposes of sub-articles 10(e) the expression 'relevant shares' means and includes (so far as the same remain for the time being held by the trustees) the shares originally transferred to the trustees and any additional shares issued or transferred to the trustees by virtue of the holding of the relevant shares or any of them.
- (f) For the purpose of this article:

- (i) 'privileged relation' in relation to a member means the spouse or widow or widower of the member and the member's children and grandchildren (including step and adopted children and grandchildren);
 - (ii) 'family trust' in relation to any member means a trust which does not permit any of the settled property or the income therefrom to be applied otherwise than for the benefit of that member and/or privileged relation of that member and no power of control over the voting powers conferred by any shares the subject to the trust is capable of being exercised by any person other than the trustees or such member or his privileged relations;
 - (iii) 'settlor' includes a testator or an intestate in relation to a family trust arising respectively under a testamentary disposition or an intestacy of a deceased member.
- (g) a transfer of any share in the Company held by Barclays Bank plc or any subsidiary of Barclays Bank plc may be made between that member and Barclays Bank plc or any subsidiary of Barclays Bank plc or any fund managed or advised by any subsidiary of Barclays Bank plc.
- (h) a transfer of any share in the Company held by any member of the Company which is a Virgin Associate may be made between that Virgin Associate and another Virgin Associate.

For the purposes of this paragraph (h), the following definitions shall apply:-

"Undertaking" a body corporate or partnership or an unincorporated association situate in any jurisdiction carrying on a trade or business with or without a view to profit (and, in relation to an undertaking which is not a company, references to companies shall be construed as references to the corresponding persons, officers, documents or organs (as the case may be) appropriate to Undertakings of that description);

"Virgin Associate"

- (i) any spouse of the Virgin Individual, or any child or remoter issue of the Virgin Individual's grandparents; and/or
- (ii) the trustee or trustees for the time being of any settlement made by the Virgin Individual or any person mentioned in (i) above (but only when acting in that capacity); and/or

- (iii) any Undertaking in any jurisdiction in which the Virgin Individual himself or any person mentioned in (i) or (ii) above or (iv), (v) or (vi) below or any such persons taken together who has or have control (as defined in section 435(10) of the Insolvency Act 1986) directly or indirectly; and/or
- (iv) any personal representative of the Virgin Individual or any person mentioned in (ii) above (but only when acting in that capacity); and/or
- (v) any person acting as bare nominee for the Virgin Individual or any of the persons referred to in (ii) or (iv) above (but only when acting in that capacity);

"Virgin Individual"

R.C.N. Branson."

PRE-EMPTION RIGHTS

- 11.(a) Other than in the case of a transfer pursuant to the preceding Article any member wishing to dispose of any of his shares in the Company or the beneficial interest therein ('the Transferor') shall give notice in writing ('a Transfer Notice') to the Company that he wishes to dispose of one or more of his shares. A Transfer Notice may provide that unless all the transfer shares are sold to the persons to be offered the same pursuant to sub-article (c) of this Article none shall be sold ('a Total Transfer Condition');
- (b) every Transfer Notice shall specify the number and class of shares to be transferred, shall be accompanied by the Certificate for the Transferor's shares and shall constitute the company agent for the sale of the shares in accordance with this Article at a price to be determined in accordance with sub-article (d) of this Article ('the Sale Price'). A Transfer Notice may include several shares and in

such case shall operate as if it were a separate notice in respect of each such share. If the capital is divided into separate classes of shares a separate Transfer Notice shall be given (or be deemed to have been given) for each such class of shares. A Transfer Notice shall not be revocable except with the sanction of the directors;

(c) subject to the Sale Price being agreed or determined (as the case may be) in accordance with sub-article (d) of this Article within 15 days of receipt of a Transfer Notice or if later forthwith upon such determination the directors shall:-

(i) give notice in writing of the Transfer Notice specifying the Sale Price (an 'Offer Notice') to all the appropriate members of the Company in accordance with the following provisions:-

