
MODEL DOCUMENTATION

FOR A COMPANY WITH EMPLOYEE OWNERSHIP

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PETT, FRANKLIN & CO. LLP

HELPING *SHARE* GROWTH



TAX, INCENTIVES AND
EMPLOYEE SHARE PLANS

NOTE: Words, phrases and passages marked in [] and/or *in italics* are presented only as an example of a range of alternatives which need to be considered to determine what is appropriate in the case of a particular company having regard to its initial ownership structure and the commercial intentions of the relevant parties seeking to convert the company into a “company with employee ownership”.

Whilst every effort has been made to ensure that these documents are in a form which can be used as the basis for conversion to a company with employee owners, neither the Department for Business, Innovation and Skills nor Pett, Franklin & Co. LLP can accept responsibility for any loss occasioned by reliance upon anything in these documents for any purpose whatsoever. Professional advice should always be obtained before acting or making use of these model documents or any part of them.

Reference should also be made to the accompanying guidance notes issued by HMRC [and which are reproduced as an Annexe to this document].

Warning: the form of trust deed included in these model documents is not intended to, and will not, satisfy the requirements of s 236I TCGA 1992 which must be met if the trust is to qualify as an employee-ownership trust (“an EOT”), as mentioned in ss236H-236U and in Chapter 10A, Part 4 ITEPA 2003 (bonus payments by companies owned by an EOT).

The form of trust deed in this document should not be used in situations in which the intention is for vendor shareholders to claim relief from capital gains tax on a sale of shares to an EOT and/or that a company owned by such an EOT may pay tax-free bonuses to employees.

PART A

GUIDE TO

THE CONSTITUTION OF [INSERT NAME] LIMITED

(a company with employee ownership)

This Part A comprises:

- **a guide to the constitution of the Company**
- **the Principles of the Company**
- **the rules governing the Employees' Council**

It is included in the model documentation by way of an example (only) of the narrative description of a typical type of ownership structure of a company with employee ownership. Although the structure described is based upon a number of real-life examples of companies with employee ownership, it is not intended to be prescriptive but rather is presented as one out of a range of possible structures. In particular, there is no restriction upon the extent to which employees of the company or group of companies may participate in, or be represented at, any body or persons forming part of such a structure (i.e. the directors of the company, the directors of the corporate trustee company, any 'employees' council' or other body comprising or including employees or their representatives). However, it should be noted that directors of a company have specific duties and liabilities under company law and other laws of the parts of the United Kingdom.

PART 1

A GUIDE TO THE CONSTITUTION OF [INSERT NAME] LIMITED

1. INTRODUCTION

1.1 [The [founding] shareholders of the Company have determined to transform the Company into a company with employee ownership and with a distinctive ethos for the operation of the business, at the heart of which is the Constitution set out in this document.] Inherent in this form of ownership structure is the idea that, by procuring that a [substantial] proportion of the shares in the Company are held [by or] for the benefit of employees, employees will be motivated to enhance the success of the business for their own benefit as well as that of all other stakeholders.

1.2 Individual employees may benefit:

- from taking advantage of opportunities to be made available by the Directors to acquire [on favourable terms] shares in the Company from the Trust;
- from distributions to employees out of the profits of the Company; and
- from future growth in the value of such shares.

1.3 All employees are expected to become familiar with the Constitution and, in their dealings with, or conduct as officers or employees of, the Group, to act only in a manner which is consistent with the Constitution.

1.4 This Part of this document describes:-

- (a) the [existing and the] proposed future ownership structure of the Company; and
- (b) the respective roles and responsibilities of each of:-
 - (i) the Directors of the Company ("**the Directors**");
 - (ii) the [INSERT NAME] Employees' Share Trust ("**the Trust**");
 - (iii) the directors of the company which acts as the trustee of the Trust ("**the Trustee Directors**");
 - (iv) the Employees' Council ("**the Council**"); and
 - (v) the employees of members of the Group.

