

THE COMPANIES ACT 1985

PRIVATE COMPANY LIMITED BY SHARES

NEW

ARTICLES OF ASSOCIATION

(Adopted by Special Resolution passed
on 18 November 1996 as amended by
Special Resolution passed on 11 March 1997 and
as further amended by a Special Resolution passed
on 4 December 1997)

-of-

MALMAISON LIMITED

Incorporated 27 December 1995

Company No. 3141385



CONTENTS

	Page
Article 1	
Introduction	1
Article 2	
Definitions	1
Articles 3	
Share Capital	2
Article 4	
Deferred Share Rights	3
Article 5	
Alteration of Share Capital	9
Article 6	
Issues of new shares	10
Article 7	
Lien	10
Articles 8 to 13	
Transfers of shares	11
Articles 14 to 18	
General Meetings	19
Article 19	
Number of directors	20
Article 20	
Appointment of directors	21
Article 21	
Nominated directors	21
Article 22	
Disqualification of directors	22
Article 23	
Removal of directors	22
Article 24	
Directors' remuneration	22
Articles 25 to 29	
Proceedings of directors	22

Article 30	
Borrowing powers	23
Article 31	
Execution of documents	23
Article 32	
Indemnity	23

THE COMPANIES ACT 1985

PRIVATE COMPANY LIMITED BY SHARES

NEW

ARTICLES OF ASSOCIATION

(Adopted by Special Resolution passed
18 November, 1996 as amended by a
Special Resolution passed on 11 March 1997 and
as further amended by a Special Resolution passed
on 4 December 1997)

-of-

MALMAISON LIMITED

INTRODUCTION

- 1.1 The Regulations contained or incorporated in Table A in the Schedule to The Companies (Tables A to F) Regulations 1985 as amended by The Companies (Tables A to F) Amendment Regulations 1985 ("Table A") shall apply to the Company, save insofar as they are varied or excluded by, or are inconsistent with, the following Articles.
- 1.2 In Regulation 1 of Table A, the words "and in Articles of Association adopting the same" shall be inserted after the word "Regulations" in the last paragraph of that Regulation and the sentence "Any reference to any statutory provision shall be deemed to include a reference to each and every statutory amendment, modification, re-enactment and extension thereof for the time being in force" shall be inserted at the end of that Regulation.
- 1.3 Regulations 8, 24, 62, 73 to 77 (inclusive), 80, 82, 94 to 98 (inclusive) and 118 of Table A shall not apply to the Company.

DEFINITIONS

- 2 In these Articles the following words and expressions shall have the following meanings:-

"the Act"	the Companies Act 1985, as amended;
"A Deferred Shares"	deferred shares of 1 pence each in the capital of the company created pursuant to Article 4.5 and having the rights and being subject to the restrictions set out in Articles 4.1 and 4.5;
"B Deferred Shares"	deferred shares of 1 pence each in the capital

	of the Company from time to time having the rights and being subject to the restrictions set out in Article 4.1 to 4.4 and 4.6;
"the Banking Facilities"	the banking facilities to be provided pursuant to an agreement entered into on the date of adoption of these Articles and those banking facilities to be provided pursuant to a further agreement dated on or about 12 March 1997;
"Deferred Shares"	the A Deferred Shares and the B Deferred Shares (provided that for the purposes of Article 4.6 Deferred Shares shall mean the B Deferred Shares but not the A Deferred Shares);
"the Investment Agreement"	the agreement dated 30 July, 1996 made between Botts Capital Nominees Limited (1) Arcadian International Plc (2) A.G. Dodd (3) and E.E. Rashman (4) The Trustees of the Simply Red Group Retirement Benefit Scheme and the Trustees of the So What Music Limited Pension Scheme (5) The Trustees of the So What Arts Limited Pension Scheme (6) KW McCulloch (7) M.J. Walker (8) the Company (9) and So What Arts Limited (10) as amended by an agreement dated 24 October 1996 and by an agreement dated 18 November 1996 and as the same may be amended from time to time;
"the Mezzanine Facilities"	the mezzanine lending facilities to be provided pursuant to an agreement entered into on the date of adoption of these Articles;
"Ordinary Shares"	ordinary shares of 1 pence each in the capital of the Company from time to time; and
"subsidiary" and "holding company"	shall have the meanings set out in Section 736 of the Act

SHARE CAPITAL

- 3.1 The share capital of the Company at the date of adoption of these Articles is £210,000 divided into 19,100,000 Ordinary Shares and 1,900,000 "B" Deferred Shares.
- 3.2 The Directors are authorised, for the purposes of Section 80 of the Act, to allot and issue relevant securities (as defined in Section 80(2) of the Act) up to an aggregate nominal value of £210,000. This authority shall expire on the fifth anniversary of the adoption of these Articles unless previously revoked, renewed or varied by the Company in general meeting.

- 3.3 The Directors shall be entitled, pursuant to the authority conferred by Article 3.2 or any renewal or variation of such authority to make at any time prior to its expiry any offer or agreement which would or might require relevant securities to be allotted after such expiry and to allot relevant securities pursuant to any such offer or agreement.

DEFERRED SHARE RIGHTS

4.1 **Income**

The Deferred Shares shall not confer on the holders thereof any rights to participate in the profits or income of the Company.

4.2 **Capital**

On a winding up or other return of capital the holders of the Deferred Shares shall be entitled out of the surplus assets of the Company to a return of the capital paid up on the Deferred Shares held by them respectively after a total sum of £1 million has been distributed on such winding up or return of capital in respect of each Ordinary Share.

4.3 **No further rights**

Save as provided above the holders of the Deferred Shares shall not be entitled to any participation in the profits or assets of the Company.

4.4 **No voting**

The Deferred Shares shall not entitle the holders thereof to attend or vote in any General Meeting of the Company by virtue or in respect of their holdings of such Deferred Shares.

