

THE COMPANIES ACTS 2006
COMPANY NUMBER 04441386
PRIVATE COMPANY LIMITED BY GUARANTEE
WRITTEN RESOLUTION
OF SOLARFLARE COMMUNICATIONS LIMITED
(the "Company")

FRIDAY



A03 "A0ZXJPTB" #46
06/01/2012
COMPANIES HOUSE

Resolution Circulated on December 19, 2011 (the "Circulation Date")

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006, the directors of the Company propose that

- resolutions 1-3 below are passed as ordinary resolutions (the "Ordinary Resolutions"), and
- resolution 4 below is passed as a special resolution (the "Special Resolution")

Such resolutions are together referred to as the "Resolutions"

ORDINARY RESOLUTIONS

- 1 THAT the Directors of the Company for the time being shall have power to authorise conflicts of interest in accordance with section 175(5)(a) of the Companies Act 2006
- 2 THAT in connection with the Revolving Credit and Term Loan Agreement to be entered into by Solarflare Communications, Inc , a Delaware corporation and the indirect parent company of the Company ("Solarflare"), the lenders from time to time party thereto (each a "Lender" and collectively, the "Lenders") and Comerica Bank, as administrative agent for the Lenders (in such capacity, the "Agent"), pursuant to which Solarflare may borrow up to an aggregate principal amount of Thirteen Million Dollars (\$13,000,000), consisting of revolving loans in an aggregate principal amount at any time outstanding of up to Five Million Dollars (\$5,000,000) and term loans in an aggregate principal amount of up to Eight Million Dollars (\$8,000,000), the pledge by the undersigned, the sole shareholder and direct parent company of the Company, of its equity interest in the Company (the "Pledge") is hereby approved
- 3 THAT the Company and its officers and Directors shall have the power to take all actions that may be necessary to effectuate the Pledge

SPECIAL RESOLUTION

- 4 THAT the articles of association appended to this written resolution be adopted in substitution to its existing articles of association with immediate effect

AGREEMENT

Please read the notes at the end of this document before signifying your agreement to the Resolutions

We the undersigned, each being persons entitled to vote on each of the Resolutions on the Circulation Date, hereby irrevocably agree to the Resolutions

Signed by Russell Stern
for and on behalf of Level 5 Networks, Inc
a director and officer duly
authorised to sign



Date

December 19, 2011 . . .

	RESOLUTION	FOR	AGAINST
1	THAT the Directors of the Company for the time being shall have power to authorise conflicts of interest in accordance with section 175(5)(a) of the Companies Act 2006	X	
2	THAT in connection with the Revolving Credit and Term Loan Agreement to be entered into by Solarflare Communications, Inc , a Delaware corporation and the indirect parent company of the Company (" <u>Solarflare</u> "), the lenders from time to time party thereto (each a " <u>Lender</u> " and collectively, the " <u>Lenders</u> ") and Comerica Bank, as administrative agent for the Lenders (in such capacity, the " <u>Agent</u> "), pursuant to which Solarflare may borrow up to an aggregate principal amount of Thirteen Million Dollars (\$13,000,000), consisting of revolving loans in an aggregate principal amount at any time outstanding of up to Five Million Dollars (\$5,000,000) and term loans in an aggregate principal amount of up to Eight Million Dollars (\$8,000,000), the pledge by the undersigned, the sole shareholder and direct parent company of the Company, of its equity interest in the Company (the " <u>Pledge</u> ") is hereby approved	X	
3	THAT the Company and its officers and Directors shall have the power to take all actions that may be necessary to effectuate the Pledge	X	
4	THAT the articles of association appended to this written resolution be adopted in substitution to its existing articles of association with immediate effect	X	

NOTES

- 1 You can choose to agree to the all of the resolutions or none of them but you cannot agree to only some of the resolutions. If you agree to all of the Resolutions, please indicate your agreement by signing and dating this document where indicated above and returning it to the Company using one of the following methods

- **By Hand** delivering the signed copy to

Jim Krenn
Morrison & Foerster LLP
12531 High Bluff Drive, Suite 100
San Diego, California 92130

- **Post** returning the signed copy by post to

Jim Krenn
Morrison & Foerster LLP
12531 High Bluff Drive, Suite 100
San Diego, California 92130

