

No 6448185

To all the members of Host Europe Corporation Ltd

Circulation Date. 09 / 09 / 2010

**THE COMPANIES ACT 2006**  
**WRITTEN RESOLUTION OF**  
**HOST EUROPE CORPORATION LTD**  
**(the "Company")**

We, the undersigned, representing 75 per cent. or more of the total voting rights of all the members of the Company, who (at the circulation date of this resolution (as defined in section 290 of the Companies Act 2006 ("the Circulation Date")) would have been entitled to vote on these resolutions, hereby agree, pursuant to Chapter 2, Part 13 of the Companies Act 2006, to the following resolution which is proposed as a special resolution.



**THAT:**

the articles of association in the form attached at annex 1 to this resolution (the "New Articles") be adopted as the articles of association of the Company in substitution for, and to the exclusion of, the existing articles of association.

We further consent to every variation or abrogation of the rights attaching to any class of shares of which we are a holder involved in or proposed to be effected by the passing of the resolution set out above.

Please read the notes below before signifying your agreement.

**OAKLEY CAPITAL PRIVATE EQUITY L.P.**  
acting by its General Partner:  
**OAKLEY CAPITAL GP LIMITED**  
by:

  
.....  
  
.....

**Ian Pilgrim & Paul Stevenson**

**Directors**

**For and on behalf of**  
**PEMBROKE COMPANY LIMITED**  
**(as nominee for Thomas Vollrath)**

.....

THURSDAY



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A15

16/09/2010

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COMPANIES HOUSE

for and on behalf of  
**PEMBROKE COMPANY LIMITED**  
(as nominee for Uwe Braun)

.....  
for and on behalf of  
**PEMBROKE COMPANY LIMITED**  
(as nominee for Manfred Fandel)

.....  
for and on behalf of  
**PEMBROKE COMPANY LIMITED**  
(as nominee for Tobias Mohr)

.....  
for and on behalf of  
**PEMBROKE COMPANY LIMITED**  
(as nominee for Madsen Galvin)

.....  
for and on behalf of  
**PEMBROKE COMPANY LIMITED**  
(as nominee for Patrick Pulvermueller)

.....  
for and on behalf of  
**PEMBROKE COMPANY LIMITED**  
(as nominee for Gabriele Pulvermueller)

Date: 09/09/2010

## NOTES

1. If you agree to the resolutions, please indicate your agreement by signing and dating this document where indicated and return it to the Company using one of the following methods

**By Hand:** delivering the signed copy to the Company at its registered office 8th Floor The Economist Building, 25 St James's Street, London SW1A 1HA.

**Post:** returning the signed copy by post to the Company at its registered office as stated above.

**E-mail.** by attaching a scanned copy of the signed document to an e-mail and sending it to nerys.evans@ashurst.com. Please enter "Written resolution dated 2010" in the e-mail subject box

2. Once you have indicated your agreement to the resolutions, you may not revoke your agreement.
3. Unless, prior to the expiry of 28 days from 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

**Annex 1**  
**New Articles of Association of the Company**



The Companies Acts 1985 to 2006

# Articles of Association of HOST EUROPE CORPORATION LIMITED

Private Company having a Share Capital  
(Incorporated on 7 December 2007)

A handwritten signature in black ink, appearing to be "J. B. 18/2".



COMPANIES HOUSE

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(No. 6448185)

**THE COMPANIES ACTS 1985 to 2006**

**PRIVATE COMPANY HAVING A SHARE CAPITAL**

**ARTICLES OF ASSOCIATION**

(adopted by special resolution passed on 9 September 2010)

- of -

**HOST EUROPE CORPORATION LIMITED**  
(the "Company")

**PRELIMINARY**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In the interpretation of these Articles, the headings shall not affect the construction and, unless the context otherwise requires, the following words and expressions shall bear the following meanings:

**"A Debt Apportionment"** means the aggregate amounts of Group Indebtedness apportioned (whether such debt relates to the Credit Facilities, the Loan Notes, or as otherwise) at any relevant time to the UK Hosting Division, as determined by the Board with Special Approval in accordance with Article 10.1(c) or as otherwise determined by the Auditors in accordance with Article 10.2,

**"A Ordinary Shares"** means the A Ordinary Shares of £1 each in the capital of the Company,

**"acting in concert"** shall have the meaning set out in the City Code on Takeovers and Mergers or in any rules or regulations replacing such Code from time;

**"the Acts"** means the Companies Act 1985, any provisions of the Companies Act 2006 for the time being in force, the Electronic Communications Act 2000 and in each case any statutory modification, amendment, variation or re-enactment thereof for the time being in force, and every other statute or subordinate legislation at the time being in force concerning companies and affecting the Company;

**"Auditors"** means the auditors of the Company for the time being;

**"Articles"** means these articles of association of the Company, as amended, supplemented or restated from time to time, and **"Article"** means the appropriate section of these Articles,

**"B Debt Apportionment"** means the aggregate amounts of Group Indebtedness apportioned (whether such debt relates to the Credit Facilities, the Loan Notes, or as otherwise) at any relevant time to the UK Network Services Division, as determined by the Board with Special Approval in accordance with Article 10.1(c) or as otherwise determined by the Auditors in accordance with Article 10.2,

**"B Ordinary Shares"** means the B Ordinary Shares of £1 each in the capital of the Company,

**"Board"** means the board of directors of the Company for the time being or, as the context may require, any duly authorised committee thereof,

**"C Debt Apportionment"** means the aggregate amounts of Group Indebtedness apportioned (whether such debt relates to the Credit Facilities, the Loan Notes, or as otherwise) at any relevant time to the German Hosting Division, as determined by the Board with Special Approval in accordance with Article 10 1(c) or as otherwise determined by the Auditors in accordance with Article 10 2,

**"C Ordinary Shares"** means the C Ordinary Shares of £1 each in the capital of the Company,

**"Cessation Date"** means the date upon which a person becomes a Departing Employee,

**"Completion"** means completion under the Shareholders' Agreement,

**"connected"** means in the context of determining whether one person is connected with another, shall be determined in accordance with the provisions of section 839 of the Income and Corporation Taxes Act 1988,

**"Control"** means the right, by virtue of holding Shares in, or the possession of voting power in or in relation to the Company or any other body corporate, to exercise or procure the exercise of the voting rights attached to the relevant Shares,

**"Credit Facilities"** means the senior facilities agreement dated 14 March 2008 between (1) certain of the subsidiaries of the Company and (2) the Lenders (as defined therein, together with their transferees, successors and assigns) as such agreement shall be varied, amended, novated or supplemented from time to time,

**"Credit Facilities Amount"** means the aggregate sum of all amounts which would be required to be paid by the Group on an Exit to discharge in full any indebtedness of each member of the Group under the terms of the Credit Facilities,

**"Debt Apportionment"** means the proportion of the aggregate sum of all amounts of Group Indebtedness apportioned to a Relevant Division for the purposes of these Articles which shall be

- (a) in respect of the UK Hosting Division, the A Debt Apportionment,
- (b) in respect of the UK Network Services Division, the B Debt Apportionment, and
- (c) in respect of the German Hosting Division, the C Debt Apportionment

**"Departing Employee"** means

- (a) any employee or director of a Relevant Division (other than an Exiting Division) who ceases to be so and who does not begin or continue otherwise to provide services to any Relevant Division, or
- (b) any individual who, not being or having been an employee or director of the Company or any subsidiary of the Company, is otherwise having his services provided to a Relevant Division for any reason, cease to have his services provided to a Relevant Division and does not continue to be a director or employee of any member of the Group,