4.5 **Clawback**

In the event that the provisions of Schedule 6 of the Investment Agreement shall apply and to the extent required by the Investor Majority (as defined in that Agreement), up to 1,250,000 of the Ordinary Shares held by Andrew Gerard Dodd and Elliott Edward Rashman or any person to whom either of them shall have transferred Ordinary Shares, shall be automatically and without any further sanction, consent or action be converted into "A" Deferred Shares. Such conversion shall take place on a date determined by the Investor Majority.

4.6 **Conversion Rights - "B" Deferred Shares**

4.6.1 **Interpretation**

For the purpose of this Article 4.6 the following expressions bear the following meanings:-

"A Loan Stock"

the unsecured A loan stock 2003/2005 of the

	Company constituted by the A Loan Stock Instrument;
"A Loan Stock Instrument"	the deed executed on the date hereof by the Company constituting the A Loan Stock;
"B Loan Stock"	the unsecured B loan stock 2003/2005 of the Company constituted by the B Loan Stock Instrument;
"C Loan Stock"	the unsecured C loan stock 2003/2005 of the Company constituted by the C Loan Stock Instrument;
"B Loan Stock Instrument"	the deed executed by the Company on the date hereof by the Company constituting the B Loan Stock;
"C Loan Stock Instrument"	the deed executed on the 11 March 1997 by the Company (as amended by a deed dated 4 December 1997) constituting the C Loan Stock;
"Deferred Shares"	the "B" Deferred Shares;
"Financial Advisers"	the merchant bank and/or the broker appointed by the board of directors of the Company to advise in connection with a Listing;
"the Investors"	the subscribers for the Ordinary Shares and/or the A Loan Stock on 18 November 1996 other than Arcadian International Plc and Mr K. McCulloch together with any person to whom such persons have transferred all or part of the Ordinary Shares and/or the A Loan Stock in accordance with the provisions of these Articles;
"Investors' Cash Flow"	<p>the amount for each day comprised in the period up to and including the Realisation Date equal to the difference, if any, between (a) and (b) below (the Cash Flow being negative if (b) exceeds (a) and positive if (a) exceeds (b)) where in respect of each day in such period there shall be ascertained:</p> <p>(a) the amount of cash paid to the Company by the Investors for or in respect of any shares, loan stock or securities in the Company (together "Securities") on such day (and in the case of non-cash consideration for Securities, an amount</p>

equal to the nominal value of such Securities together with any premium), and for or in respect of all cash called or which could be called pursuant to any guarantee given by an Investor on behalf, or in respect, of the Company (and, for the avoidance of doubt, where such a guarantee is given but not called upon a cash sum equal to the amount of such guarantee shall be included in the cash flow under this paragraph (a));

(b) the receipts of the Investors from the Company on such day comprising the following receipts:-

(i) dividends (together with any associated tax credit) received by the Investors from the Company in respect of the Ordinary Shares held by them;

(ii) cash paid by the Company to the Investors in respect of the Loan Stock held by Investors including interest payments on such stock and repayments, redemptions or purchases of such stock; and

(iii) the Investors' Proportion of Realisation Value

and so that references to receipts shall be deemed to be references to amounts received or receivable and the date of receipt shall be the date of actual receipt (or the closest estimate thereof in the case of amounts receivable) save in the case of a Listing when the Investors' Proportion of Realisation Value shall be deemed to be receivable on the date on which the listing of the shares in question becomes effective;

"Investors' Investment"

the Ordinary Shares and the Loan Stock held by the Investors;

"Investors' IRR"

the discount rate expressed as an annual percentage such that when applied to the Investors' Cash Flow in order to determine the current value of the Investors' Cash Flow on a

	Realisation Date the aggregate of those current values is zero;
"Investors' Proportion of Realisation Value"	that amount of Realisation Value as is attributable to the Investors' Investment;
"Listing"	means the effective admission of the whole or substantially the whole of the equity share capital of the Company to London Stock Exchange Limited;
"Loan Stock"	the A Loan Stock, the B Loan Stock and the C Loan Stock;
"Master Management Agreement"	the management agreement between the Company (1) and Malmaison Management Limited (2) dated the date hereof;
"Material Asset Sale"	completion of the sale of all or a substantial part of the business carried on by the Company and its subsidiaries including any such sale effected through the sale of a subsidiary of the Company;
"the Deferred Shareholders' Realisation Value"	an amount equal to 10% of the Investors' Cash Flow over and above the Investors' Cash Flow required to attain the Minimum Realisation Value;
"Minimum Realisation Value"	in respect of a given Realisation, the Realisation Value at which the receipt by the Investors of the Investors' Proportion of Realisation Value would give an Investors' IRR of 25%;
"Realisation"	means either of the following events:- <ul style="list-style-type: none"> (i) the obtaining of a Listing; or (ii) the entering into of an agreement or agreements for a Sale where the agreement or agreements in question either is or are unconditional in all respects or (if originally conditional in any respect) is or are or has or have become unconditional in all respects

PROVIDED THAT for this purpose an agreement or agreements for a Sale shall be deemed to have been entered into in circumstances where an agreement or agreements shall have been entered into for the

sale of less than the whole of the issued Ordinary Shares in circumstances where the Company has received advice satisfactory to it that the purchaser or purchasers is or are (or will upon the agreement or agreements becoming unconditional be) entitled to acquire that part of the issued Ordinary Shares not agreed to be acquired pursuant to such agreement or agreements in accordance with the provisions of Part XIII A of the Companies Act 1985;

"Realisation Date"

the date on which the Sale or Listing occurs;