- **Fax** faxing the signed copy to (858) 523-2816 marked "For the attention of Jim Krenn"
- **E-mail** by attaching a scanned copy of the signed document to an e-mail and sending it to jkrenn@mofo.com Please enter "Written resolutions dated December 19, 2011" in the e-mail subject box

If you do not agree to all of the Resolutions, you do not need to do anything you will not be deemed to agree if you fail to reply However it would be helpful if you would reply, indicating your disagreement

- 2 Once you have indicated your agreement to the resolutions, you may not revoke your agreement
- 3 Unless, within 28 days of the Circulation Date, sufficient agreement has been received for the resolutions to pass, they will lapse If you agree to the Resolutions, please ensure that your agreement reaches us before or during this date
- 4 In the case of joint holders of shares, only the vote of the senior holder who votes will be counted by the Company Seniority is determined by the order in which the names of the joint holders appear in the register of members
- 5 If you are signing this document on behalf of a person under a power of attorney or other authority please send a copy of the relevant power of attorney or authority when returning this

Company Number 04441386

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

**NEW ARTICLES OF ASSOCIATION
OF
SOLARFLARE COMMUNICATIONS LIMITED**

(adopted by special resolution passed on December 19, 2011)

PART 1

**INTERPRETATION, LIMITATION OF LIABILITY AND OTHER PRELIMINARY
MATTERS**

1 Non-applicability of the prescribed forms of Articles

None of the model forms of Articles of Association prescribed by the Companies (Model Articles) Regulations 2008 shall apply to the Company and the following regulations shall be the Articles of Association of the Company

2 Defined terms

In these Articles, unless the context requires otherwise –

“Act” means the Companies Act 2006 as from time to time in force,

“Articles” means these Articles of Association,

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

“chairman” has the meaning given in Article 16,

“Companies Acts” means the Companies Acts (as defined in section 2 of the Act), in so far as they apply to the Company,

“Director” means a Director of the Company, and includes any person occupying the position of Director, by whatever name called,

“distribution recipient” has the meaning given in Article 42,

“document” includes any document sent or supplied in electronic form,

“electronic form” has the meaning given in section 1168 of the Act,

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

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

“ordinary resolution” has the meaning given in section 282 of the Act,

“paid” means paid or credited as paid,

“participate”, in relation to a Directors’ meeting, has the meaning given in Article 14,

“shareholder” means a person who is the holder of a share,

“shares” means shares in the Company,

“special resolution” has the meaning given in section 283 of the Act,

“subsidiary” means a subsidiary undertaking as defined by section 1162 of the Act,

“transmittee” means a person entitled to a share by reason of the death, bankruptcy or liquidation of a shareholder or otherwise by operation of law, and

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

Unless the context otherwise requires, other words or expressions contained in these Articles bear the same meaning as in the Act as in force on the date when these Articles become binding on the Company

3 Liability of shareholders

The liability of each shareholder is limited to the amount, if any, unpaid on the shares held by him

4 Memorandum not to apply

None of the provisions of the Memorandum of Association of the Company as deemed to be included in the Company’s Articles of Association shall from the date of the adoption of these Articles apply, save for those provisions stating the name of the Company

5 Private Company

The Company is a private Company within the meaning of section 4 of the Act and accordingly no shares in or debentures of the Company shall be offered to the public (whether for cash or otherwise) and the Company shall not allot (whether for cash or otherwise) any shares in or debentures of the Company with a view to all or any of those shares or debentures being offered for sale to the public

6 **Registered Office**

The registered office of the Company shall be situated in England and Wales

PART 2

DIRECTORS

DIRECTORS' POWERS AND RESPONSIBILITIES

7 **Number of Directors**

The number of the Directors shall be determined by a written resolution of the shareholders but unless and until so determined there shall be no maximum number of Directors and the minimum number of Directors shall be one

8 **Directors' general authority**

Subject to these Articles, the Directors are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company

9 **Directors may delegate**

9 1 The Directors may delegate any of the powers which are conferred on them under these Articles

(A) to such person or committee (whether or not being or including a Director),

(B) by such means (including by power of attorney),

(C) to such an extent,

(D) in relation to such matters or territories, and

(E) on such terms and conditions,

as they think fit

9 2 If the Directors so specify, any such delegation may authorise further delegation of the Directors' powers by any person to whom they are delegated

9 3 The Directors may revoke any delegation in whole or part, or alter its terms and conditions