**"Departing Employee's Group"** means

- (a) a Departing Employee,



- (b) the trustees for the time being of a family trust of the Departing Employee,
- (c) any other person designated by the Board in writing for the purpose of Article 18 1 (Compulsory Transfers) in relation to the Departing Employee as a condition of any issue of Shares to them by the Company,
- (d) any person designated by the Board in writing for the purpose of Article 18 1 (Compulsory Transfers) in relation to the Departing Employee as a condition of any transfer consent given pursuant to Article 15 1 (Transfer of Shares), and
- (e) the nominees of any of the persons in the preceding four categories,

**"Directors"** means the directors for the time being of the Company,

**"dividend"** includes any distribution whether in cash or kind,

**"Division"** means any body (whether or not incorporated) which is or was a subsidiary undertaking or otherwise associated with the Company or any member of the Group or in which the Company or any such member of the Group has or had any interest, whether direct or indirect, or of any predecessor in business of any of the foregoing,

**"Division Exit"** means the Sale, Listing or Return of Capital in respect of a Relevant Division (applying those definitions as if references therein to the Company were to the Relevant Division),

**"Division Exit Date"** means immediately prior to the completion of a Division Exit or a Division Exit being effective (as applicable), or such other date as the Board may designate with Special Approval,

**"Division Exit Market Capitalisation"** means Market Capitalisation in respect of a Division Exit only (applying, mutatis mutandis, references therein to (i) Exit as if such reference were to Division Exit and (ii) the Company as if such reference were to the Exiting Division),

**"Divisional Representatives"** means any Manager appointed by the Board under Article 20 4 as divisional representatives for the purposes of these Articles, and "Divisional Representative" shall have a corresponding meaning,

**"EBITDA"** means the earnings on ordinary trading activities (or losses, in which case the EBITDA will be deemed to be zero) of a Relevant Division before interest, tax, depreciation and amortisation but excluding the impact of any one off or exceptional items and determined on the basis of financial statements prepared on a consistent basis with past practice used by the Group,

**"Exit"** means the earliest to occur of a Sale or Listing or Return of Capital,

**"Exit Value"** has the meaning set out in Article 10 1(b),

**"Exiting Division"** means any Relevant Division which is the subject of a Division Exit on a Division Exit Date,

**"FSMA"** means the Financial Services and Markets Act 2000,

**"German Hosting Division"** means any Division so designated as such by the Board from time to time with Special Approval for the purposes of these Articles,

**"Group"** means the Company and any company which is from time to time a subsidiary of the Company,

**"Group Indebtedness"**

- (a) means all bank borrowings of the Group including but not limited to the Credit Facilities,
- (b) all indebtedness for moneys borrowed or raised by the Group under any acceptance credit, bond, note, bill of exchange or commercial paper, finance lease, hire purchase agreement, trade bills (other than those on terms normally obtained) forward sale or purchase agreement or conditional sale agreement or other transaction having the commercial effect of a borrowing),
- (c) all intra-Group Indebtedness owed by any member of the Group to any other member of the Group, and
- (d) all corporation tax liabilities of each member of the Group for periods ended on or before the Completion Date to the extent they are due and payable

**"holder"** means, in respect of any share in the capital of the Company, the person or persons for the time being registered by the Company as the holder of that share,

**"Index"** means the all-items Retail Prices Index published by the Office for National Statistics and if that index is not published for a month which is relevant for the purposes of any provision in this schedule any substituted index or index figures published by that Office,

**"Institution"** shall have the meaning assigned to "Lead Institution" in the Shareholders' Agreement,

**"Institutional Director"** shall have the meaning assigned to it in the Shareholders' Agreement,

**"Issue Price"** means in respect of a share in the capital of the Company, the aggregate sum of amounts paid up (or credited as paid up) in respect of the nominal value thereof and any share premium thereon,

**"Listing"** or **"IPO"** means together the admission of any part of the share capital of the Company to the Official List of the UK Listing Authority becoming effective in accordance with paragraph 3.2.7G of the Listing Rules and their admission to trading on the London Stock Exchange's market for listed securities becoming effective in accordance with the Admission and Disclosure Standards of the London Stock Exchange or the grant of permission for dealings therein on AIM (a market of the London Stock Exchange) or their admission to listing on any recognised investment exchange (as that term is used in section 285 of the FSMA),

**"Listing Rules"** means the listing rules made by the Financial Services Authority pursuant to part VI of FSMA,

**"Loan Notes"** means the OCIL Loan Notes, the OCP Loan Notes and the Vendor Loan Notes,

**"Loan Notes Amount"** means the sum of all amounts which would be required to be paid by the Group on an Exit to discharge in full any indebtedness of each member of the Group under the terms of any of the Loan Notes,

**"London Stock Exchange"** means London Stock Exchange plc,

**"Market Capitalisation"** means

- (a) in the case of an Exit by way of Listing, the price per share (expressed in pounds sterling) (or translated into such currency at the date of Listing) at which ordinary

shares in the Company are proposed to be sold in connection with the Listing (in the case of an offer for sale, being the underwritten price (or if applicable the minimum tender price), and in the case of a placing being the placing price) in each case multiplied by the number of ordinary shares in the Company as will be in issue immediately following the Listing that represent the Ordinary Shares in issue immediately prior to the Listing (including any capitalisation issues in respect thereof) but excluding therefrom, for the avoidance of doubt, any shares issued on the Listing in order to raise money for the Company, or

- (b) in the case of an Exit by way of Sale, the aggregate consideration expressed as a cash price (whether that consideration is to be satisfied in cash, shares, loan stock or a combination thereof or otherwise) paid on completion of an agreement or offer to acquire either (i) the whole of the assets and undertaking of the business of the Company or (ii) the entire issued ordinary share capital of the Company, as the case may be (and, where any consideration is to be paid following such completion, the value of that consideration as at the date of completion (as determined by the Company's auditors acting as experts and not arbitrators)) (or, where the Sale comprises part only either (i) the whole of the assets and undertaking of the business of the Company or (ii) the entire issued ordinary share capital of the Company, as the case may be, the amount which would have been paid if the whole of the issued ordinary share capital had been acquired at the same price per share as the shares comprised in the Sale), or
- (c) in the case of an Exit by way of a Return of Capital, an amount equal to the total amount paid or payable to the holders of Ordinary Shares following the sale of assets giving rise to the Return of Capital by way of dividend, dividend on liquidation or consideration payable in respect of Ordinary Shares purchased by the Company,

less, in each case, costs of the Exit attributable to the shareholders,

**"Members"** means a holder, including their successors, assignees or transferees,

**"OCIL"** means Oakley Capital Investments Limited (registered number 40324) whose registered office and principal place of business is at Bamboo Gate, 11 Harbour Road, Paget PG01, Bermuda,

**"OCIL Loan Notes"** means the £19,400,000 Fixed Rate Secured Loan Notes 2015 to be issued by Host Europe Holdings Limited (a member of the Group formerly known as Manchester Acquisitionco Limited) and to be constituted on the terms of the instrument dated 14 March 2008,

**"OCP Loan Notes"** means the £10,000,000 Varied Rate Unsecured Loan Notes 2016 to be issued by Host Europe Group Limited (a member of the Group formerly known as Manchester Midco Limited) and to be constituted on the terms of the instrument dated on or about the date of Completion,

**"Ordinary Shares"** means together the A Ordinary Shares, B Ordinary Shares and the C Ordinary Shares,

**"Preference Shares"** means the redeemable preference shares of £1 each in the capital of the Company,

**"Redemption Amount"** has the meaning assigned to it in Article 6 5,

**"Redemption Date"** means any date when Preference Shares are redeemed in accordance with these Articles,

**"Relevant Division"** means one or more or all of the UK Hosting Division, the UK Network Services Division and the German Hosting Division, as the context requires,