1.5 The Constitution sets out:-

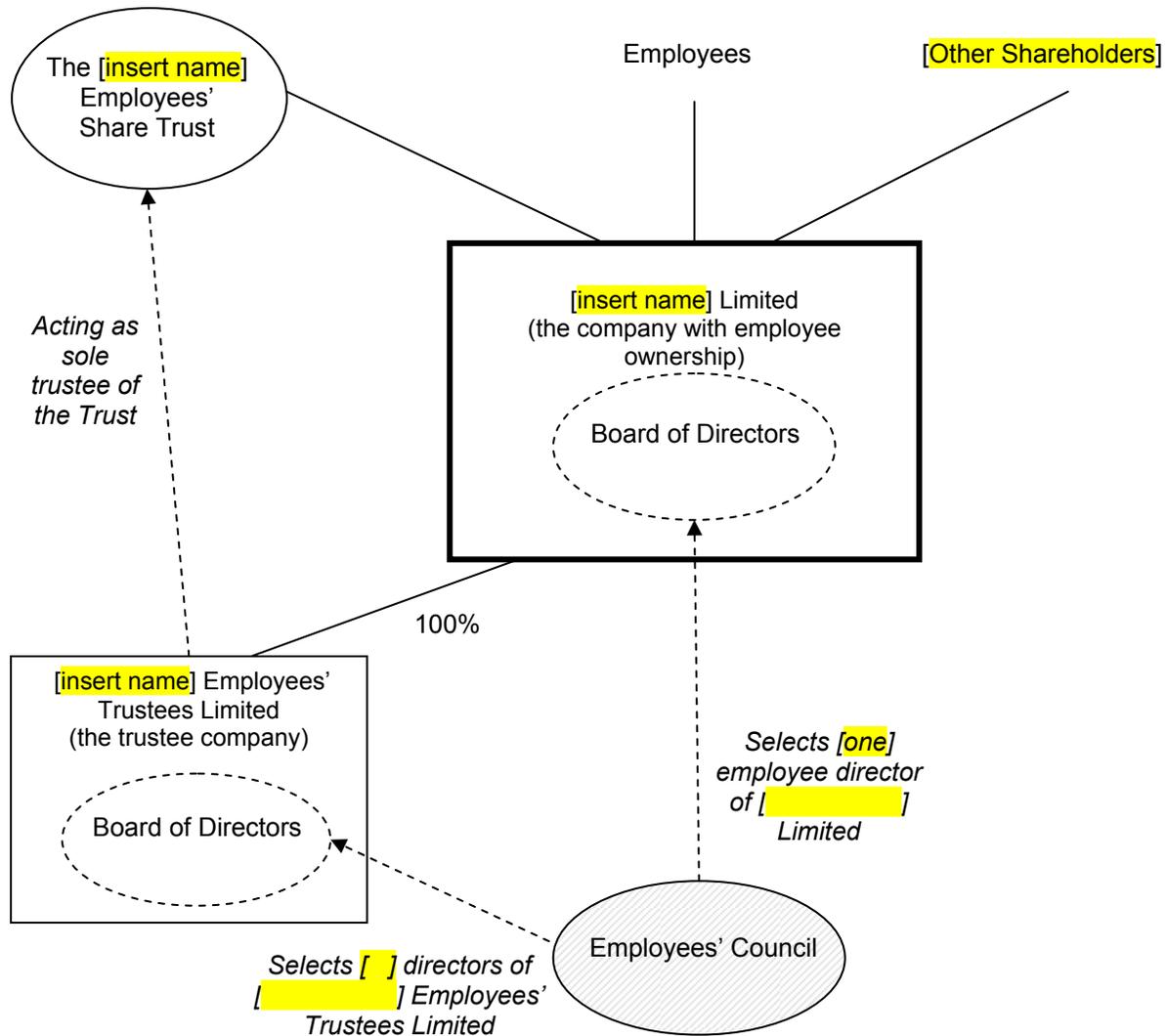
- (a) the Principles which underpin the conduct of the business of the Company ("**the Principles**"); and
- (b) the rules governing the membership, responsibilities and conduct of business of the Employees' Council ("**the Rules**").

- 1.6 The Constitution has been established by [ordinary resolution of the members of] the Company. Except in relation to minor changes to the Rules intended to benefit the administration of the Employees' Council, the provisions of the Constitution may not be amended without the approval of shareholders (which will include the Trust) and of the Employees' Council.

2. OWNERSHIP OF THE COMPANY

- 2.1 [INSERT NAME] Limited is a company incorporated and registered in [England and Wales]. It presently has [] shareholders[, of whom [] are individuals]. [The remaining shareholder[s] [is an/are] investor[s] in the Company.]
- 2.2 The shareholders have agreed that, rather than sell their shareholdings to "outside" investors, each of them will, over time and insofar as it is economically possible for them to do so, sell their shares to a trust which has been specially formed for the purpose of acquiring shares in the Company to be held for the benefit of employees (present and future) of members of the Group. This trust is known as The [INSERT NAME] Employees' Share Trust ("**the Trust**").
- 2.3 Over time, it is envisaged that the Trust will acquire an increasing proportion of the shares in the Company [and will eventually acquire control of the Company].
- 2.4 The Articles of Association of the Company (in common with those of most other companies) provide that the shareholders have delegated responsibility for the management of the business of the Company to the Directors.