"Realisation Value"

the value of the issued Ordinary Shares of the Company calculated as follows:-

- in the event of a Listing the market value of the issued equity share capital of the Company (excluding any equity share capital to be subscribed and issued on such Listing) determined by reference to the price per share at which such shares are to be offered for sale, placed or otherwise marketed pursuant to the arrangements relating to the Listing as determined by the Financial Advisers;
- in the event of a Sale:-
 - (i) if the Ordinary Shares of the Company are to be sold by private treaty (as distinct from a public offer) and the consideration is a fixed cash sum payable in full on completion of the Sale, such cash sum;
 - (ii) if a written offer has been made for a cash consideration or, if the Sale is pursuant to any other public cash offer or public offer accompanied by a cash alternative, the cash consideration or cash alternative price whichever is the higher;
 - (iii) if the Sale is by private treaty or public offer and the consideration is the issue of

securities (not accompanied by a cash alternative) (a) if the securities will rank pari passu with a class of securities already admitted to the Official List of London Stock Exchange Limited (in the case of a sale by private treaty) the value attributed to such consideration in the related sale agreement setting out the terms of such sale or, (in the case of a Sale following a public offer or failing any such attribution in the sale agreement) by reference to the value of such consideration determined by reference to the average middle market quotation of such securities over the 5 business days prior to the day on which the offer for or intention to acquire the Company is first announced by the purchaser; or (b) if the securities are not of such a class, the value of such securities determined by an independent expert in a certificate obtained for the purpose and addressed to the holders of Ordinary Shares; or

- (iv) to the extent that the Sale includes an element of deferred consideration, its value shall be the present value of the maximum amount of such deferred consideration (on the assumption that all conditions relating to payment of such deferred consideration have been satisfied) as agreed between the Deferred Shareholders and the Investors or in the absence of such agreement determined by such independent expert stated above;

"Realisation Value per Ordinary Share" the amount equal to the Realisation Value divided by the number of issued Ordinary Shares on the Realisation Date (excluding any

Ordinary Shares issued in connection with the Realisation or any reorganisation required to effect the Realisation);

"Sale"

means (i) a sale of all the issued Ordinary Shares to a single purchaser (or to one or more purchasers as part of a single transaction); (ii) a Material Asset Sale; (iii) on the acquisition of a Relevant Interest pursuant to Article 12;

4.6.2 In the event that:

4.6.2.1 no Realisation has occurred by 31 December 2005

4.6.2.2 the Realisation Value does not exceed the Minimum Realisation Value

4.6.2.3 the Company terminates the Master Management Agreement pursuant to Clause 7.6 thereof

no conversion of Deferred Shares shall occur.

4.6.3 Subject to Article 4.6.2, if on a Realisation, the Minimum Realisation Value is achieved, the Company shall on the Realisation Date convert such number of Deferred Shares into Ordinary Shares as would entitle the holders of the Deferred Shares to such number of Ordinary Shares which at the Realisation Value per Ordinary Share is equal to the Deferred Shareholders' Realisation Value.

4.6.4 Any conversion of Deferred Shares pursuant to this Article 4.6 shall be made by the holders thereof pro rata to their holdings of Deferred Shares. The Board of Directors shall be authorised by the resolution adopting these Articles to do all acts and things as may be necessary to give effect to such conversion.

4.6.5 If any doubt shall arise as to any calculation required to be made for the purposes of this Article the certificate of the Auditors shall, in the absence of manifest error, be final and binding on all concerned.

4.6.6 The Deferred Shareholders shall be bound to send to the Company the share certificates in respect of their respective holdings (or the relevant part thereof) and the Company shall in exchange issue to such members share certificates for the Ordinary Shares resulting from conversion.

ALTERATION OF SHARE CAPITAL

5 In their application to the Company Regulations 2 and 32 of Table A shall each be modified by the deletion of the word "ordinary" and the substitution therefor of the word "special".

ISSUE OF NEW SHARES

- 6.1 Subject to Articles 6.2, 6.3 and 6.4, any original shares for the time being unissued and any new shares from time to time created shall before they are issued be offered to the holders of the Ordinary Shares in proportion to the numbers of Ordinary Shares held by them respectively. The offer shall be made by notice specifying the number and class of shares offered and the price per share and limiting a time (not being less than thirty days or greater than forty-two days) within which the offer, if not accepted, will be deemed to be declined. After the expiration of such time, or on the receipt of an indication from the person to whom the offer is made that he declines to accept the shares offered or any of them, the Directors shall offer the shares declined in like manner to the other holders of Ordinary Shares who have agreed to subscribe for all the shares offered to them. If the shares comprised in such further offer are declined or deemed to be declined the further offer shall be withdrawn.
- 6.2 The provisions of Article 6.1 shall not apply to Ordinary Shares to be issued pursuant to Clauses 4.4 and 6 of the Investment Agreement.
- 6.3 Subject to this Article and to the provisions of Section 80 of the Act the shares shall be at the disposal of the Directors who may allot, grant options over or otherwise dispose of them to such persons at such times and generally on such terms and conditions as they think proper, provided that:
- 6.3.1 No shares shall be issued at a discount.
- 6.3.2 No shares to which Article 6.1 applies shall be issued more than three months after the expiry of the period for acceptance of the last offer of such shares made under Article 6.1 unless the procedure set out in Article 6.1 is repeated in respect of such shares (and so that the time limit set out in this Article 6.3.2 shall apply equally to any repetition of that procedure)
- 6.3.3 No shares shall be issued at a price less than that at which they were offered to the members of the Company in accordance with Article 6.1 and so that (if the Directors are proposing to issue such shares wholly or partly for non-cash consideration) the cash value of such consideration for the purposes of this subparagraph shall be as reasonably determined by the Auditors of the Company for the time being who shall act as experts and not as arbitrators and whose determination shall be final and binding on the Company and each of its members.
- 6.3.4 No share in the capital of the Company whether original or new and with and subject to whatever rights and restrictions shall be made the subject of any option or conversion right without the prior sanction of a Special Resolution of the Company in General Meeting;
- 6.4 The provisions of sections 89(1) and 90(1) to (6) of the Act shall not apply to the Company.