10 **Committees**

10 1 Committees to which the Directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of these Articles which govern the taking of decisions by Directors

10 2 The Directors may make rules of procedure for all or any committees, which prevail over rules derived from these Articles if they are not consistent with them

DECISION-MAKING BY DIRECTORS

11 **Directors to take decisions collectively**

- 11 1 The general rule about decision-making by Directors is that any decision of the Directors must be either a unanimous or majority decision at a meeting or a such a decision taken in accordance with Article 12
- 11 2 If the Company only has one Director, the general rule does not apply, and the Director may take decisions without regard to any of the provisions of these Articles relating to Directors' decision-making, subject to compliance with Article 20

12 **Decisions taken otherwise than at a meeting**

- 12 1 A unanimous decision of the Directors is taken in accordance with this Article 12 when all eligible Directors indicate to each other by any means that they share a common view on a matter
- 12 2 Subject to Article 12 1, a decision of the Directors taken in accordance with this Article 12 shall take the form of a resolution in writing, copies of which have been signed by all or a majority of the eligible Directors or to which all or a majority of the eligible Directors have otherwise indicated agreement in writing, but if the decision is not unanimous this shall only apply if the text of the proposed decision has been previously sent to all the Directors (other than any Director proposing it) at least 48 hours before the resolution is signed. It is not necessary for all or such a majority of the Directors to sign the same copy of the resolution as long as the copies, when read together, have been signed by all or a majority of the Directors. Any Director may at any time propose a resolution in writing by sending a copy of it to all the other Directors
- 12 3 References in this Article 12 to eligible Directors are to Directors who would have been entitled to vote on the matter had it been proposed as a resolution at a Directors' meeting
- 12 4 A decision may not be taken in accordance with this Article 12 if the eligible Directors would not have formed a quorum at such a meeting

13 **Calling a Directors' meeting**

- 13 1 Any Director may call a Directors' meeting by sending notice of the meeting to all the other Directors or by authorising the Company secretary (if any) to send such notice to all the Directors
- 13 2 Notice of any Directors' meeting must indicate
- (A) its proposed date and time,
 - (B) where it is to take place, and
 - (C) if it is anticipated that Directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting

13 3 Notice of a Directors' meeting must be sent to each Director whether or not he is within the United Kingdom, but need not be in writing

13 4 Notice of a Directors' meeting need not be sent to Directors who waive their entitlement to notice of that meeting, by sending notice to that effect to the Company not more than 7 days after the date on which the meeting is held. Where such notice is sent after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it

14 **Participation in Directors' meetings**

14 1 Directors participate in a Directors' meeting, or part of a Directors' meeting, when -

(A) the meeting has been called and takes place in accordance with these Articles, and

(B) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting

14 2 In determining whether Directors are participating in a Directors' meeting, it is irrelevant where any Director is or how they communicate with each other

14 3 If all the Directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is

15 **Quorum for Directors' meetings**

15 1 At a Directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting

15 2 The quorum for Directors' meetings may be fixed from time to time by a decision of the Directors, but it must never be less than two, and unless otherwise fixed it is two, unless there is for the time being only one Director, in which case he shall have and may exercise all the powers and authorities over the affairs of the Company conferred on the Directors by these Articles. An alternate Director whose appointor is not participating shall be counted when determining whether there is a quorum, but if a Director or alternate Director participates also as an alternate Director for one or more other Directors he shall count as one Director for the purpose of determining whether there is a quorum

15 3 If there are no Directors in office, any shareholder may propose a written resolution (or instruct the company secretary, if any, to do so) for the purpose of appointing one or more Directors specified by that shareholder and who are willing to act

16 **Chairing of Directors' meetings**

16 1 The Directors may appoint a Director to chair their meetings either for a specified meeting or on a continuing basis

16 2 The person so appointed for the time being is known as the chairman

16 3 Where the chairman is appointed on a continuing basis the Directors may terminate the appointment of the chairman at any time

- 16 4 If a chairman appointed on a continuing basis is not participating in a Directors' meeting within ten minutes of the time at which it was to start, the participating Directors must appoint one of themselves to chair that meeting, but the chairman previously appointed on a continuing basis shall thereafter continue in office unless and until such office is terminated under Article 16 3