**"Relevant Shares"** means

- (a) in respect of the UK Hosting Division, the A Ordinary Shares,
  - (b) in respect of the UK Network Services Division, the B Ordinary Shares, and
  - (c) in respect of the German Hosting Division, the C Ordinary Shares,
- or as otherwise designated by the Board with Special Approval,

**"Return of Capital"** means a return of capital by the Company on a liquidation or following the sale of all or substantially all of the Company's undertaking and assets,

**"Sale"** means the transfer of shares in the Company as a result of which any person (or persons connected with each other, or persons acting in concert with each other (other than one of the subscribers for Ordinary Shares under the Shareholders' Agreement (as at Completion) or any person connected with or acting in concert with any such subscriber) would obtain Control over or increase Control beyond that number of shares in the Company which in aggregate confers 50 per cent or more of the voting rights normally exercisable at general meetings of the Company (calculated on the basis that the Sale has taken place),

**"Shareholders' Agreement"** means the subscription and shareholders' agreement entered into on or around the date of adoption of these Articles between (1) the Company, (2) the Managers (as defined therein), (3) the Institution, (4) OCIL and (5) Oakley Capital (as defined therein) as such agreement shall be varied, amended, novated or supplemented from time to time,

**"Shares"** means the issued shares in the capital of the Company from time to time,

**"Special Approval"** means the receipt by the Company of the prior written consent of the holders of a 75 per cent majority of each class of Ordinary Shares in respect of any decision or act of the Board stipulated in these Articles as requiring such written consent,

**"Table A"** means Table A in the schedule to the Companies (Tables A to F) Regulations 1985 (SI 1985 No 805) as amended by SI 2007/2541 and SI 2007/2826,

**"UK Hosting Division"** means any Division so designated as such by the Board from time to time with Special Approval for the purposes of these Articles,

**"UK Network Services Division"** means any Division so designated as such by the Board from time to time with Special Approval for the purposes of these Articles, and

**"Vendor Loan Notes"** means the £17,500,000 Varied Rate Secured Loan Notes 2010 to be issued by Host Europe Group Limited (a member of the Group formerly known as Manchester Midco Limited) and to be constituted on the terms of the instrument dated on or about the date of Completion.

- 1.2 Words and expressions defined in or having a meaning provided by the Acts (but excluding any statutory modification not in force on the date of adoption of these Articles) shall, unless the context otherwise requires, have the same meanings when used in these Articles

2. **TABLE A**

- 2.1 The regulations contained in Table A, save in so far as they are expressly excluded or varied by these Articles, and the regulations contained in these Articles shall together constitute the regulations of the Company

- 2 2 The regulations of Table A numbered 24, 40, 76 to 78 (inclusive), 96, 101 and 118 shall not apply to the Company

## **SHARE RIGHTS**

### **3 AUTHORISED SHARE CAPITAL**

The authorised share capital of the Company at the date of adoption of these Articles is £40,000,000 divided into

100,000	A Ordinary Shares,
100,000	B Ordinary Shares,
100,000	C Ordinary Shares, and
39,700,000	Preference Shares

### **4 SPECIAL RIGHTS AND RESTRICTIONS**

The special rights and restrictions attached to and imposed on each class of share capital of the Company prior to an Exit are as set out in Articles 5 and 6 and with effect from an Exit are as set out in Articles 7 to 10 Subject as expressly set out in those Articles, the Ordinary Shares shall rank *pari passu* as one class of share

### **5 INCOME PRIOR TO AN EXIT**

- 5 1 The holders of the Ordinary Shares shall not be entitled to receive any dividend
- (a) until all issued Preference Shares have been redeemed, and
  - (b) subject to Article 5 1(a) above, prior to an Exit except with Special Approval
- 5 2 Subject to Article 5 1, any amounts of dividends declared by the Board prior to an Exit shall be paid to the holders of each class of the Ordinary Shares and in each case
- (a) in amounts and in a manner determined by the Board with Special Approval, and
  - (b) *pro-rata* to the number of such class of share held by them

For the avoidance of doubt, dividend amounts declared in respect of each class of Ordinary Shares in accordance with this Article 5 may differ from class to class and no provision of these Articles shall be interpreted to mean that each class of Ordinary Share must rank *pari passu* to any other class of Ordinary Share with respect to rights to dividends under this Article 5

- 5 3 Any dividends declared by the Board in accordance with this Article 5, but that remain unpaid on a winding up of the Company or other return of capital prior to an Exit, shall be repaid as a debt of the Company in accordance with Article 7

### **6 REDEMPTION OF PREFERENCE SHARES**

- 6 1 The holders of Preference Shares shall not be entitled to receive any dividends, but for the avoidance of doubt they shall be entitled to receive the Redemption Amount (as applicable)
- 6 2 The Company shall have the right (but not the obligation) to redeem all outstanding Preference Shares on 31 December 2016 without consent of the holders of the Preference Shares

- 6.3 The Company may, at any time with the consent of the holders of the Preference Shares given in accordance with Article 12 (Variation of Rights) redeem all or some of the Preference Shares then outstanding
- 6.4 Redemption of the Preference Shares is subject to any restrictions on redemption imposed by law. Where, because of such restrictions, the Company is unable to redeem Preference Shares otherwise required to be redeemed by these Articles, the Company shall redeem as many of the Preference Shares as, subject to such restrictions, it can and the balance when those restrictions cease to apply
- 6.5 There shall be paid on the redemption of each Preference Share an amount equal to the Issue Price thereof together with a redemption premium ("**Redemption Amount**") The Redemption Amount on each Preference Share shall be an amount of £A, £B, £C, £D, or £X, as applicable, depending on when the Redemption Date occurs, as determined below

Date of issue to 31 December 2008

$\text{£A} = (0.12 \times \text{Issue Price}) + \text{Issue Price}$

1 January 2009 to 31 December 2009

$\text{£B} = [(0.12 \times \text{£A}) \times (d1/365)] + \text{£A}$

where d1 is the number of days the Preference Share is in issue between (and including) 1 January 2009 and 31 December 2009

1 January 2010 to 31 December 2010

$\text{£C} = [(0.14 \times \text{£B}) \times (d2/365)] + \text{£B}$

where d2 is the number of days the Preference Share is in issue between (and including) 1 January 2010 and 31 December 2010

1 January 2011 to 31 December 2011

$\text{£D} = [(0.16 \times \text{£C}) \times (d3/365)] + \text{£C}$

where d3 is the number of days the Preference Share is in issue between (and including) 1 January 2011 and 31 December 2011

1 January 2012 to Redemption Date

£X being the aggregate of

(a)  $\text{£E} = \text{£D} \times (1 + 0.18)^n$

where  $n$  is the number of full years from 31 December 2011 to 31 December 2016, and

(b)  $\text{£E} \times 0.18 \times (d4/365)$

where d4 is the number of days between (and including) the Redemption Date and the immediately preceding anniversary of 31 December 2010

Provided always that

to the extent any Preference Share is issued during 2009 then £A shall be the Issue Price,

to the extent any Preference Share is issued during 2010 then £B shall be the Issue Price,

to the extent any Preference Share is issued during 2011 then £C shall be the Issue Price,  
and

to the extent any Preference Share is issued during 2012 onwards then £D shall be the Issue Price

- 6 6 The Company shall (if practicable) give at least seven days' notice of any redemption to be made pursuant to Article 6 2
- 6 7 Each redemption of some but not all of the Preference Shares shall be made amongst the holders thereof pro rata to their holding of Preference Shares
- 6 8 Upon delivery of a Preference Share certificate for redemption (or an indemnity in form reasonably satisfactory to the Board in respect of any lost certificate) the Company shall pay to such holder (or the first named holder in the register of members of the Company if more than one) the amount due to him in respect of such redemption and shall cancel the certificate. Pending delivery of such certificate or indemnity in respect of any Preference Shares to be redeemed the Company shall on the Redemption Date pay the amount due in respect of the redemption of those Preference Shares into a separate bank account in the Company's name and if and when the holder shall deliver up his Certificate or Certificates for the relevant Preference Shares to the Company he shall thereupon be paid such amount, with interest. If any Certificate so delivered to the Company includes any Preference Shares which are not to be redeemed on that occasion a fresh Certificate for such unredeemed preference shares shall be issued to the holder as soon as practicable and in any event within 14 days of redemption