LIEN

- 7 The Company shall have a first and paramount lien on every share (whether or not fully paid) for all and any indebtedness of any holder thereof to the Company

(whether a sole holder or one of two or more joint holders), whether or not such indebtedness or liability is in respect of the shares concerned and whether or not it is presently payable.

TRANSFERS OF SHARES

- 8.1 The Directors shall be required (subject only to Article 8.2) to register promptly any transfer of shares made in accordance with the provisions of Articles 10, 11, 12 and 13 below, but shall not register any transfer of shares not so made.
- 8.2 The Directors may refuse to register a transfer unless:
- 8.2.1 it is lodged at the office or such other place as the Directors may appoint and is accompanied by the certificate for the shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer;
- 8.2.2 it is in respect of only one class of share; and
- 8.2.3 it is in favour of not more than four transferees
- and may also refuse to register
- 8.2.4 the transfer of a share which is not fully paid to a person of whom they do not approve;
- 8.2.5 the transfer of a share on which the Company has a lien; and
- 8.2.6 the transfer of a share to a bankrupt, a minor or a person of unsound mind.
- 9 In this Article and in Articles 10, 11, 12 and 13 the following words shall bear the following meanings:-

"Acceptance Period"	a period during which an offer made under Article 11.4 is open for acceptance;
"Company"	includes any body corporate;
"Investor Affiliate"	the meaning ascribed thereto in the Investment Agreement;
"Investor"	subject as provided in Article 13.6, shall mean each of Botts Capital Nominees Limited, Arcadian International plc, the Trustees of the Simply Red Group Retirement Benefit Scheme and the Trustees of the So What Music Limited Pension Scheme, Andrew Gerard Dodd, Elliott Edward Rashman, the Trustees of the So What Arts Limited Pension Scheme, Kenneth Wilfred McCulloch, Michael John Walker or any person to whom any of the above shall have transferred Shares pursuant

	to Article 10, whether directly or through a series of two or more transfers;
"Member"	a holder of Shares;
"a member of the same group"	as regards any company, a company which is for the time being a holding company or a subsidiary of that company or of any such holding company;
"the Prescribed Price"	the price per Sale Share specified in the Transfer Notice or (if no price is specified) the price per Sale Share agreed or determined pursuant to Article 11.3;
"Privileged Relation"	the spouse, parents and every child and remoter descendant of a person (including stepchildren and adopted children);
"Proposing Transferor"	a Member proposing to transfer or dispose of Shares or any interest therein;
"Purchaser"	a Member willing to purchase Shares comprised in a Transfer Notice;
"the Sale Shares"	all Shares comprised in a Transfer Notice;
"Shares"	Ordinary Shares;
"Subsidiary"	the meaning given by Section 736 of the Companies Act 1985;
"Transferee Company"	a company for the time being holding shares in consequence of a transfer or series of transfers of shares between members of the same group (the relevant Transferor Company in the case of a series of transfers being the first transferor in that series);
"Transfer Notice"	a written notice served or deemed to be served by a Member on the Company in accordance with Article 11;
"Transferor Company"	a company (other than a Transferee Company) which has transferred shares to a member of the same Group;
"the Withdrawal Period"	the period referred to in Article 11.6.

10.1 Subject to the provisions of Article 8, any Shares may at any time be transferred:-

- 10.1.1 by an individual Member (not being a holder of the Shares concerned as a trustee) to a Privileged Relation of that Member; or
- 10.1.2 by any Member being a company to a member of the same group as the Transferor Company; or
- 10.1.3 by any Member to an Investor Affiliate of that Member; or
- 10.1.4 by any Member to a person who is to hold the shares as bare nominee for such Member; or
- 10.1.5 by any Member holding shares as nominee for any person or persons to the person or persons on whose behalf those shares are so held or to another person to hold as nominee for the same person or persons provided (in either case) that the transferor certifies to the Company, and the Directors are satisfied, that no beneficial interest in the shares passes by reason of the transfer or has passed prior to the transfer at any time since the transferring nominee became the registered holder of the shares; or
- 10.1.6 by any Member in consequences of acceptance of an offer made to that Member pursuant to, and in accordance with, Article 12 or 13.
- 10.2 In the event that a Transferee Company holding Relevant Shares (as defined below) ceases to be a member of the same group as the Transferor Company from which (whether directly or by a series of transfers under Article 10.1.2) the Relevant Shares were derived the Member holding the shares shall notify the Directors in writing that that event has occurred and the Transferee shall be bound, if and when required in writing by the Directors to do so, to give a Transfer Notice in respect of the Relevant Shares (but without specifying a Prescribed Price and so that the right of revocation conferred by Article 11.6 shall not apply).

For this purpose the expression "the Relevant Shares" means (so far as the same remain held by any Transferee Company) the Shares originally transferred to the Transferee Company and any additional shares issued to such Transferee Company by way of capitalisation or acquired by such Transferee Company in exercise of any right or option granted or arising by virtue of the holding of the Relevant Shares or any of them or the membership thereby conferred.
- 11 The right to transfer Shares or any interest therein shall (save in respect of transfers made pursuant to Article 10) be subject to the following restrictions.
- 11.1 Before transferring, or disposing of, any Shares (or any interest in Shares) the Proposing Transferor shall serve a Transfer Notice on the Company specifying the number of Shares in question, and the Transfer Notice shall constitute the Company his agent for the sale of those Shares at the Prescribed Price to any Member or Members. Except as provided in this Article, a Transfer Notice once given or deemed to be given shall not be revocable except with the consent of the Directors.
- 11.2 A Transfer Notice:-
- 11.2.1 may specify the Prescribed Price per Share;