(A) an Offer Notice in respect of shares registered in the names of any of the Founders shall be first offered to all the other shareholders in proportion to their holdings of equity share capital (a 'First Offer'); and

(B) an Offer Notice in respect of shares registered in the name of a member of the Investment Group shall be first offered to the remaining members of the Investment Group in the proportions which their individual holdings bear to the total number of equity shares held by the Investment Group (a 'Preliminary Offer');

a Preliminary Offer shall be limited to a period of 15 days from the date of the Offer Notice ('the Preliminary Period') and shall if not accepted by any such members of the Investment Group within such time be deemed to have been declined by such members. The Preliminary Offer shall give the members of the Investment Group to which it is made the right to claim shares offered in addition to their due proportion if any other such members do not accept their due proportion. If any such members do not accept their due proportion then the unaccepted shares shall be distributed among those members of the Investment Group claiming additional shares in proportion or as

nearly as may be to their said holdings (but no member shall be bound to take more shares than those he has claimed) up to the maximum number of shares that each member is prepared to take. If any shares comprised in a Preliminary Offer remain unaccepted the directors shall issue a further Offer Notice in respect of such shares to all the shareholders in proportion to their holdings of equity share capital (a 'First Offer') and the provisions of this Article (apart from this sub-article) shall apply thereto.

Every First Offer shall be limited to a period of 15 days ('the First Period') from the date of the Offer Notice and shall if not accepted by any such members within such time be deemed to have been declined by such members. The First Offer shall give the members of the Company to which it is made the right to claim shares offered in addition to their due proportion if any other such members do not accept their due proportion. If any such members do not accept their due proportion then the unaccepted shares shall be distributed among those members of the Company claiming additional shares in proportion or as nearly as may be to their said holdings (but no member shall be bound to take more shares than those he has claimed) up to the maximum number of shares that each member is prepared to take. If the number of shares comprised in the Transfer Notice is insufficient to enable them to be offered pro rata to all the eligible members of the Company then they shall be offered individually to such members by the drawing of lots and the provisions of this sub-article shall apply accordingly;

- (ii) if by the expiry of the First Period there remain unaccepted shares the subject of the First Offer in accordance with the preceding provisions of this Article the Company shall be entitled to offer such unaccepted shares to a third party at any price not lower than the Sale Price. Such offer shall be limited to a period of 15 days ('the Second Period') from the end of the First Period and if not accepted within such time shall be deemed to be declined; and

(iii) if the Company shall within the Preliminary Period, the First Period, or the Second Period (as the case may be) find a transferee or transferees for the shares offered for sale as herein referred to or any of them they shall give notice thereof to the Transferor and he shall be bound upon payment of the appropriate Sale Price to transfer the shares to the relevant transferee or transferees provided always that if the Transfer Notice contained a Total Transfer Condition then unless the Company shall within such periods as aforesaid find a transferee or transferees for all but not some only of the shares offered for sale as herein referred to, the provisions of this paragraph (iii) shall not apply.

(d) The Sale Price of the shares comprised in any Offer Notice shall subject to the provisos herein contained in respect of any share be either the price thereof agreed between the Transferor and the directors within 15 days of the service of the Transfer Notice or (as the case may be) the date when the Transfer Notice is deemed to have been served or in default of agreement within such period such price as the Auditors of the Company shall on the application of either party certify in writing to be the fair value thereof per share taking into account (where relevant):-

- (i) the aggregate consideration which in their opinion a willing buyer would offer to a willing seller on the open market for the whole of the issued share capital of the Company;
- (ii) the past and current performance of the Company;
- (iii) the Company's apparent future prospects; and
- (iv) the rights attached to the class of share which is the subject of the Transfer Notice.

and ignoring any reduction in value which may be ascribed to the shares comprised in the Offer Notice by virtue of the fact that they represent a minority interest.

In so certifying the Auditors shall be considered to be acting as experts and not as arbitrators with regard to their determination and their decision

shall be final and binding on the parties. The reasonable costs of the Auditors shall be borne by the Company.