## **7 CAPITAL PRIOR TO AN EXIT**

- 7 1 In the event of a winding up of the Company or other return of capital prior to an Exit, the assets of the Company available for distribution to Members after payment of all other relevant Group Indebtedness, other liabilities of the Company and the costs, charges and expenses of any such winding up shall be applied
- (a) first, in paying to the holders of the Preference Shares the Redemption Amount on such shares calculated in accordance with Article 6 5 (as if the Redemption Date were the date of such payment), and
  - (b) firstly in respect of the Issue Price of the Ordinary Shares, and
  - (c) secondly, in respect of any remaining balance, to the holders of each class of the Ordinary Shares and in each case
    - (i) in amounts and in a manner determined by the Board with Special Approval, and
    - (ii) pro-rata to the number of such class of share held by them
- 7 2 For the avoidance of doubt, capital amounts distributed to Members accordance with this Article 7 may differ between each class of Ordinary Share and no provision of these Articles shall be interpreted to mean that each class of Ordinary Share must rank parri passu to any other class of Ordinary Share with respect to rights of Members to distributions under this Article 7

**8 INCOME WITH EFFECT FROM AN EXIT**

- 8 1 With effect from an Exit, the holders of the Ordinary Shares shall not be entitled to receive any dividend except with Special Approval and provided that all issued Preference Shares have been redeemed
- 8 2 Subject to Articles 8 1 and 11, with effect from an Exit any dividend determined to be paid by the Company shall be paid to the holders of the Shares as follows
- (a) A per cent to the holders of the A Ordinary Shares,
  - (b) B per cent to the holders of the B Ordinary Shares, and
  - (c) C per cent to the holders of the C Ordinary Shares,
- in each case pro-rata to the number of such class of share held by them
- 8 3 Any dividends declared by the Board in accordance with this Article 8, but that remain unpaid on a winding up of the Company or other return of capital following an Exit, shall be repaid as a debt of the Company in accordance with Article 9

**9 CAPITAL WITH EFFECT FROM AN EXIT**

Subject to Article 11 and with effect from an Exit, the assets of the Company available for distribution to Members after payment of all other relevant Group Indebtedness, other liabilities of the Company and the costs, charges and expenses of any such winding up shall be distributed

- (a) first, in paying to the holders of the Preference Shares the Redemption Amount on such shares calculated in accordance with Article 6 5 (as if the Redemption Date were the date of such payment), and
- (b) second, amongst the holders of the A Ordinary Shares, the B Ordinary Shares and the C Ordinary Shares
  - (i) in the relevant proportion stipulated mutatis mutandis in Articles 8 2(a) to (c) (inclusive), and
  - (ii) pro-rata to the number of such class of share held by them

**10 CALCULATION OF A, B AND C**

- 10 1 Subject to Articles 10 2 and 11 and for the purposes of Articles 8 and 9, the contribution of each Relevant Division to the Market Capitalisation of the Company on Exit shall be ascertained by way of a determination by the Board with Special Approval of the values of each A, B and C in accordance with this Article 10 For the purpose of determining each of the values of A, B and C, the Board, or the Auditors (if applicable under Article 10 2), in their absolute discretion (acting reasonably) shall have regard and give due consideration to the following factors
- (a) the requirement for the aggregate sum of A plus B plus C to always to equal 100,
  - (b) the gross value of the Company on the Exit shall be considered, being the Market Capitalisation plus
    - (i) the Credit Facilities Amount (whether or not such indebtedness is in fact discharged),
    - (ii) the Loan Notes Amount (whether or not such indebtedness is in fact discharged) immediately prior to the Exit, and



(iii) any other amounts of Group Indebtedness the Board shall consider relevant to the calculation of such gross value of the Company,

(the "**Exit Value**"),

(c) the Board shall apportion Debt Apportionment amounts with effect from Completion for each of the Relevant Divisions, and such amounts may be adjusted in accordance with Article 11 or by the Board from time to time with Special Approval, or if requested from time to time in writing by the Board to do so, by the Auditors who shall act as experts and not as arbitrators and their determination of the Debt Apportionment shall be conclusive and binding on the Company and upon all of its Members for the purposes of these Articles,

(d) in respect of each of the Relevant Divisions the gross value of such Relevant Division applying

(i) a fair value for such Relevant Division as between a willing vendor and a willing purchaser, and

(ii) any amounts of such Relevant Division's Debt Apportionment outstanding,

as at the Exit Date (the "**Division Value on Exit Date**"), with the proviso that (i) the Division Value on Exit Date for an Exiting Division shall be determined with reference to the Division Exit Market Capitalisation as adjusted by the Index for the period between the relevant Division Exit Date and the Exit Date, and (ii) the aggregate sum of all Division Value on Exit Date amounts shall not exceed the Exit Value, and each Division Value on Exit Date amount shall be adjusted by the Board as necessary with Special Approval,

(e) in respect of each of the Relevant Divisions that Division's

(i) Division Value on Exit Date as a proportion of the Exit Value, and

(ii) EBITDA for the 12 month period ending with the last complete month prior to the Exit in respect of which management accounts of the Group are available (as shown in the Group's management accounts for that period) as a proportion of the aggregate sum of all of the Relevant Divisions' EBITDA (provided that any such proportion may be amended by the Board with Special Approval) For the avoidance of doubt, such 12 month period may cover periods during which an Exiting Division was not part of the Group, and accordingly the calculation of the aggregate of all the Relevant Divisions' EBITDA under this Article 10 1(e) shall exclude EBITDA amounts in respect of an Exiting Division,

provided that any proportions referred to in sub-paragraphs (i) and (ii) above may be amended by the Board with Special Approval,

(f) "**Net Cash Generation**" amounts (which may be positive or negative) for each of the Relevant Divisions, being the aggregate (in each case) of

(i) all amounts lent (and not repaid to) or distributed by that Relevant Division to any other member of the Group between Completion and the Exit plus interest thereon at the rate which would have been charged thereon had such sums been borrowed by the Group pursuant to the terms of the Credit Facilities and/or the Loan Notes (as applicable) (and for the avoidance of doubt (i) any such remittance of money, from that Relevant Division to any other Member of the Group shall to the extent that there is outstanding debt due from that Relevant Division to the other member of the Group be treated as repayment of that debt rather than giving rise to a loan from that Relevant Division to that other member and (ii) head office costs (including group tax)

as approved by the Board (acting reasonably) will be appropriately apportioned between the Relevant Divisions and payment of the amounts so apportioned will be by way of management charge and not loan) (in each case "**Loaned Amounts**"),

- (ii) less all amounts borrowed by that Relevant Division from any other member of the Group between Completion and the Exit (plus interest thereon at the rate which would have been charged thereon had such sums been borrowed by the Group pursuant to the terms of the Credit Facilities),
- (iii) plus all repayments by that Relevant Division between Completion and the Exit of any amounts referred to in (ii) above,
- (iv) (in the case of the UK Hosting Division only) less interest payable or which would have been or become payable by the Group on the A Debt Apportionment in respect of the period between Completion and the Exit but calculated as if all Loaned Amounts had been immediately applied in repayment of such bank debt, the Loan Notes and then any other relevant (in the Board's opinion) Group Indebtedness (in that order of priority),
- (v) (in the case of the UK Network Services Division only) less interest payable or which would have been or become payable by the Group on the B Debt Apportionment in respect of the period between Completion and the Exit but calculated as if all Loaned Amounts had been immediately applied in repayment of such bank debt, the Loan Notes and then any other relevant (in the Board's opinion) Group Indebtedness (in that order of priority), and
- (vi) (in the case of the German Hosting Division only) less interest payable or which would have been or become payable by the Group on the C Debt Apportionment in respect of the period between Completion and the Exit but calculated as if all Loaned Amounts had been immediately applied in repayment of such bank debt, the Loan Notes and then any other relevant (in the Board's opinion) Group Indebtedness (in that order of priority), and