- 11.2.2 shall, if the Proposing Transferor has received any offer to purchase the Sale Shares (whether or not an offer capable of becoming legally binding upon acceptance), within the period of three months prior to service of the Transfer Notice, give the name of the offeror, the number of Shares concerned and the price per Share offered.
- 11.3.1 Forthwith following receipt of a Transfer Notice which does not specify a Prescribed Price for such Shares, the Directors of the Company (other than the Proposing Transferor, if a Director, and other than any Director connected with the Proposing Transferor within the meaning of Section 839 of the Income and Corporation Taxes Act 1988) shall seek to agree the Prescribed Price with the Proposing Transferor. In the event that the Prescribed Price is not agreed within 14 days of receipt of the Transfer Notice by the Company the Directors shall request the Auditors of the Company (acting as experts and not as arbitrators) to certify the Prescribed Price.
- 11.3.2 The Auditors shall within 14 days of such a request certify to the Company the Prescribed Price, being the value of each Share calculated on the following basis:-
- 11.3.2.1 By determining the sum which a willing purchaser would offer to a willing vendor for the whole of the issued share capital of the Company;
- 11.3.2.2 By dividing the resultant figure by the number of Shares (excluding, for the avoidance of doubt, Deferred Shares) in issue;
- 11.3.2.3 By making such adjustment (if any) as the Auditors consider necessary to allow for any rights which may be outstanding under which any person may call for the issue of further Shares;
- 11.3.2.4 Making no adjustment to reflect any premium or discount arising in relation to the size of the holding the subject of the Transfer Notice or in relation to any restrictions on the transferability of the Shares.
- 11.4 The Sale Shares shall, within 14 days following receipt of the Transfer Notice or (in a case falling within Article 11.3.1) agreement or certification of the Prescribed Price, be offered by the Company to each Member (other than the Proposing Transferor) for purchase at the Prescribed Price. All offers shall be made by notice in writing and limit a time (being between thirty and forty two days, inclusive) within which the offer must be accepted or, in default, will be deemed to have been declined. A copy of such offers shall at the same time be sent by the Company to the Proposing Transferor.
- 11.5 The Company shall offer the Sale Shares on the following basis:-
- 11.5.1 If there is more than one member to whom an offer is to be made, the Shares on offer shall be offered to such holders in proportion as nearly as may be to their existing holdings of Shares, and the Directors' decision as to the number of Shares which shall be "in proportion as nearly as may be to their existing holdings of Shares" shall be conclusive.

- 11.5.2 Any Member to whom Sale Shares are offered may accept all or some only of the Sale Shares offered to him.
- 11.5.3 Each Member to whom the offer is made (if more than one) shall be invited to indicate whether, if he accepts the number of Sale Shares offered to him pursuant to Article 11.5.1, he wishes to purchase any Sale Shares offered to other Members in the same offer which they decline to accept (such Sale Shares being referred to as "excess shares") and if so the maximum number which he wishes to purchase.
- 11.5.4 If there are any excess shares they shall be allocated between the Members who have indicated that they wish to purchase excess shares. If the number of excess shares available is insufficient the excess shares shall be allocated between the Members seeking to purchase them as follows:-
- 11.5.4.1 any Member who has sought to purchase no more than his proportionate entitlement of excess shares (calculated by reference to the proportion of the total holdings of Shares of Members seeking to purchase excess shares represented by that Member's holding) shall be allocated all the excess shares he sought to purchase
- 11.5.4.2 any Member or Members who sought to purchase more than their proportionate entitlement shall have the number of excess shares applied for scaled down and (if more than one) in proportion to their respective holdings of Shares;
- 11.5.5 Subject to the provisions of this Article, the Purchasers shall be bound to purchase the Sale Shares allocated to them under the provisions of this Article 11.5 at the Prescribed Price
- 11.6 Not later than 7 days following the expiration of the last Acceptance Period the Company shall give written notice to the Proposing Transferor stating:-
- 11.6.1 if it is the case, that no Member has sought to purchase any of the Sale Shares; or, otherwise
- 11.6.2 the number of Sale Shares which Members have sought to purchase, giving the name and address of each Purchaser and the number of Sale Shares to be purchased by him;
- and so that in the event that Purchasers have been found in the Acceptance Period for some only of the Sale Shares the Proposing Transferor may within 7 days of service on him of notice under this Article 11.6 revoke his Transfer Notice by written notice to the Company.
- 11.7 In the event that the Proposing Transferor is given notice under Article 11.6.2 (and subject to the Proposing Transferor not revoking his Transfer Notice in accordance with Article 11.6, where possible) the Proposing Transferor shall be bound on payment of the Prescribed Price to transfer the Shares in question to the respective Purchasers. The sale and purchase shall be completed at the registered office of

the Company during normal business hours on the first business day after the expiry of 14 days from the date of service of notice under Article 11.6.2.