- (e) If the Transferor, after having become bound to transfer his shares as aforesaid, makes default in transferring the same the Company may receive the purchase money tendered by the relevant transferee and the proposed Transferor shall be deemed to have appointed any one director or the secretary of the Company as his agent to execute a transfer of the shares which are the subject of the Transfer Notice to the transferee and upon the execution of such transfer the Company shall hold the purchase money in trust for the Transferor. The receipt of the Company for the purchase money shall be a good discharge to the transferee and after his name has been entered on the Register of Members in purported exercise of the powers conferred by this paragraph, the validity of the proceedings shall not be questioned by any person.
- (f) If the Company shall not find a transferee or transferees before the expiry of the Second Period in accordance with the preceding provisions of this Article the Company may, subject to the provisions of the Companies Act 1985 and, where appropriate, with the sanction of the shareholders of the Company or any class thereof and with the consent of the Transferor, exercise its power to purchase all or any of the shares comprised in the Transfer Notice. If the Company declines or is unable to exercise such power it shall so notify the Transferor who shall be at liberty within a period of three months from receipt of such notification on a bona fide sale to transfer the shares together with the beneficial interest therein (or where the Transfer Notice comprises more shares than one, those not transferred in accordance with the foregoing provisions of this Article), to any person at a price no less than the Sale Price previously determined or to retain them for his own benefit provided, in the case of sale, that:-
 - (i) the directors may require to be satisfied in such manner as they may reasonably think fit that such shares are being transferred in pursuance of a bona fide sale and the directors, if not so satisfied, may refuse to register or approve the transfer provided that such refusal must be exercised reasonably and in good faith; and
 - (ii) if the Transfer Notice shall contain a Total Transfer Condition the Transferor shall not be

entitled under this sub-article to transfer any shares comprised in the Transfer Notice unless in aggregate the whole of such shares are transferred by him.

- (g) Subject to the provisions of the preceding Article any transfer of shares made otherwise than in accordance with the foregoing provisions of this Article shall be void and have no effect provided that the foregoing provisions of this Article may be set aside with the consent in writing of all the shareholders of the Company.

LIMITATION ON TRANSFER OF CONTROL

13. (a) No sale or transfer of the legal or beneficial interest in any shares in the Company may be made or validly registered without the previous written consent of majorities of the holders of the 'A' Ordinary Shares, 'B' Ordinary Shares and the holders of the Ordinary Shares respectively if as a result of such sale or transfer and registration thereof a Controlling Interest (as hereinafter defined) is obtained in the Company:-
- (i) by a person or persons (other than a company to which paragraph (b) below applies) who was or were not a member or members of the Company on the date this article was adopted as an article of association of the Company unless the proposed transferee or transferees or his or their nominees are independent third parties acting in good faith and has or have offered to purchase all the 'A' Ordinary Shares, 'B' Ordinary Shares and the Ordinary Shares and any Ordinary Shares subject to unexercised Share Warrants (as if the Shares the subject of the Share Warrants had been issued) at the Specified Price (as hereinafter defined) and all the Preference Shares at a price per share of at least £1 plus a sum equal to any arrears deficiency or accruals of the dividends on each such Preference Share calculated down to the date of sale or transfer; or
- (ii) by a company in which one or more of the members of the Company or persons acting in concert (which expression shall have the meaning ascribed to it in the City Code on Takeovers and Mergers from time to time) with any member of the Company have or as a result of such sale or transfer will have a Controlling Interest
- (b) No sale or transfer of the legal or beneficial interest in any shares in the Company held by Donald

Sidney Rothwell or Christopher Henry Thomas or their respective privileged relations or trustees of their respective family trusts or others to whom shares have been transferred under the provisions of Article 10(d) (other than a transfer permitted under Article 10(d)) may be made or validly registered without the previous written consent of a majority of the holders of the 'A' Ordinary Shares unless the proposed transferee or transferees or his or their nominees has or have offered to purchase all the 'A' ordinary Shares any Ordinary Share held by the holders of the 'A' Ordinary Shares and any Ordinary Shares subject to any unexercised Share Warrants (as if the Shares the subject of the Share Warrants had been issued) at the Specified Price (as hereinafter defined) and all the Preference Shares at a price per share of at least £1 plus a sum equal to any arrears deficiency or accruals of the dividends on each such Preference Share calculated down to the date of sale or transfer.