- (g) any adjustments to the values of A, B or C that need to be made in accordance with Article 11 in the event of a Division Exit

10 2 In the event of any dispute between the Members arising out of or in connection with any determination of the Board under Article 10 1 ("**Dispute**"), any Divisional Representative shall be entitled to refer the determination of the values of each of A, B and C to the Auditors, whereby a certificate of the Auditors as to the values of A, B and C shall (in the absence of fraud or manifest error) be conclusive and binding on the Company and upon all of its Members for the purposes of these Articles

10 3 In the event of a Sale then, notwithstanding anything to the contrary in the terms and conditions governing such Sale (unless all the selling holders of Shares immediately prior to such Sale have agreed to the contrary for the purposes of this Article 10 3) the selling holders of Shares (immediately prior to such Sale) shall procure that the consideration (whenever received and in whatever form) shall be held by a trustee nominated by the Board and shall be distributed amongst such selling holders mutatis mutandis in the manner set out in Article 9

## 11 **DIVISION EXIT AND CONVERSION**

11 1 Notwithstanding any other provision of these Articles to the contrary except Article 10 2, with effect from an Division Exit Date the values of A, B or C (as appropriate) for the purposes of Articles 8, 9, and 10 1 shall be adjusted in accordance with Article 11 2

11 2 Where the Exiting Division is

- (a) the UK Hosting Division in the case of A,
- (b) the UK Network Services Division in the case of B, or
- (c) the German Hosting Division in the case of C

the value of A, B or C (as applicable) in respect of the Exiting Division shall be adjusted so that any dividend (under Article 8) or distribution of capital (under Article 9) to an Exiting Division on the Exit Date shall not exceed the Division Exit Market Capitalisation as adjusted by the Index for the period between the relevant Division Exit Date and the Exit Date. For the avoidance of doubt, the value of A, B, or C (as applicable) for the purposes of Articles 8, 9 and 10 1 in respect of the Relevant Divisions not subject to the Division Exit referred to in Article 11 1 above shall continue to be determined in accordance with Article 10 1, subject to any necessary adjustment of Debt Apportionment for the Relevant Divisions by the Board (or by the Auditors if requested by the Board to do so in the manner set out in Article 10 1 (c)) with effect from the relevant Division Exit Date

## 12 VARIATION OF RIGHTS

- 12 1 Whenever the share capital of the Company is divided into different classes of share, the special rights attached to any such class may only be varied or abrogated (either whilst the Company is a going concern or during or in contemplation of a winding-up) with Special Approval and with the sanction of an Extraordinary Resolution passed at a separate general meeting of the holders of that class. To every such separate general meeting all the provisions of these Articles relating to general meetings of the Company (and to the proceedings at such general meetings) shall, mutatis mutandis, apply, except that (i) the necessary quorum shall be two persons, present in person or by proxy or by duly authorised representative (if a corporation), who together hold or represent at least one-third in nominal value of the issued shares of the relevant class (unless all the shares of that class are registered in the name of a single holder, in which case the quorum shall be that holder, his proxy or duly authorised representative (if a corporation)), but so that if, at any adjourned meeting of such holders, such a quorum is not present, then those holders who are present shall be a quorum, (ii) any holder of shares of the relevant class present in person or by proxy or by duly authorised representative (if a corporation) may demand a poll, and (iii) the holders of shares of the relevant class shall, on a poll, have one vote in respect of every share of that class held by each of them.

- 12 2 Each of the holders of the A Ordinary Shares, B Ordinary Shares and the C Ordinary Shares covenant with and undertake to all of the other Members that, in respect of any matter

- (a) which would otherwise require under the provisions of Article 12 1 their written consent as a holder of a particular class of share or the sanction of any Extraordinary Resolution passed at a separate meeting of the holders of shares of a particular class of which they are members, and
- (b) in respect of which the Relevant Criteria are satisfied,

they will in accordance with directions from the holder or holders of a majority in nominal value of the Ordinary Shares give their written consent or exercise their votes at any such separate meeting and give their consents to any such separate meeting being held at short notice, and each such Member irrevocably and as security for its respective obligations under this Article 12 2 appoints each of the Directors as its attorney to execute on its behalf any document (including, but without limitation, any written consent or form of proxy) and to do any act, matter or thing for the purpose of complying with such directions as may be given by such holder or holders

- 12 3 For the purpose of Article 12 2, the "Relevant Criteria" will be satisfied if the matter which would otherwise require the written consent or sanction of an Extraordinary Resolution under the provisions of Article 12 1 would not result in the rights conferred on

the holders of the A Ordinary Shares, B Ordinary Shares or C Ordinary Shares being varied or abrogated in a manner that is discriminatory as between them or any of them as a class

**13 SUBSCRIPTION RIGHTS**

13 1 Notwithstanding any other provision of these Articles, and subject to any direction or authority contained in any resolution of the Company, the Board is generally and unconditionally authorised (for the purposes of section 80 of the Companies Act 1985) to allot relevant securities PROVIDED THAT the authority hereby granted to the Board

(a) shall not permit the Board to allot relevant securities in an amount which is in excess of the unissued share capital of the Company immediately following the date of adoption of these Articles, and

(b) shall expire on the fifth anniversary of the date of adoption of these Articles, save that the Board may, after the expiry of the authority hereby granted, allot relevant securities in pursuance of an offer or agreement made by the Company before such authority expired

13 2 The provisions of section 89(1) and section 90(1) to (6) (inclusive) of the Companies Act 1985 shall not apply to the Company

**14 VOTING RIGHTS**

14 1 Regulation 54 of Table A shall be modified in accordance with the following provisions of this Article 14

14 2 Every member who is present in person or by proxy or (being a corporation) is present by a representative or by proxy shall (except as otherwise provided in these Articles) have one vote for every share of which he is the holder (except for a Preference Share (subject to Article 12 1)) and whether on a show of hands or a poll

14 3 A proxy shall be entitled to vote on a show of hands

14 4 Any Shares held by a member of a Departing Employee's Group shall, irrespective of whether the Board has served a notice requiring such member to transfer their Shares in accordance with Article 18 (Compulsory Transfers), cease to confer upon that Member the right to be entitled to attend or vote at any general meeting provided that this restriction shall cease in the event that the Shares are no longer held by such Member (or any other member of the Departing Employee's Group)

**15 TRANSFER OF SHARES**

15 1 Except as hereinafter provided in Article 16 (Permitted Transfers) or Article 17 (Transfer of Control and Come Along Option) or as required by Article 18 (Compulsory Transfers) and subject to the further provisions of this Article 15, no Shares shall be transferred (including any transmission of shares pursuant to regulations 29, 30 and 31 of Table A) without Special Approval For the avoidance of doubt holders of A Ordinary Shares shall be entitled to be counted in any consent in respect of any proposed transfer of their own Shares The Board shall decline to register any transfer not made in accordance with the provisions of these Articles and may decline to register any transfer of Shares which are not fully paid or on which the Company has a lien Any transfer in breach of these Articles shall be void

15 2 For the purposes of these Articles the following shall be deemed (but without limitation) to be a transfer by a holder of Shares in the Company