17 **Voting at Directors' meetings**

- 17 1 Each Director participating in a Directors' meeting has one vote
- 17 2 If the numbers of votes for and against a proposal are equal, the chairman or other Director chairing the meeting has a second or casting vote

18 **Conflicts of interest**

Where the Directors are exercising their powers to authorise conflicts of interest contained in section 175(5) of the Act, each such authorisation may be granted on such terms as the Directors granting it may determine, including (without limitation) the imposition on the conflicted Director of obligations of confidentiality, exclusion from meetings of the Directors at which matters relating to the conflict are to be discussed, exclusion from voting on matters relating to the conflict or the release of the conflicted Director from any obligation to make available to the Company any information imparted to him by, or obtained by him from, any party to whom he owes any relevant conflicting duty and every such authorisation may be withdrawn at any time by a decision of the Directors excluding the conflicted Director

19 **Directors' interests**

- 19 1 A Director who is in any way directly or indirectly interested in a proposed or existing contract or arrangement with the Company shall declare the nature and extent of his interest in accordance with section 177 or sections 182 to 187 of the Act
- 19 2 Subject to such disclosure and to the terms of any authorisation granted under Article 18, a Director who is interested as set out in Article 19 1 may nevertheless be counted as participating in the decision making process for quorum and voting purposes

20 **Records of decisions to be kept**

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

21 **Directors' discretion to make further rules**

Subject to these Articles, the Directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to Directors

22 **Irregularities**

All decisions made and acts done by the Directors, or by any person acting as a Director or by any person or persons to whom authority has been delegated by a decision of one or more Directors or by a person or persons acting as such shall,

notwithstanding that it shall afterwards be discovered that there was a defect in the appointment of any such person or in such delegation, or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if such irregularity had not occurred

DIRECTORS

23 Appointment of Directors

23 1 Any person who is willing to act as a Director, and is permitted by law to do so, may be appointed to be a Director

(A) by ordinary resolution,

(B) by a notice in writing, specifying the person to be appointed, signed by or on behalf of holders together entitled to a majority of the voting rights exercisable in respect of all the issued shares of the Company, which is sent to the Company or tabled at a meeting of the Directors,

24 Alternate Directors

24 1 Any Director may at any time by notice in writing given to the Company, or tabled at a meeting of the Directors, appoint any person (including another Director) to be his alternate Director and may in like manner at any time terminate such appointment

24 2 The appointment of an alternate Director shall determine on the happening of any event which, if he were a Director, would cause him to vacate such office or if his appointor ceases to be a Director

24 3 An alternate Director shall (whether or not within the United Kingdom) be entitled to be sent notices of meetings of the Directors and of all meetings of committees of Directors of which his appointor is a member and shall be entitled to attend, speak and vote as a Director at any such meeting at which the Director appointing him is not personally present and generally at such meeting to perform all the functions of his appointor as a Director and for the purposes of the proceedings at such meeting the provisions of these Articles shall apply as if he (instead of his appointor) were a Director

24 4 If an alternate Director shall be himself a Director or shall attend any such meeting as an alternate for more than one Director his voting rights shall be cumulative

24 5 The execution by an alternate Director of any resolution in writing of the Directors shall be as effective as the execution by his appointor

24 6 An alternate Director shall not (save as provided in this Article 24) have power to act as a Director nor shall he be deemed to be a Director for the purposes of these Articles, but he shall be an officer of the Company, he alone shall be responsible for his own acts and defaults and he shall not be deemed to be the agent of the Director appointing him

24 7 An alternate Director shall be entitled to contract and be interested in and benefit from contracts or arrangements or transactions and to be repaid expenses and to be indemnified to the same extent, so far as applicable, as if he were a Director, but he

shall not be entitled to receive from the Company in respect of his appointment as alternate Director any remuneration except only such part (if any) of the remuneration otherwise payable to his appointor as such appointor may by notice in writing sent to the Company from time to time direct

- 24 8 Subject to this Article 24, every reference to these Articles to a Director shall, unless the context otherwise requires, include an alternate Director when he is acting on behalf of his appointor