- 11.8 If a Proposing Transferor, after having become bound to transfer any Shares to a Purchaser, shall fail to do so the Directors may authorise any person to execute on behalf of and as attorney for the Proposing Transferor any necessary instruments of transfer and shall register the Purchaser as the holder of the Shares. The Company's receipt of the purchase money shall be a good discharge to the Purchaser, and the Company shall thereafter hold the same on trust for the Proposing Transferor. After the name of the Purchaser has been entered in the Register in purported exercise of these powers, the validity of the proceedings shall not be questioned by any person.
- 11.9 The Proposing Transferor may transfer Sale Shares to any person or persons in the following circumstances:-
- 11.9.1 If the Company shall fail within the Acceptance Period to find a Purchaser or Purchasers for all of the Sale Shares, and the Proposing Transferor revokes his transfer notice pursuant to Article 11.6 the Proposing Transferor may sell all of the Sale Shares.
- 11.9.2 If the Company shall within the Acceptance Period find a Purchaser or Purchasers for some (but not all) of the Sale Shares and shall serve notice accordingly under Article 11.6.2 the Proposing Transferor may sell all or any of the Sale Shares for which no Purchaser has been found, but so that if the Proposing Transferor revokes his Transfer Notice under Article 11.6 he may sell all (but not some only) of the Sale Shares in each of the cases set out in Articles 11.9.1 and 11.9.2.
- However any transfer of Sale Shares pursuant to Articles 11.9.1 and 11.9.2 shall be subject to the following restrictions:-
- 11.9.3 Shares may not be sold after the expiry of three months after the date on which notice is given under Article 11.6.
- 11.9.4 The Shares must be sold on a bona fide sale at a price not being less than the Prescribed Price; the Directors may require to be satisfied that the Shares are being transferred in pursuance of a bona fide sale for the consideration stated in the instrument of transfer without any deduction rebate or allowance whatsoever to the purchaser.
- 11.9.5 If the provisions of Article 12 are applicable, the transfer or disposal may only be made if those provisions are complied with.
- 11.10 Unless such person is a Privileged Relation who would have been entitled to Shares transferred pursuant to Article 10.1.1, a person entitled to a Share in consequence of the death, bankruptcy, receivership or liquidation of a Member shall be bound at any time, if called upon in writing to do so by the Directors to give a Transfer Notice (without specifying a Prescribed Price) in respect of all the Shares then registered in the name of the deceased or insolvent Member. Such a Transfer Notice shall not be capable of revocation under the provisions of Article 11.6. Regulations 29 to 31 of Table A shall take effect accordingly.

- 11.11 For the purpose of ensuring that a transfer of Shares is duly authorised under these Articles or that no circumstances have arisen by reason of which a Transfer Notice may be required to be given, the Directors may from time to time require any Member or past Member or the personal representatives or trustee in bankruptcy, receiver or liquidator of any Member or any person named as transferee in any instrument of transfer lodged for registration to provide to the Company such information as the Directors reasonably think fit regarding any matter which they consider relevant. If such information is not provided to the reasonable satisfaction of the Directors within a reasonable time after request, the Directors shall be entitled to refuse to register the transfer in question or (in case no transfer is in question) to require by notice in writing that a Transfer Notice be given in respect of the Shares concerned. If the information discloses (in the reasonable opinion of the Directors) that a Transfer Notice ought to have been given in respect of any Shares the Directors may by notice in writing require that a Transfer Notice be given in respect of the Shares concerned. Any Transfer Notice required to be given under this Article 11.11 shall not specify a price per Share and shall not be capable of revocation under the provisions of Article 11.6.
- 11.12 In any case where the Directors may require a Transfer Notice to be given in respect of any Shares, if a Transfer Notice is not duly given within a period of two weeks of demand being made, a Transfer Notice shall be deemed to have been given at the expiration of that period. Such a deemed Transfer Notice shall not be capable of revocation under Article 11.6.
- 11.13 Any notice required to be given under this Article by the Company to a Member or by a Member to the Company or otherwise shall be given or served either personally or by sending it by first class post to the registered office of the Company or to the registered address of the Member (as the case may be) or, if he has no registered address within the United Kingdom and has supplied to the Company an address within the United Kingdom for the giving of notice to him, to the address so supplied. When a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected 48 hours after posting.
- 11.14 The restrictions imposed by this Article may be waived in relation to any proposed transfer of Shares with the consent of all Members who, but for such waiver, would or might have been entitled to have such shares offered to them in accordance with Article 11.5.
- 12.1 Notwithstanding the provisions of Article 11 no sale or transfer for value of the legal or beneficial interest in any Ordinary Shares ("the relevant transaction") (other than one made pursuant to Article 10) may be made or validly registered if as a result of such sale or transfer a Relevant Interest is obtained by a person (or persons acting in concert) where such person(s) did not have a Relevant Interest immediately prior to the relevant transaction, unless the Proposing Transferor shall have procured a written offer complying with the provisions of Article 12.3 to have been made by the proposed transferee (or any person or persons acting in concert with it) to the holders of all the other issued Shares in the Company to acquire their entire holdings of Shares and Deferred Shares.
- 12.2 For the purpose of this Article:-

- 12.2.1 the expression "a Relevant Interest" shall mean an interest in Shares conferring the right to cast or control the casting of a majority of the votes at a general meeting on all, or substantially all, matters
- 12.2.2 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
- 12.2.3 the expression "acting in concert" shall bear the meaning ascribed to it in The City Code on Takeovers and Mergers (as amended from time to time).
- 12.3 The offer referred to in Article 12.1 above shall:-
- 12.3.1 be open for acceptance in England for a period of at least 28 days following the making of the offer;
- 12.3.2 be on terms that the shareholders shall be entitled to receive for their holdings of shares a sum in cash equal to the price per Share paid or payable by the proposed purchaser in the relevant transaction or any related or previous transaction by the same purchaser or any person acting in concert with the proposed purchaser which price shall be deemed to include any consideration (in cash or otherwise) paid or payable by such purchaser or person acting in concert which, having regard to the substance of the transaction as a whole, is reasonably regarded by the Directors as an addition to the price so paid or payable;
- 12.3.3 be on terms that the holders of Deferred Shares shall be entitled to receive for their holding of Deferred Shares the amount paid up on such shares; provided that where any Deferred Shares are converted (or are capable of being converted) into Ordinary Shares pursuant to Article 4.6.3 such shares shall be treated as Shares for the purposes of this Article 12;
- 12.3.4 be on terms that the purchase of any Shares in respect of which such offer is accepted shall be completed at the same time as the relevant transaction; and
- 12.3.5 provide that the liabilities of the shareholders under any agreement for the sale of their shares shall be identical (as nearly as practicable) in form and proportionate in quantum to the liabilities of the Proposing Transferor.
- 13.1 Subject to the provisions of Article 12, in the event that Investors holding 75 per cent in nominal value of the Shares held by Investors propose to sell the legal or beneficial interest in their entire holdings of Shares to a person other than a Member or any person connected with any Member (within the meaning of Section 228 of the Income and Corporation Taxes Act 1988) and who is a bona fide purchaser at arms length and whether or not the provisions of Article 12.1 apply, if such Investors procure that an offer is made by the proposed transferee (or any person or persons acting in concert with it) ("the Offeror") to all of the other holders of Shares and Deferred Shares to acquire their entire holding of Shares and Deferred Shares and that offer complies with the requirements of Article 12.3 (as if the Investors' proposed sale were "the relevant transaction") such Investors shall have the right (the "Come Along Right") to require all of the other holders of Shares and Deferred Shares (the "Called Shareholders") to accept in full the offer procured to be made to them provided that the Called Shareholders' liabilities

under any agreement for the sale of their shares shall be identical (as nearly as practicable) in form and proportionate in quantum to the liabilities of Investors exercising the Come Along Right.