(c) For the purpose of this Article:-

- (i) the expression 'a Controlling Interest' shall mean an interest (within the meaning of Schedule 13 Part I and Section 324 of the Companies Act 1985) in shares in a company conferring in the aggregate 10% or more (where the consent of the holders of 'A' Ordinary Shares and/or Ordinary Shares is in issue) or 50% or more (where the consent of the holders of the 'B' Ordinary Shares is in issue) in either case of the total voting rights conferred by all the issued equity share capital in that company;
- (ii) the expressions 'transfer' and 'transferee' shall include respectively the renunciation of a renounceable letter of allotment and the renouncee under any such letter of allotment; and
- (iii) the expression 'the Specified Price' shall mean the higher of:-
 - (A) a price per share of 21p plus a sum equal to any arrears, deficiency or accruals of the dividends on such share calculated down to the date of sale or transfer; and
 - (B) a price per share at least equal to that offered or paid or payable by the proposed transferee or transferees or his or their nominees for any other shares in the Company plus an amount equal to the relevant proportion of any other consideration (in cash or otherwise) received or receivable by the holders of such other shares which having regard to the substance of the transaction as a

whole can reasonably be regarded as an addition to the price paid or payable for such other shares provided that if any part of the price per share is payable otherwise than by cash the holders of the 'A' Ordinary Shares may at their option elect to take a price per share of such cash sum as may be agreed by them having regard to the substance of the transaction as a whole plus a sum equal to any arrears, deficiency or accruals of the dividends on such share calculated down to the date of sale or transfer;

and in the event of disagreement the calculation of the Specified Price shall be referred to an umpire (acting as expert and not as arbitrator) nominated by the parties concerned (or in the event of disagreement as to nomination, appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales) whose decision shall be final and binding.

- (d) All other regulations of the Company relating to the transfer of shares and the right to registration of transfers shall be read subject to the provisions of this article.

GENERAL MEETINGS AND RESOLUTIONS

14. (a) Every notice convening a general meeting shall comply with the provisions of s.372(3) of the Companies Act 1985 as to giving information to members in regard to their right to appoint proxies; notices of and other communications relating to any general meeting which any member is entitled to receive shall be sent to the directors and to the auditors for the time being of the Company.
- (b) The directors shall procure that the accounts of the Company in respect of any financial year are audited and laid before the Company in an Annual General Meeting to be held not later than four months after the end of the financial year to which they relate.
15. No business shall be transacted at any meeting unless a quorum is present. A quorum shall consist of two persons entitled to vote upon the business to be transacted, each being a member or a proxy for a member or a duly authorised representative of a member corporation, provided that one such person shall be a proxy or representative of a member of the Investment Group and provided further that if a

quorum is not present within thirty minutes after the time appointed for the meeting the meeting shall be adjourned until two days later at the same time and place or at such other time or place as the directors may determine and at such adjourned meeting a quorum shall consist of any two shareholders of the Company.