(a) any direction (by way of renunciation or otherwise) by a holder entitled to an allotment or transfer of shares that a share be allotted or issued or transferred to some person other than himself, and

- (b) any sale or any other disposition (including by way of mortgage, charge or other security interest) of any legal or equitable interest in a share (including any voting right attached to it), (i) whether or not by the relevant holder, (ii) whether or not for consideration, and (iii) whether or not effected by an instrument in writing

15 3 To enable the Board to determine whether or not there has been any transfer of Shares in breach of these Articles the Board may, and shall if so requested in writing by any holder(s) of a majority of the Ordinary Shares from time to time, require any holder or the legal personal representatives of any deceased holder or any person named as transferee in any transfer lodged for registration or such other person as the Board or any such holder may reasonably believe to have information relevant to such purpose, to furnish to the Company such information and evidence as the Board may think fit regarding any matter which they deem relevant to such purpose, including (but not limited to) the names, addresses and interests of all persons respectively having interests in the Shares from time to time registered in the holder's name. Failing such information or evidence being furnished to enable the Board to determine to its reasonable satisfaction that no such breach has occurred, or that as a result of such information and evidence the Board is reasonably satisfied that such breach has occurred, the Board shall forthwith notify the holder of such Shares in writing of that fact whereupon

- (a) the relevant Shares shall cease to confer upon the holder thereof (or any proxy thereof) any rights

- (i) to vote (whether on a show of hands or on a poll and whether exercisable at a general meeting of the Company or at any separate meeting of the class in question), or

- (ii) to receive dividends (other than the Issue Price of the relevant shares upon a return of capital),

otherwise attaching to such Shares or to any further Shares issued in right of such Shares or in pursuance of an offer made to the relevant holder, and

- (b) the holder may be required at any time following such notice to transfer some or all of its Shares (the "**Sale Securities**") to such person(s) at such price as the Board with Special Approval may require by notice in writing to such holder (but being not less than the amount that might reasonably be expected to be obtained from a sale of those Shares on the open market at that time if there were no provisions for transfer, reversion or forfeiture attaching to those shares)

The rights referred to in (a) above may be reinstated by the Board with Special Approval or, if earlier, upon the completion of any transfer referred to in (b) above

15 4 If a holder defaults in transferring the Sale Securities to be transferred pursuant to Article 15 3

- (a) the Chairman for the time being of the Company, or failing him one of the Directors or some other person duly nominated by a resolution of the Board for that purpose, shall be deemed to be the duly appointed attorney of the holder with full power to execute, complete and deliver in the name and on behalf of the holder all documents necessary to give effect to the transfer of the relevant Sale Securities to the relevant transferee,

- (b) the Board may receive and give a good discharge for the purchase money on behalf of the holder and (subject to the transfer being duly stamped) enter the name of the transferee in the register of members or other appropriate register as the holder by transfer of the relevant Sale Securities,

- (c) the Board shall forthwith pay the purchase money into a separate bank account in the Company's name and if and when the holder shall deliver up his certificate or

certificates for the relevant Sale Securities to the Company he shall thereupon be paid the purchase money, without interest and less any sums owed to the Company by the holder pursuant to these Articles or otherwise, and

- (d) if such certificate shall comprise any Sale Securities which the holder has not become bound to transfer as aforesaid the Company shall issue to him a balance certificate for such Sale Securities

The appointment referred to in this Article 15 4 shall be irrevocable and is given by way of security for the performances of the obligations of the holder under Article 15 3 and those other Articles incorporating the provisions of this Article 15 4

- 15 5 No share shall in any circumstances be issued or transferred to any infant, bankrupt or person of unsound mind or company in liquidation

#### 16. **PERMITTED TRANSFERS**

- 16 1 Any holder being a body corporate shall be entitled to transfer all or any of its Shares to any other body corporate which is for the time being its subsidiary or holding company or another subsidiary of its holding company (each such body corporate being a "**Group Company**") but if a Group Company whilst it is a holder of Shares in the Company shall cease to be a Group Company in relation to the body first holding the relevant Shares following their allotment or following a transfer made in accordance with this Article 15 (otherwise than pursuant to this Article 16 1) it shall, within 21 days of so ceasing, transfer the Shares held by it to such body or any Group Company of such body

- 16 2 Any holder may at any time transfer to the Company any Shares in accordance with and subject to the provisions of the Acts

- 16 3 Any Shares held by or on behalf of an investment trust company (as defined for the purposes of the Listing Rules of the United Kingdom Listing Authority) whose Shares are admitted to the Official List of the United Kingdom Listing Authority and to trading on the London Stock Exchange's market for listed securities may be transferred to another such investment trust company (a "**transferee**")

- (a) whose shares are so admitted, and

- (b) which is managed by the same management company as the transferor or by a holding company of such management company or any subsidiary company of such holding company,

PROVIDED ALWAYS THAT if the above requirements cease to be satisfied in relation to the transferee it shall, within 21 days of so ceasing, transfer the Shares previously transferred to it pursuant to this Article 16 3 to the first mentioned investment trust company or such other company which, in relation to the first mentioned investment trust company, shall satisfy the requirements of paragraphs 16 3(a) and (b) above

- 16 4 Any Shares which are held by or on behalf of any collective investment scheme (within the meaning of section 235 of FSMA, as the same may be amended, modified or replaced from time to time) may be transferred to participants (within the meaning of the said section, as the same may be amended, modified or replaced from time to time) in the scheme in question

- 16 5 Any holder may transfer Shares to a nominee or trustee for that holder alone and any such nominee or trustee of any person or persons may at any time transfer any Shares to that person or persons or to another nominee or trustee for that person or persons PROVIDED THAT no beneficial interest in such Shares passes by reason of such transfer.

- 16 6 In the event that any person to whom Shares are transferred pursuant to Articles 16 1 ceases to be within the required relationship to the original transferee the holder of such

Shares shall be entitled to transfer such Shares back to the person who originally transferred them or to any other person falling within the required relationship to the original transferor and the Board may by written notice served on such holder at any time require the holder of such Shares to transfer them back to the original transferor or to any person falling within the required relationship to the original transferor on the same terms as they were originally transferred. If the holder of such Shares fails to transfer the Shares where so required by the Board, the provisions of Article 15 4 (reference therein to holder, Sale Securities, transferee and documents being construed in accordance with the provisions of this Article 16 6) shall apply to the transfer of such shares mutatis mutandis

16 7 Any Shares may be transferred pursuant to a Come Along Notice

## 17 TRANSFER OF CONTROL AND COME ALONG OPTION

17 1 If the effect of any bona fide transfer of any Shares shall, if made and registered, result in there being a Sale, the holder(s) thereof (the "**Relevant Transferor(s)**") shall procure before the transfer is made and lodged for registration that the proposed transferee has unconditionally offered to the other holders to purchase all of the other issued Shares (other than Shares held by any holder who is connected with or acting in concert with the proposed transferee) of the same class as those that the Relevant Transferor(s) has agreed to sell to the proposed transferee on the same terms and conditions as shall have been agreed between the Relevant Transferor and the proposed transferee and, in particular for the same consideration which having regard to the substance of the transaction as a whole can reasonably be regarded as is to be paid by the proposed transferee. The offer shall remain open for acceptance for not less than 21 business days. No offer shall be required pursuant to this Article 17 1 if a Come Along Notice has been served under Article 17 2