25 **Termination of a Director's appointment**

A Director ceases to be a Director as soon as

- 25 1 that Director ceases to be a Director by virtue of any provision of the Act or is prohibited from being a Director by law, or
- 25 2 a bankruptcy order is made against that Director, or
- 25 3 a composition is made with that Director's creditors generally in satisfaction of that Director's debts, or
- 25 4 a registered medical practitioner who is treating that Director gives a written opinion to the Company stating that that Director has become physically or mentally incapable of acting as a Director and may remain so for more than three months, or
- 25 5 by reason of that Director's mental health, a court makes an order which wholly or partly prevents that Director from personally exercising any powers or rights which that person would otherwise have, or
- 25 6 notification is received by the Company from that Director that he is resigning from office, and such resignation has taken effect in accordance with its terms, or
- 25 7 that Director is removed from office by notice in writing signed by or on behalf of all the other Directors sent to the Company or tabled at a meeting of the Directors (which removal shall be deemed to be an act of the Company), or
- 25 8 that Director is removed from office by notice in writing signed by or on behalf of shareholders together entitled to a majority of the voting rights exercisable on a poll in respect of all the issued shares of the Company, which is sent to the Company or tabled at a meeting of the Directors (which removal shall be deemed to be the act of the Company), or
- 25 9 where that Director holds an appointment to an executive office with the Company or any Subsidiary, that appointment is terminated or otherwise determines in which case (unless otherwise resolved by the Directors) that Director ceases to be a Director at the time the appointment terminates or otherwise determines, which shall be deemed an act of the Company and shall have effect without prejudice to any claim for damages for breach of contract or service or otherwise between that Director and the Company

26 **Directors' remuneration**

- 26 1 Directors may undertake any services for the Company that the Directors decide

- 26 2 Directors are entitled to such remuneration as the Directors determine
- (A) for their services to the Company as Directors, and
 - (B) for any other service or executive office which they undertake for the Company
- 26 3 Subject to these Articles, a Director's remuneration may
- (A) take any form, and
 - (B) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that Director
- 26 4 Unless the Directors decide otherwise, Directors' remuneration accrues from day to day
- 26 5 Unless the Directors decide otherwise, Directors are not accountable to the Company for any remuneration which they receive as Directors or other officers or employees of the Company's subsidiaries or of any other body corporate in which the Company is interested
- 27 **Directors' expenses**
- 27 1 The Company may pay, in accordance with decisions of the Directors, any reasonable expenses which the Directors properly incur in connection with their attendance at
- (A) meetings of Directors or committees of Directors,
 - (B) general meetings, or
 - (C) separate meetings of the holders of any class of shares or of debentures of the Company,
- or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the Company

PART 3

SHARES AND DISTRIBUTIONS

SHARES

- 28 **All shares to be fully paid up**
- 28 1 No share is to be issued unless there has been paid on it the aggregate of its nominal value and any premium to be paid to the Company in consideration for its issue
- 28 2 This does not apply to shares taken on the formation of the Company by the subscribers to the Company's memorandum, where the nominal value and any premium shall be paid up when required by the Directors

29 **Powers to issue different classes of share**

29 1 Without prejudice to the rights attached to any existing share, the Company may issue shares with such rights or restrictions as may be determined by ordinary resolution

29 2 The Company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the Company or the holder, and the Directors may determine the terms, conditions and manner of redemption of any such shares

30 **Directors' powers to allot shares**

The Directors shall not have power to allot or issue or grant any right to subscribe for or to convert into any shares of the Company without an authority to do so conferred by ordinary resolution and section 560 of the Act shall not apply

31 **No pre-emption rights on share issues**

The Directors shall not be required to have regard to section 561 of the Act which section shall be excluded from applying to the Company

32 **Company not bound by less than absolute interests**

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

33 **Share certificates**

33 1 The Company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds

33 2 Every certificate must specify

- (A) in respect of how many shares, of what class, it is issued,
- (B) the nominal value of those shares,
- (C) that the shares are fully paid, and
- (D) any distinguishing numbers assigned to them

33 3 No certificate may be issued in respect of shares of more than one class

33 4 If more than one person holds a share, only one certificate may be issued in respect of it

33 5 Certificates must

- (A) have affixed to them the Company's common seal, or
- (B) be otherwise executed in accordance with the Act

34 **Replacement share certificates**

34 1 If a certificate issued in respect of a shareholder's shares is

- (A) damaged or defaced, or
- (B) said to be lost, stolen or destroyed,

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

34 2 A shareholder exercising the right to be issued with such a replacement certificate