16. One member present in person or by proxy or the Chairman may demand a poll and Regulation 46 of Table A shall be deemed to be altered and modified accordingly.
- 17.1 Subject to any special rights or restrictions as to voting attached to any shares by or in accordance with these Articles of Association, on a show of hands every member who (being an individual) is present in person or (being a corporation) is present by a representative not being himself a member, shall have one vote, and on a poll every member who is present in person or by proxy or (being a corporation) is present by a representative or by proxy shall (except as hereinafter provided) have one vote for every 50p in nominal amount of shares in the capital of the Company of which he is the holder. Provided that the holders of the Preference Shares shall be entitled to receive notice of all general meetings but shall not be entitled to attend or vote at any general meeting unless any cumulative dividend on the Preference Shares is six months or more in arrears or the Company shall have failed to redeem any of the Preference Shares in accordance with these Articles of Association and the holders of the Preference Shares have not consented to the delay in payment or redemption when the holders of the Preference Shares shall have such number of votes per Preference Share as, when added to the votes on any other Share in the share capital of the Company held by the holders of the Preference Shares, shall entitle the holders of the Preference Shares to vote 75% of the voting power attaching to the issued share capital of the Company; PROVIDED that for so long as any member of the 3i Group holds any Preference Shares the total aggregate number of votes capable of being cast by the members of the 3i Group shall be one vote less than would entitle the members of the 3i Group to vote 50% of the voting power attaching to the issued share capital of the Company and the remaining holders of the Preference Shares shall have the right to vote not less than 25.1% of the voting power attaching to the issued share capital of the Company.
- 17.2 For the purposes of these Articles of Association the expression 'a member of the 3i Group' shall mean 3i Group plc, 3i plc and any other subsidiary of 3i Group plc.
18. Subject to the provisions of the Companies Act 1985, a resolution in writing signed by all the members of the Company who would be entitled to receive notice of and to

attend and vote at a General Meeting, or by their duly appointed proxies or attorneys, shall be as valid and effectual as if it had been passed at a General Meeting of the Company duly convened and held. Any such resolution may be contained in one document or in several documents in the same terms each signed by one or more of the members or their proxies or attorneys, and signature in the case of a body corporate which is a member shall be sufficient if made by a director or the secretary thereof or by its duly authorised representative.

DIRECTORS

19. Unless and until the Company in General Meeting shall otherwise determine the number of directors shall not be less than 2 nor more than 10 of which at least one shall, if the holders of the 'B' Ordinary Shares have appointed a director pursuant to article 5(e)(iv), be such a director. The Company may by ordinary resolution appoint a person who is willing to act to be a director either to fill a vacancy or as an additional director.
20. The composition of the board of directors shall be governed by the provisions of the Investment Agreement and references in these Articles to 'Special Director' shall be to Special Director as defined in the Investment Agreement PROVIDED ALWAYS THAT if and for so long as any party or group of parties hereto is entitled to appoint a Special Director but has not exercised such right such party shall be entitled from time to time to appoint any person (an 'Observer') to attend meetings of the directors. Observers shall be entitled to speak at such meetings and to require that business be placed upon the agenda for any such meeting but shall not in any circumstances be entitled to vote.
21. The quorum for the transaction of the business of the directors shall be two, provided that one such person shall be a Special Director if any such have been appointed and provided further that if a quorum is not present within thirty minutes after the time appointed for the meeting the meeting shall be adjourned until two days later at the same time and place or at such other time or place as the directors may determine and at such adjourned meeting a quorum shall consist of any two directors of the Company.

A director may participate in a meeting of the board or of a committee of the board by means of conference telephone or similar communications equipment whereby all the directors participating in the meetings can hear each other, and the directors participating in a meeting in this manner are deemed to be present in person at any such meeting.

22. A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum. The chairman shall have no second or casting vote and Regulation 88 of Table A shall be varied accordingly.

BORROWING POWERS

23. Subject as hereinafter provided the directors may exercise all the powers of the Company (whether express or implied):-

- (a) of borrowing or securing the payment of money;
- (b) of guaranteeing the payment of money and the fulfilment of obligations and the performance of contracts; and
- (c) of mortgaging or charging the property assets and uncalled capital of the Company and (subject to section 80 of the Act) of issuing debentures