17 2 If the effect of any transfer of any Shares would be that described in Article 17 1, then the Relevant Transferor or, if more than one any one of them, shall have the right to require all the other holders of Shares in the Company (the "**Called Shareholders**") to transfer within five business days of demand being made by the Relevant Transferor by notice in writing to the Called Shareholders all (but not some only) of their Shares of the same class as the Relevant Transferor(s) propose to transfer to the proposed transferee. The transfer shall be on the same terms and conditions as shall have been agreed between the Relevant Transferor(s) and the proposed transferee and in particular, for the same consideration which having regard to the substance of the transaction as a whole can reasonably be regarded as is to be paid by the proposed transferee. The right of the Relevant Transferor(s) shall be exercised by the Relevant Transferor(s) giving written notice to the Called Shareholders to that effect (the "**Come Along Notice**") accompanied by copies of all documents required to be executed by the Called Shareholders to give effect to the required transfer. If the triggering transfer is to a person connected with the Relevant Transferor the rights conferred by this Article 17 2 shall only be exercisable if the Board of the Company is advised (by a reputable investment bank or other corporate finance advisory firm, the identity of which is approved by the holders of a majority of the Ordinary Shares) that the terms on which the Called Shareholders are to be transferred are fair and reasonable (so far as the shareholders of the Company other than the Relevant Transferor and persons connected with it are concerned) and the substance of that advice can be relied upon by the Called Shareholders and is made known to the Called Shareholders in the documents which accompany the Come Along Notice

17 3 If a Called Shareholder makes default in transferring its Shares pursuant to Article 17 2 the provisions of Article 15 4 (reference therein to the holder, Sale Securities, transferee and documents being construed in accordance with the provisions of this Article 17) shall apply mutatis mutandis to the transfer of such Shares

## 18 COMPULSORY TRANSFERS

18.1 The Board shall be entitled at any time following a Cessation Date to serve a written notice (the "**Compulsory Transfer Notice**") on all or any members of the Departing Employee's Group who holds Ordinary Shares (other than Relevant Shares in respect of an Exiting

Division) The Compulsory Transfer Notice may require the relevant member(s), within ten days of the Compulsory Transfer Notice, to transfer such number and class of Shares held by them to such person(s) and at such prices (subject to the price being not less than that provided for in Article 18 2) in each case as are specified in the Compulsory Transfer Notice. If the relevant member(s) of the Departing Employee's Group make(s) default in transferring the shares required to be transferred, the provisions of Article 15 (Transfer of Shares) shall apply (references therein to the holder, Sale Securities (as defined in Article 15), transferee and documents being construed in accordance with the provisions of this Article 18)

18 2 The price at which such Shares may be required to be transferred pursuant to Article 18 1 shall be determined by the Board with Special Approval and shall be no lower than

- (a) if the Cessation Date is on or prior to the first anniversary of the date of Completion ("**Commencement Date**") then, regardless of the reason for the Departing Employee becoming a Departing Employee (the "**Departure Reason**") the lower of Cost and Market Value,
- (b) if the Cessation Date is after the fifth anniversary of the Commencement Date then, regardless of the Departure Reason Market Value, or
- (c) if the Cessation Date is after the first anniversary but on or before the fifth anniversary of the Commencement Date
  - (i) if the Departure Reason is a Good Reason Market Value, or
  - (ii) if the Departure Reason is a Bad Reason the lower of (i) Cost and (ii) Market Value

18 3 In Article 18 2

- (a) "**Good Reason**" shall mean any of the following reasons
  - (i) the death of the Departing Employee,
  - (ii) the ill health or permanent disability of the Departing Employee rendering him incapable of continued full-time employment in his current position (or a comparable position at the location he is employed or otherwise provides his services at the Cessation Date) with the Group,
  - (iii) the Departing Employee being made redundant by a member of the Group, or
  - (iv) the service contract of the Departing Employee (or other arrangement pursuant to which his services are provided to a member of the Group) being terminated by that member in breach of the terms thereof other than in circumstances in which the member of the Group is entitled summarily to terminate such contract without payment of damages or payment in lieu of notice,
- (b) "**Bad Reason**" shall mean
  - (i) voluntary resignation by the Departing Employee for a reason other than a Good Reason, or
  - (ii) any other reason which is not a Good Reason, and
- (c) "**Cost**" shall mean the amount paid (by way of purchase or subscription price) for the Shares in question by the first member (in point of time) of the Departing Employee's Group who held such Shares



- 18 4 In determining the Market Value of the shares the subject of the Compulsory Transfer Notice the Company may propose to the Departing Employee a price which if accepted by the Departing Employee shall be deemed to be the Market Value. In the absence of agreement Market Value shall be determined in accordance with Article 18 5 or, at the election of the Board, Market Value shall be based upon the price per share implied in the Market Value last determined pursuant to Article 18 5 where such determination took place within the 12 months prior to the Cessation Date and the Auditors shall not add any premium to the price of the Shares for the sale of control of the Company
- 18 5 Subject to Article 18 4, Market Value of the Shares the subject of the Compulsory Transfer Notice (the "**Transferred Shares**") shall be the market value of the Transferred Shares as between a willing buyer and a willing seller as certified by the Auditors acting as experts and not arbitrators and whose determination shall be final and binding on the parties concerned. In arriving at the Market Value of the Transferred Shares, the Auditors shall be instructed to
- (a) determine the "**Enterprise Value**" which shall mean the price obtainable on a sale of Shares of whatever class between a willing buyer and a willing seller (on the assumption that all Relevant Shares of the same class as the Transferred Shares are being sold for cash) free of any indebtedness that is outstanding under the Credit Facilities and Loan Notes as at the Cessation Date save that the Auditors shall exclude any premium that might arise as a result of the sale of control of the Company,
  - (b) deduct from the Enterprise Value an amount equal to that which would be required as at the Cessation Date to refinance all amounts (including all arrears and accruals of interest, fees and other costs, and expenses payable) outstanding under
    - (i) the Credit Facilities to the extent the terms of the Credit Facilities would permit refinancing on the Cessation Date, and to the extent they do not, deducting the amount of the indebtedness outstanding under the Credit Facilities as at that date on a refinancing together with such further amount which in the opinion of the Auditors would be required to obtain a waiver of such prohibition, and
    - (ii) the Loan Notes, and
  - (c) use the resultant figure as the valuation of all of the Shares from which they determine the market value of the Transferred Shares as between a willing buyer and a willing seller
- 18 6 The costs and expenses of the Auditors shall be borne by the Company who shall be reimbursed by the Departing Employee unless the value determined by the Auditors is 20 per cent or more higher than that proposed by the Company, in which case such costs and expenses shall be borne by the Company

## **GENERAL**

### **19. GENERAL MEETINGS**

- 19 1 Every notice convening a general meeting shall comply with the provisions of section 325 of the Companies Act 2006 as to giving information to Members in regard to their right to appoint proxies, and notices of and other communications relating to any general meeting which any Member is entitled to receive shall be sent to the Directors and to the Auditors
- 19 2 No business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business and for its duration. Two persons, being Members present in person, by proxy or by duly authorised representative (if a corporation), shall be the quorum at any general meeting. If a meeting is adjourned under regulation 41 of Table A because a quorum is not present, and at the adjourned

meeting a quorum is not present within half an hour from the time appointed for that adjourned meeting, the Members then present shall form a quorum, and regulation 41 of Table A shall be modified accordingly

- 19 3 A poll may be demanded at a general meeting either by the chairman of the meeting or by any Member who is present in person, by proxy or by duly authorised representative (if a corporation) and who, in any such case, has the right to vote at the meeting, and regulation 46 of Table A shall be modified accordingly

## **20 DIRECTORS**

- 20 1 Unless otherwise determined by ordinary resolution, the number of Directors (other than alternate directors) shall not be subject to any maximum and the minimum number of Directors shall be one. Regulation 64 of Table A shall not apply to the Company.
- 20 2 A Director shall be entitled to vote as a director and be counted in the quorum in respect of any resolution concerning a matter in which he has, directly or indirectly, an interest or duty (whether or not it may conflict with the interests of the Company). Regulations 94 to 98 (inclusive) of Table A shall not apply to the Company.
- 20 3 A person may be appointed as a Director at any time by a notice (or notices) in writing to the Company signed by or on behalf of the holders of a majority of the Ordinary Shares, or in the case of the Institutional Director only, signed by the Institution. Such notice shall take effect upon the notice being received at the registered office of the Company or such later date as may be specified in the notice.
- 20 4 The Board shall appoint a Divisional Representative from time to time in respect of each Relevant Division. The Board may at any time remove any of the Divisional Representatives and replace any of them with another, except such removal shall not constitute a removal of his office as an employee or director of any member of the Group.