- (A) may at the same time exercise the right to be issued with a single certificate or separate certificates,
- (B) must return the certificate which is to be replaced to the Company if it is damaged or defaced, and
- (C) must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the Directors decide

35 **Share transfers**

35 1 Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the Directors, which is executed by or on behalf of the transferor

35 2 No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share

35 3 The Company may retain any instrument of transfer which is registered

35 4 The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it

35 5 The Directors may in their absolute discretion refuse to register the transfer of a share, and if they do so, the instrument of transfer must be returned to the transferee with the notice of refusal giving reasons for the refusal as specified by the Act unless they suspect that the proposed transfer may be fraudulent

35 6 The Directors may also refuse to register a transfer unless

- (A) it is sent to the Company's registered office or at 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,
- (B) it is in respect of only one class of shares, and
- (C) it is in favour of not more than four transferees

35 7 No share shall be transferred to any infant, bankrupt or person with mental disorder

36 **Variation of rights**

If at any time the share capital is divided into different classes of shares, the rights attached to any class may, whether or not the Company is being wound up, be modified, varied or abrogated with the consent in writing of the holder or holders of not less than three fourths in nominal value of the issued shares of that class

37 **Transmission of shares**

37 1 If title to a share passes to a transmittee, the Company may only recognise the transmittee as having any title to that share

37 2 A transmittee who produces such evidence of entitlement to shares as the Directors may properly require

(A) may choose either to become the holder of those shares or to have them transferred to another person subject to Article 35, and

(B) pending any transfer of the shares to another person, has the same rights as the holder had, subject to Article 37 3

37 3 Transmittees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the holder's death or bankruptcy or otherwise, unless they become the holders of those shares

38 **Exercise of transmittees' rights**

38 1 Transmittees who wish to become the holders of shares to which they have become entitled must send to the Company notice in writing of that wish

38 2 If the transmittee wishes to have a share transferred to another person, the transmittee must execute an instrument of transfer in respect of it

38 3 Any transfer made or executed under this Article 38 is to be treated as if it were made or executed by the person from whom the transmittee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred

39 **Transmittees bound by prior notices**

If a notice is sent to a shareholder in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was sent to the shareholder before the transmittee's name has been entered in the register of members

40 **Purchase of own shares**

The Company may purchase its own shares in accordance with the Act and may make a payment in respect of such a purchase otherwise than out of its distributable profits or the proceeds of a fresh issue of shares

DIVIDENDS AND OTHER DISTRIBUTIONS

41 Procedure for declaring dividends

- 41 1 The Company may by ordinary resolution declare dividends, and the Directors may decide to pay interim dividends
- 41 2 A dividend must not be declared unless the Directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the Directors
- 41 3 No dividend may be declared or paid unless it is in accordance with shareholders' respective rights
- 41 4 Unless the shareholders' resolution to declare or Directors' decision to pay a dividend, or the terms on which shares are issued specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it
- 41 5 If the Company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear
- 41 6 The Directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment
- 41 7 If the Directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights

42 Payment of dividends and other distributions

- 42 1 Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means
- (A) transfer to a bank or building society account specified by the distribution recipient either in writing sent to the Company or as the Directors may otherwise decide,
 - (B) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing sent to the Company or as the Directors may otherwise decide,
 - (C) sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing sent to the Company or as the Directors may otherwise decide, or
 - (D) any other means of payment as the Directors agree with the distribution recipient either in writing or by such other means as the Directors decide

42 2 In the articles, “the distribution recipient” means, in respect of a share in respect of which a dividend or other sum is payable

(A) the holder of the share, or

(B) if the share has two or more joint holders, whichever of them is named first in the register of members, or

(C) if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee

42 3 The Directors may deduct from any dividend payable on or in respect of any share all or any sums of money presently payable by the holder to the Company or any account whatsoever

43 **No interest on distributions**

The Company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by

43 1 the terms on which the share was issued, or

43 2 the provisions of another agreement between the holder of that share and the Company

44 **Unclaimed distributions**

44 1 All dividends or other sums which are

(A) payable in respect of shares, and

(B) unclaimed after having been declared or become payable,

may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed

44 2 The payment of any such dividend or other sum into a separate account does not make the Company a trustee in respect of it

44 3 If

(A) twelve years have passed from the date on which a dividend or other sum became due for payment, and