but so that:-

- (d) the directors of the Company shall procure that the aggregate amounts for the time being remaining undischarged by virtue of any of the foregoing operations by the Company or any subsidiary of the Company and by virtue of any like operations by the Company or any subsidiary of the Company (including any liability (whether ascertained or contingent) under any guarantee for the time being in force and including amounts due under any hire purchase, credit sale, conditional sale or leasing agreements (other than leases of real or heritable property) as can in accordance with current accounting practice be attributed to capital but excluding inter-company loans, mortgages and charges) shall not without the previous sanction of the 'A' Ordinary Shareholders and Preference Shareholders exceed a sum which is the greater of £7,000,000 or twice the aggregate of the nominal amount of the share capital of the Company for the time being issued and paid up or credited as paid up and the amounts for the time being standing to the credit of the capital and revenue reserves and the share premium account of the Company and all its subsidiaries (excluding any amounts arising from the writing up of the book values of any capital assets any amounts attributable to goodwill and minority interests and any amounts set aside for future taxation) all as shown by the then latest audited consolidated balance sheet of the Company;
- (e) no such sanction shall be required to the borrowing of any sum of money intended to be applied in the repayment (with or without premium) of any moneys then already borrowed and outstanding, notwithstanding that the same may result in such limit being exceeded;
- (f) no lender or other person dealing with the Company shall be concerned to see or enquire whether the limit imposed by this article is observed and no debt or liability incurred in excess of such limit shall be invalid and no security given for the same shall be invalid or ineffectual except in the case of express notice to the lender or recipient of the security or

person to whom the liability is incurred at the time when the debt or liability was incurred or the security given that the limit hereby imposed has been or was thereby exceeded;

- (g) except with the previous sanction of the holders of the 'A' Ordinary Shares and the Preference Shares no mortgage or charge shall be created on any part of the undertaking property or assets of the Company or any subsidiary of the Company except for the purpose of securing moneys borrowed from any member of the 3i Group with interest thereon and from bankers with interest thereon and bank charges.

POWERS AND DUTIES OF DIRECTORS

24. A director who is in any way either directly or indirectly interested in a contract or arrangement or proposed contract or arrangement with the Company shall declare the nature of his interest at a meeting of the directors of the Company in accordance with Section 317 of the Companies Act 1985. Subject to such disclosure, a director shall be entitled to vote in respect of any contract or arrangement in which he is interested and if he shall do so his vote shall be counted and he may be taken into account in ascertaining whether a quorum is present.
25. The directors may procure the establishment and maintenance of or participate in or contribute to any non-contributory or contributory pension or superannuation fund, scheme or arrangement or life assurance scheme or arrangement for the benefit of, and pay, provide for or procure the grant of donations, gratuities, pensions, allowances, benefits or emoluments to, any persons (including directors and other officers) who are or shall have been at any time in the employment or service of the Company or of any company which is a subsidiary of or associated with the Company or of the predecessors in business of the Company or any such subsidiary or associated company and the wives, widows, families or dependants of any such persons.

DISQUALIFICATION

26. No director shall vacate his office or be ineligible for appointment or re-appointment as a director by reason only of his having attained any particular age, nor shall special notice be required of any resolution appointing or approving the appointment of such a director or any notice berequired to state the age of the person to whom such resolution relates.
27. The office of a director shall be vacated if:-

- (a) he is prohibited from being a director by an order made under Sections 1 to 6 (inclusive) or Sections 8 or 10 of the Company Directors Disqualification Act 1986;
- (b) he becomes bankrupt or a receiving order is made against him or he makes any arrangement or composition with his creditors generally;
- (c) he becomes incapable by reason of mental disorder illness or injury of managing and administering his property and affairs;
- (d) save in the case of the Special Director he absents himself from attendance at two consecutive meetings of directors without special leave of absence from the directors, and they pass a resolution that he has by reason of such absence vacated office; or
- (e) by notice in writing to the Company he resigns his office.

28. In Regulation 79 of Table A the second sentence and third sentence thereof shall be deemed to be deleted.

PROCEEDINGS OF DIRECTORS

- 29. The third sentence of Regulation 88 of Table A shall not apply to the Company.
- 30. A resolution in writing signed or approved by letter, facsimile or telex by all the directors for the time being entitled to receive notice of a meeting of directors shall be as effective as a resolution passed at a meeting of the directors duly convened and held and may consist of several documents in the same terms each signed or approved by one or more of the directors.
- 31. Meetings of the directors shall, unless otherwise agreed by all of the directors, be held by telephone communication or audiovisual communications media provided that the immediately preceding meeting was not so held, and such meetings shall, subject to notice thereof having been given in accordance with these Articles, be as effective as if the directors had met in person, provided always that the number of directors participating in such communication is not less than the quorum stipulated by these Articles. A resolution made by a majority of the said directors in pursuance of this Article shall be as valid as it would have been if made by them at a meeting duly convened and held in person.