- 13.2 The Come Along Right may be exercised by such Investors serving notice to that effect (the "Come Along Notice") to the Called Shareholders at the same time as, or within 7 days following, the making of the offer.
- 13.3 A Come Along Notice once given shall be irrevocable but shall lapse (and the obligations thereunder shall lapse) in the event that for any reason such Investors do not transfer their entire holdings of Shares to the Offeror (or the Offeror's nominee) not later than the date specified as the date for completion of the sale and purchase of the Shares pursuant to acceptance of the offer.
- 13.4 Upon the exercise of the Come Along Right in accordance with this Article 13, each of the Called Shareholders shall be bound to accept the offer made to it in respect of its entire holding of Shares and to comply with the obligations assumed by virtue of such acceptance.
- 13.5 In the event that any Called Shareholder fails to accept the offer made to him or, having accepted such offer, fails to complete the sale of any of its Shares or Deferred Shares pursuant to the offer or otherwise, fails to take any action required of it under the terms of the offer, the Directors (or any of them) may authorise some person to accept the offer on behalf of the Called Shareholders in question or undertake any action required under the terms of the offer on the part of a Called Shareholder who has accepted the offer. The Directors may in particular authorise some person to execute a transfer of any Shares or Deferred Shares in favour of the Offeror (or its nominee) and the Company may give a good receipt for the purchase price of such Shares or Deferred Shares and may register the Offeror (or its nominee) as holder thereof and issue to it (or as it may direct) certificates for the same whereupon the Offeror (or its nominee) shall be indefeasibly entitled thereto. The Called Shareholder shall in such case be bound to deliver up its certificate for its Shares or Deferred Shares to the Company whereupon the Called Shareholder shall be entitled to receive the purchase price for such Shares or Deferred Shares, which purchase shall in the meantime be held by the Company on trust for the Called Shareholder but without interest. After the name of the Offeror (or its nominee) has been entered in the Register in purported exercise of these powers, the validity of the proceedings shall not be questioned by any person.
- 13.6 For the purposes of this Article 13 the expression "Investors" shall mean each of Botts Capital Nominees Limited, the Trustees of the Simply Red Group Retirement Benefit Scheme and the Trustees of the So What Music Limited Pension Scheme, Andrew Gerard Dodd, Elliott Edward Rashman and the Trustees of the So What Arts Limited Pension Scheme or any person to whom any of the above shall have transferred Shares pursuant to Article 10, whether directly or through a series of two or more transfers.

GENERAL MEETINGS

- 14 In Regulation 37 of Table A there shall be substituted for the words "eight weeks" the words "twenty-eight days" and after the words "receipt of the requisition" there

shall be added the words "and for the avoidance of doubt the requisitionists, or any of them representing more than one half of the total voting rights attached to shares held by all the requisitionists, may, if the Directors shall fail within seven days of receipt of the requisition to give notice of a general meeting for a date not later than twenty-eight days after receipt of the requisition, convene the meeting requisitioned for such date as they may select (subject to compliance with the provisions of the Act regarding the giving of notice of meetings requisitioned by the members, insofar as consistent with the provisions of this Article)".

- 15 In its application to the Company, the final sentence of Regulation 38 of Table A shall be modified by the insertion of the words "known to be" after the words "to all persons".
- 16 In its application to the Company, Regulation 50 of Table A shall be modified by the insertion after the word "shall" and before the words "be entitled" of the word "not".
- 17 The instrument appointing a proxy and any authority under which it is executed or a copy of such authority certified notarially or in some other way approved by the Directors may:-
- 17.1 be deposited at the office or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Company in relation to the meeting not less than 24 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
- 17.2 be delivered at the meeting or adjourned meeting at which the person named in the instrument proposes to vote to the Chairman or to the Secretary or to any Director; or
- 17.3 in the case of a poll, be delivered at the meeting at which the poll was demanded to the Chairman or to the Secretary or to any Director, or at the time and place at which the poll is held to the Chairman or to the Secretary or to any Director or scrutineer
- and an instrument of proxy which is not deposited or delivered in a manner so permitted shall be invalid.
- 18 The appointment of an alternate Director by a Director appointed pursuant to Article 21 hereof shall not require approval by a resolution of the Directors, and in its application to the Company Regulation 65 of table A shall be modified accordingly.

NUMBER OF DIRECTORS

- 19 Unless and until the Company in general meeting shall otherwise determine the number of directors shall be not less than two nor more than seven.

APPOINTMENT OF DIRECTORS

- 20.1 In its application to the Company, Regulation 78 of Table A shall be modified by the deletion of the words "... and may also determine the rotation in which any additional Directors are to retire"
- 20.2 In its application to the Company, Regulation 79 of Table A shall be modified by the deletion of the second and third sentences.
- 20.3 In its application to the Company, Regulation 84 of Table A shall be modified by the deletion of the third and final sentences.