(B) the distribution recipient has not claimed it,

the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the Company

45 **Non-cash distributions**

45 1 Subject to the terms of issue of the share in question, the Company may, by ordinary resolution on the recommendation of the Directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of

equivalent value (including, without limitation, shares or other securities in any Company)

- 45 2 For the purposes of paying a non-cash distribution, the Directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution

- (A) fixing the value of any assets,
- (B) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients, and
- (C) vesting any assets in trustees

46 **Waiver of distributions**

- 46 1 Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by sending to the Company notice in writing to that effect, but if

- (A) the share has more than one holder, or
- (B) more than one person is entitled to the share, whether by reason of the death, bankruptcy or liquidation of one or more joint holders, or otherwise,

the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share

CAPITALISATION OF PROFITS

47 **Authority to capitalise and appropriation of capitalised sums**

- 47 1 The Directors may, if they are so authorised by an ordinary resolution

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

- 47 2 Capitalised sums must be applied

- (A) on behalf of the persons entitled, and
- (B) in the same proportions as a dividend would have been distributed to them

- 47 3 Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct

- 47 4 A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the Company which are then allotted credited as fully paid to the persons entitled or as they may direct
- 47 5 Subject to these Articles the Directors may
- (A) apply capitalised sums in accordance with Articles 47 3 or 47 4 partly in one way and partly in another,
 - (B) make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments), and
 - (C) authorise any person to enter into an agreement with the Company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article

PART 4

DECISION-MAKING BY SHAREHOLDERS

48 **No general meetings unless required by law**

- 48 1 Except where required by law, the Company shall not hold general meetings or class meetings of any class of share and all decisions of the shareholders or the holders of any class of share shall be made by the passing of a written resolution passed in accordance with the Act, subject to Article 36
- 48 2 For the purposes of section 297 of the Act, a proposed written resolution of the shareholders shall lapse if not passed by the end of such period after the circulation date of such resolution as is determined by the Directors in respect of that resolution or, if no such period is so determined, the resolution shall lapse at the end of the period of 14 days beginning with its circulation date

PART 5

ADMINISTRATIVE ARRANGEMENTS

49 **Means of communication to be used**

- 49 1 Subject to these Articles, anything sent by or to the Company under these Articles may be sent in any way in which the Act provides for documents or information which are authorised or required by any provision of the Act to be sent or supplied by or to the Company. Anything sent by the Company shall be deemed to have been received by the intended recipient at the time determined in accordance with section 1147 of the Act. Any notice or document to be sent to the Company shall be sent to its registered office for the time being or to such other place or electronic or other

address as the Company may specify in any notice or document sent by it which gives rise to the notice or document being sent to the Company

49 2 Any notice or document to be sent or supplied to a Director in connection with the taking of decisions by Directors may be sent or supplied by the means and to such electronic or other address that Director has specified for the time being, either generally or in relation to any particular notice or document

49 3 A Director may agree with the Company that notices or documents sent to that Director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours

50 **Company seals**

The Company shall not have a seal

51 **No right to inspect accounts and other records**

Except as provided by law or authorised by the Directors or an ordinary resolution of the Company, no person is entitled to inspect any of the Company's accounting or other records or documents merely by virtue of being a shareholder

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

In accordance with section 247 of the Act, the Directors may decide to make provision for the benefit of persons employed or formerly employed by the Company or any of its subsidiaries, other than a Director or former Director or shadow Director, in connection with the cessation or transfer to any person of the whole or part of the undertaking of the Company or that subsidiary In this Article 52 the expression "subsidiary" shall be limited to a subsidiary of the Company as defined by section 1159 of the Act

DIRECTORS' INDEMNITY, INSURANCE AND BENEFITS

53 **Indemnity**

53 1 Without prejudice to any indemnity to which any person referred to in this Article 53 may otherwise be entitled, every present and former Director, Alternate Director, Secretary or other officer of the Company (excluding any past, present or former Auditors) (an "Indemnified Person") shall be indemnified by the Company against all liabilities, costs, charges and expenses incurred by him in the execution and discharge of his duties to the Company and any "Associated Company" of the Company (as defined by the Act for these purposes), including any liability incurred by any Indemnified Person in defending any proceedings, civil or criminal, which relate to anything done or omitted or alleged to be done or omitted by him as an officer or employee of the Company or an Associated Company provided that no such indemnity shall extend to any liability arising out of the fraud or dishonesty of the relevant Indemnified Person or the obtaining by such Indemnified Person of any personal profit or advantage to which such Indemnified Person was not entitled and no Indemnified Person shall be entitled to be indemnified for