ALTERNATE DIRECTORS

32. Each director shall have power by notice in writing under his hand (which shall take effect on the service thereof at the registered office of the Company) to nominate (1) any other director or (2) any person approved for that purpose by the directors such approval not to be unreasonably withheld or delayed, to act as his alternate, and at his discretion to remove such alternate director. On such appointment being made the alternate director shall be for all purposes counted as a director of the Company, and except as regards remuneration and the power to appoint an alternate, shall while so acting be entitled to exercise and discharge all the functions, powers and duties of the director whom he represents. Any director acting as alternate shall have an additional vote for each director for whom he acts as alternate but shall not be considered as two directors for the purpose of making a quorum of directors. An alternate director shall ipso facto cease to be an alternate director if his appointor ceases for any reason to be a director or on the happening of any event which if the alternate were a director would cause him to vacate such office. An alternate director shall during his appointment be an officer of the Company and shall not be deemed to be an agent of his appointor. An appointment of an alternate shall not prejudice the right of the appointor to receive notice of and to attend and vote at meetings of the board of directors.

MANAGING DIRECTORS

33. The directors may from time to time appoint one or more of their body to be managing director or to hold such other office in the management, administration or conduct of the business of the Company for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. Subject to the terms of any such agreement, a managing director or a director appointed to any other office as aforesaid shall be subject to the same provisions as to resignation and removal as the other directors of the Company and shall ipso facto and immediately cease to be managing director or to hold such other office in the management, administration or conduct of the business of the Company if he ceases to hold the office of director from any cause.
34. The remuneration of a managing director or any director who may be appointed to any other office in the management, administration or conduct of the business of the Company shall from time to time (subject to the provisions of any agreement between him and the Company) be fixed by a panel of the members of the board of directors of the Company, (not

including the said director), and may be by way of fixed salary, or commission on the dividends, profits, sales or turnover of the Company, or of any other company in which the Company is interested, or other participation in any such profits, or by way of retiring salary or provision for a pension or pensions for himself or his dependants, or by all or any of these modes, and (subject as aforesaid) the remuneration so fixed shall be additional to any ordinary remuneration to which he may be entitled as a director of the Company.

NOTICES TO MEMBERS

35. A notice may be given by the Company to any member either personally or by sending it by prepaid first class post, airmail, facsimile or telex to his registered address or to any other address supplied by him to the Company for the giving of notice to him. A properly addressed and prepaid notice sent by post shall be deemed to have been served at an address within the United Kingdom, in the case of notice of a meeting, at the expiry of 24 hours after the notice is posted and, in the case of notice of any other matter, at the time at which the notice would be delivered in the ordinary course of post and, in either case, served at an address outside the United Kingdom at the expiry of five days from the date of posting. Where a notice is given by telemessage, service of the same shall be deemed to be effected at the expiry of 24 hours after it is delivered by the Company to the relevant transmitting authority. Where a notice is given by telex, service of the same shall be deemed to be effected upon receipt of the appropriate answerback code at the end of the sender's copy of the telex. Where a notice is given by facsimile, service of the same shall be deemed to be effected upon receipt of telephone or other confirmation of its receipt.
36. Regulation 116 of Table A shall be amended by the deletion of the words 'within the United Kingdom' and Regulation 112 of Table A shall be amended by the deletion of the words 'within the United Kingdom' where they appear the second time.

INDEMNITY

37. In addition to the indemnity contained in Regulation 118 of Table A and subject to the provisions of Section 310 of the Companies Act 1985, every director, agent, auditor, secretary and other officer of the Company shall be entitled to be indemnified out of the assets of the Company against all losses or liabilities properly incurred by him in or about the execution and discharge of the duties of his office.