## **21 REMOVAL OF DIRECTORS**

- 21 1 The office of any Director except the Institutional Director shall be vacated if
- (a) (in the case of an executive Director only) he shall, for whatever reason, cease to be employed by the Company or any subsidiary of the Company, or
  - (b) all the other Directors request his resignation in writing, or
  - (c) a notice is (or notices in like form are) served on the Company signed by the holders of a majority of the Ordinary Shares together removing the Director from office,

and the provisions of regulation 81 of Table A shall be extended accordingly

- 21 2 Unless and until otherwise determined by the Company by ordinary resolution, no Director shall vacate or be required to vacate his office as a director on or by reason of his attaining or having attained the age of 70. Any Director retiring or liable to retire under the provisions of these Articles and any person proposed to be appointed a Director shall be capable of being appointed or re-appointed as a Director notwithstanding that he has attained the age of 70. No special notice need be given of any resolution for the appointment or re-appointment as a Director of a person who shall have attained the age of 70, and it shall not be necessary to give to the members notice of the age of any Director or person proposed to be appointed or re-appointed as such.

## **22 ROTATION OF DIRECTORS**

The Directors shall not be liable to retire by rotation, and accordingly regulations 76 to 78 (inclusive) shall not apply to the Company.

**23 PROCEEDINGS OF DIRECTORS**

- 23 1 Any Director or member of a committee of the Board may participate in a meeting of the Directors or such committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other and any Director or member of a committee participating in a meeting in this manner shall be deemed to be present in person at such meeting
- 23 2 In regulation 91 of Table A the words "The directors may appoint one of their number" shall be deleted and replaced by the words "The owners of the A Ordinary Shares acting by simple majority in nominal value of such shares may appoint any person"

**24 ALTERNATE DIRECTORS**

- 24 1 An alternate Director shall not be entitled (as such) to receive any remuneration from the Company, save that he may be paid by the Company such part (if any) of the remuneration otherwise payable to his appointor as such appointor may, by notice in writing to the Company from time to time, direct, and the first sentence of regulation 66 of Table A shall be modified accordingly
- 24 2 A Director, or any such other person as is mentioned in regulation 65 of Table A, may act as an alternate Director to represent more than one Director, and an alternate Director shall be entitled at any meeting of the Board (or of any committee of the Board) to one vote for every Director whom he represents (in addition to his own vote (if any) as a Director), but he shall count as only one for the purpose of determining whether a quorum is present at (and during) any such meeting

**25 LIEN**

The lien conferred by regulation 8 of Table A shall attach also to fully paid up Shares and to all Shares registered in the name of any person indebted or under liability to the Company (whether he shall be the sole registered holder of such Share(s) or shall be one of two or more joint holders)

**26 THE SEAL**

- 26 1 If the Company has a seal it shall only be used with the authority of the Board or of a committee of the Board. The Board may determine who shall sign any instrument to which the seal is affixed and, unless otherwise so determined, it shall be signed by a Director and by the secretary or a second Director. The obligation under regulation 6 of Table A relating to the sealing of share certificates shall apply only if the Company has a seal
- 26 2 The Company may have an official seal for use abroad under the provisions of the Act, where and as the directors shall determine, and the Company may by writing under the common seal appoint any agent or agents, committees or committee abroad to be the duly authorised agents of the Company, for the purpose of affixing and using any such official seal, and may impose such restrictions on the use thereof as may be thought fit. Wherever in these Articles reference is made to the common seal of the Company, the reference shall, when and so far as may be applicable, be deemed to include any such official seal as aforesaid

**27 INDEMNITY**

- 27 1 Subject to the provisions of the Acts (but so that this Article does not extend to any matter insofar as it would cause this Article or any part of it to be void under the Acts) but without prejudice to any indemnity to which the person concerned may otherwise be entitled, every person who is or was at any time a Director or other officer of the Company or any member of the Group excluding the Auditors may be indemnified out of the assets of the Company against all costs, charges, expenses, losses or liabilities (together "**Liabilities**") which he may sustain or incur in or about the actual or purported execution and/or discharge of his

duties (including those duties, powers and discretions in relation to any member of the Group or any company that is a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006)) and/or the actual or purported exercise of his powers or discretions and/or otherwise in relation thereto or in connection therewith, including (without prejudice to the generality of the foregoing) any Liability suffered or incurred by him in disputing, defending, investigating or providing evidence in connection with any actual or threatened or alleged claims, demands, investigations, or proceedings, whether civil, criminal, or regulatory or in connection with any application under section 144(3) or (4) or section 727 of the Companies Act 1985

27 2 The Company may also provide funds to any Director or other officer of the Company or of any member of the Group (excluding the Auditors) to meet, or do anything to enable a Director or other officer of the Company or member of the Group to avoid incurring expenditure of the nature described in sections 205(1) or 206 of the Companies Act 2006

27 3 Without prejudice to any other provisions of these Articles, the Directors may exercise all the powers of the Company to purchase and maintain insurance for or for the benefit of any persons who are or were at any time Directors, officers, employees or Auditors of the Company, or of any other body (whether or not incorporated) which is or was its parent undertaking or subsidiary undertaking or another subsidiary undertaking of any such parent undertaking (a "**Group Company**") or otherwise associated with the Company or any Group Company or in which the Company or any such Group Company has or had any interest, whether direct or indirect, or of any predecessor in business of any of the foregoing, or who are or were at any time trustees of (or directors of trustees of) any pension, superannuation or similar fund, trust or scheme or any employees' share scheme or other scheme or arrangement in which any employees of the Company or of any such other body are interested, including (without prejudice to the generality of the foregoing) insurance against any costs, charges, expenses, losses or liabilities suffered or incurred by such persons in respect of any act or omission in the actual or purported execution and/or discharge of their duties and/or the actual or purported exercise of their powers and discretions and/or otherwise in relation to or in connection with their duties, powers or offices in relation to the Company or any such other body, fund, trust, scheme or arrangement

## 28 **BORROWING POWERS**

Subject as hereinafter provided, the Board may exercise all the powers of the Company to borrow money, and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and, subject to the provisions of the Acts, to issue debentures, debenture stock, and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party

## 29 **RELATIONSHIP TO CREDIT FACILITIES**

29 1 Each of these Articles are subject to the terms of the Credit Facilities, which terms shall prevail to the extent that they conflict with these Articles. Notwithstanding any other provision of these Articles, no payment shall be declared or made by the Company by way of dividend or other distribution, purchase, redemption, reduction or return of shares or capital or by addition to or repayment of any dividend reserve if and to the extent that such payment is prohibited or restricted by the terms of the Credit Facilities. No dividends or other distributions payable in respect of shares, whether pursuant to the Articles or otherwise, shall constitute a debt enforceable against the Company unless permitted to be paid in accordance with the Credit Facilities (but without prejudice to the accrual of interest for late payment in accordance with the terms of these Articles)

29 2 Where any dividend or redemption payment is not made because of the provisions of Article 28 1, such dividend shall be paid or redemption payment shall be made upon the necessary consent being obtained or the prohibition ceasing to apply