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- (A) any liability incurred by him to the Company or any Associated Company of the Company,
- (B) any fine imposed in any criminal proceedings,
- (C) any sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature howsoever arising,
- (D) any amount for which he has become liable in defending any criminal proceedings in which he is convicted and such conviction has become final,
- (E) any amount for which he has become liable in defending any civil proceedings brought by the Company or any Associated Company of the Company in which a final judgment has been given against him, and
- (F) any amount for which he has become liable in connection with any application under sections 144(3) or (4) or 727 of the Companies Act 1985 or sections 661(3) or (4) or 1157 of the Act in which the court refuses to grant him relief and such refusal has become final
- 53 2 Without prejudice to any indemnity to which any person referred to in this Article 53 may otherwise be entitled, every Indemnified Person shall be indemnified by the Company against all liabilities, costs, charges and expenses incurred by him in connection with the Company's activities as a trustee of an occupational pension scheme (as defined by section 750(5) of the Finance Act 2004) which is established under a trust provided that no such indemnity shall extend to any liability arising out of the fraud or dishonesty of the relevant Indemnified Person or the obtaining by an Indemnified Person of any personal profit or advantage to which such Indemnified Person was not entitled and no Indemnified Person shall be entitled to be indemnified for
- (A) any fine imposed in any criminal proceedings,
- (B) any sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature howsoever arising, and
- (C) any amount for which he has become liable in defending any criminal proceedings in which he is convicted and the conviction has become final
- 53 3 The Company may provide funds (either directly or indirectly) to any Indemnified Person to meet expenditure incurred or to be incurred by him in any proceedings (whether civil or criminal) brought by any person or in relation to any investigation or action to be taken by a regulatory authority which relates to anything done or omitted or alleged to have been done or omitted by him as an officer or employee of the Company or any Associated Company of the Company in respect of which it is alleged that the Indemnified Person has been guilty of negligence, default, breach of duty or breach of trust, provided that he will be obliged to repay any such amount no later than
- (A) in the event that he is convicted in proceedings, the date when the conviction becomes final,

- (B) in the event that judgment is given against him in proceedings, the date when the judgment becomes final (except that such amount need not be repaid to the extent that such expenditure is recoverable under this Article 53 or under any other valid indemnity given to him by the Company), or
- (C) in the event that the court refuses to grant him relief on any application under sections 144(3) or (4) or 727 of the Companies Act 1985 or sections 661(3) or (4) or 1157 of the Act, the date when the refusal becomes final

54 **Insurance**

54 1 Subject to the provisions of the Act, the Directors shall have power to purchase and maintain insurance at the expense of the Company for or for the benefit of any persons who are or were at any time

- (A) Directors, officers or employees of the Company or of any other entity which is its parent undertaking, or in which the Company or such parent undertaking has any interest whether direct or indirect, or which is in any way allied to or associated with the Company or such parent undertaking, or of any subsidiary of the Company or of such other entity, or
- (B) trustees of any pension fund in which employees of the Company or of any other such entity or subsidiary are interested

54 2 Such insurance may include (without prejudice to the generality of the foregoing) insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported exercise, execution and/or discharge of their powers or duties and/or otherwise in relation to their duties, powers or offices in relation to the Company or any other such entity, subsidiary or pension fund

55 **Pensions and superannuation**

The Directors may establish and maintain, or procure the establishment and maintenance of, any pension or superannuation funds (whether contributory or otherwise) for the benefit of, and give or procure the giving of donations, gratuities, pensions, allowances and emoluments to, any persons (including Directors and other officers) who are or were at any time in the employment or service of the Company, or of any undertaking which is or was a subsidiary of the Company or allied to or associated with the Company or any such subsidiary, or of any of the predecessors in business of the Company or of any such other undertaking and the spouses, widows, widowers, families and dependants of any such persons and make payments to, for or towards the insurance of or otherwise provide benefits for any such persons

56 **Directors not liable to account**

A Director or former Director shall not be accountable to the Company or the shareholders for any benefit conferred under or pursuant to these Articles and the receipt of any such benefit shall not disqualify any person from being or becoming a Director