NOMINATED DIRECTORS

- 21.1 For so long as any Investor (or any person to whom he or it shall have transferred Ordinary Shares pursuant to Article 10 (whether directly or through a series of transfers) (for the purposes of this Article, an "Investor Transferee")) holds between at least 5 per cent. but not more than 10 per cent. of the issued share capital he or it shall be entitled to appoint one director of the Company. If the aggregate number of Ordinary Shares held by both Andrew Gerard Dodd ("Dodd") and Elliott Edward Rashman ("Rashman") is at least 5 per cent of the issued share capital, Dodd and Rashman shall jointly be entitled to appoint one director of the Company, provided that neither Dodd nor Rashman separately holds at least 5 per cent of the issued share capital.
- 21.2 For so long as any Investor or an Investor Transferee of that Investor holds more than 10 per cent. but not more than 20 per cent. of the issued share capital he or it shall be entitled to appoint up to two directors of the Company.
- 21.3 For so long as Arcadian International Plc or any Investor Transferee of Arcadian holds more than 20 per cent. of the issued share capital of the Company it shall be entitled to appoint three directors of the Company.
- 21.4 For so long as Botts Capital Nominees Limited or any Investor Transferee of Botts holds more than 20 per cent. of the issued share capital of the Company it shall be entitled to appoint either three directors of the Company or one or more directors of the Company who between them shall have three votes on all matters.
- 21.5 Any such appointment pursuant to Article 21.1, 21.2, 21.3 or 21.4 shall be made by notice in writing to the Company by the relevant appointer and the relevant appointer may in like manner at any time and from time to time remove from office any Director appointed by it pursuant to this Article and appoint any person in place of any Director so removed or dying or otherwise vacating office.
- 21.6 Upon any resolution pursuant to Section 303 of the Act or Article 23 for the removal of any Director appointed by the relevant appointor and for the time being holding office pursuant to this Article, the Shares held by the relevant appointor shall confer upon the holder(s) thereof the right to an aggregate number of votes which is one vote greater than the number of votes capable of being cast on such resolution by all other members of the Company. Such votes shall be divided between such holders if more than one as nearly as may be in proportion to the number of Ordinary Shares held by them respectively. The rights conferred by this

Article 21.6 shall cease upon the appointor ceasing to have a right to appoint under Articles 21.1, 21.2, 21.3 or 21.4.

DISQUALIFICATION OF DIRECTORS

- 22 In its application to the Company, Regulation 81 of Table A shall be modified by the deletion of paragraph (e) and the addition of the following paragraph:

"(e) he is removed from office under the provisions of Article 21 or Article 23;"

REMOVAL OF DIRECTORS

- 23 In addition and without prejudice to the provisions of Section 303 of the Act, the Company may by extraordinary resolution remove any Director before the expiration of his period of office and may by ordinary resolution appoint another Director in his place.

DIRECTORS' REMUNERATION

- 24 Directors' fees may be paid to such Directors and in such amounts as the Directors may from time to time determine.

PROCEEDINGS OF DIRECTORS

- 25 In its application to the Company Regulation 88 of Table A shall be modified by the insertion of the word "not" after the words "the Chairman shall" in the fifth sentence.

- 26 In its application to the Company Regulation 89 of Table A shall be modified:-

- 26.1 by the deletion of the words "may be fixed by the Directors and unless so fixed at any other number" in the first sentence; and

- 26.2 by the addition of the following as the final sentence:

"In the event that a meeting of the Directors is attended by a Director who is acting as alternate for one or more other Directors, the Director or Directors for whom he is the alternate shall be counted in the quorum notwithstanding their absence, and if on that basis there is a quorum the meeting may be held notwithstanding the fact (if it is the case) that only one Director is physically present"

- 27 Notices of meetings of the Directors shall be given in writing and in its application to the Company Regulation 111 of Table A shall be modified accordingly.

- 28 Any Director who participates in the proceedings of a meeting by means of a communication device (including a telephone) which allows all the other Directors present at such meeting (whether in person or by alternate or by means of such type of communication device) to hear at all times such Director and such Director to hear at all times all other Directors present at such meeting (whether in person or by alternate or by means of such type of communication device) shall be deemed to be present at such meeting and shall be counted when reckoning a quorum.

- 29 A Director may vote at a meeting of the Directors, and form part of a quorum present at that meeting, in relation to any matter in which he has, directly or indirectly, an interest or duty which conflicts or which may conflict with the interests of the Company, provided that he has previously disclosed the nature of such duty or interest to the Directors. The provisions of Regulation 86 of Table A shall be taken to apply equally to any disclosure to be made under the provisions of this Article.

BORROWING POWERS

- 30 The Directors may exercise all the powers of the Company to borrow or raise money and to mortgage or charge all or any part of its undertaking, property and uncalled capital and to issue debentures and other securities whether outright or as security (principal or collateral) for any debt, liability or obligation of the Company or any third party provided that the aggregate amount owing by the Company and all its subsidiaries in respect of moneys borrowed by them or any of them (exclusive of monies owing under the Banking Facilities the Mezzanine Facilities and owing by the Company to any of its subsidiaries or by any of its subsidiaries to the Company or another of the subsidiaries) shall not without previous sanction of the Company in general meeting exceed £100,000.

EXECUTION OF DOCUMENTS

- 31 In its application to the Company Regulation 101 of Table A shall be modified by the addition of the following sentence:
- "Any instrument expressed to be executed by the Company and signed by two Directors, or by one Director and the Secretary, by the authority of the Directors or of a committee authorised by the Directors shall (to the extent permitted by the Act) have effect as if executed by the seal."

INDEMNITIES

- 32 Subject to section 310 of the Act:-
- 32.1 Every Director or other officer of the Company shall be entitled to be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation to his office, including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in connection with any application under Section 144 or 727 of the Act in which relief is granted to him by the court, and no Director or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the Execution of the duties of his office or otherwise in relation to his office.
- 32.2 The Directors may purchase and maintain insurance for any such Director or other officer against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the Company.