Summary of proposed ownership and governance structure



3. ROLES AND RESPONSIBILITIES

The Board of Directors of the Company

3.1 The Directors of the Company are legally responsible for the management of the business of the Company. In exercising that responsibility, each director is obliged by law to act in accordance with the statutory duties laid down in the Companies Acts. These include:-

- to promote the success of the Company for the benefit of its members as a whole and, in doing so, to have regard to (amongst other matters):
 - the likely long-term consequences of any decisions;
 - the interests of employees;
 - the need to foster business relationships with suppliers, customers and others;
 - the impact of its operations on the community and the environment;
 - the need to act fairly as between members of the Company; and
 - the desirability of maintaining a reputation for high standards of business conduct;
- to exercise independent judgment; and
- to exercise reasonable care, skill and diligence.

3.2 In exercising their powers, the Directors of this Company are, as a term of the Articles of Association, also required to have regard to the Principles set out in the Constitution and to the views of the Employees' Council although their obligation is nevertheless to promote the financial success of the Company for the benefit of its members. It is important to appreciate that the Directors must at all times only ever act in accordance with their legal obligations as directors.

3.3 The appointment and removal of the Directors of the Company is governed by the Articles of Association of the Company. [These provide that the Employees' Council may select [one] employee[s] for appointment as an Employee Director[s] of the Company. The selection of an Employee Director is a responsibility of the Employees' Council.]

3.4 [An Employee Director of the Company will be bound by the same legal obligations as those of any other director of the Company including, amongst others, a duty of confidentiality which will necessarily restrict the Employee Director from discussing the proceedings of the Directors and other information which is commercially confidential outside of meetings of the Directors.]

3.5 The Directors have appointed [NAME OF DIRECTOR] to be the Chairman of the Company.

4. THE [INSERT NAME] EMPLOYEES' SHARE TRUST

4.1 The Trust has been established with the consent and approval of [all of] the shareholders of the Company. It was created by the execution of a legal document (called a trust deed) which sets out the terms upon which the trustee of the Trust must hold and may deal with the property held in the Trust. A 'trust' is an arrangement under which property may be held by one set of persons (the trustee(s)) not for their own benefit, but for the benefit of another set of persons (the beneficiaries).

Who is the trustee of the Trust?

4.2 The trustee is a company called [INSERT NAME] Employees' Trustees Limited. This is referred to as "the Trustee Company". The Trustee Company was specially formed as a subsidiary of the Company solely for the purpose of acting as trustee of the Trust. The business of the Trustee Company - the administration of the Trust - is carried on by its directors who are, for all practical purposes, to be regarded as having responsibility for the affairs of the Trust. They are referred to as "the Trustee Directors".

Who are the Trustee Directors?

- 4.3 Initially these are **[NAMES OF DIRECTORS]**. Under the Articles of Association of the Trustee Company, the maximum number of Trustee Directors is [X]. At least [one] of the Trustee Directors must be an Independent Trustee Director.
- 4.4 Before the Trust has first acquired shares in the Company, the Employees' Council will have the opportunity to select for appointment as Trustee Directors up to [2] employees of the Company (not being executive directors of the Company). An employee who is selected and appointed to the board of the Trustee Company will be known as an "Employee Trustee Director".
- 4.5 An Independent Trustee Director is an individual who is familiar with the Company and its business but is 'independent' of the Company. The role of an Independent Trustee Director is partly to ensure that the affairs of the Trust are properly conducted.

Who appoints the Trustee Directors?

- 4.6 Under the terms of the Trust Deed, the Trustee Directors are appointed, and may be removed, by the Company. In effect, it is the Directors of the Company who have the power to remove and appoint any new or additional Trustee Director. However, the Directors of the Company may only appoint as Employee Trustee Directors employees who have been selected in accordance with a procedure determined by the Employees' Council.

What are the responsibilities of the Trustee and of the Trustee Directors?

- 4.7 Under the terms of the Trust, the Trustee Directors (acting on behalf of the Trustee) have an overriding duty to deal with the trust property – i.e. any shares in the Company (or other assets) held by the Trust - in the best interests of the beneficiaries of the Trust (see further below).

Who are the beneficiaries of the Trust?

- 4.8 Under the terms of the Trust, the beneficiaries are, at any given time, all those persons who are employees of members of the Group at that given time and those persons who were formerly employees at some time since the creation of the Trust, and within [3] years last preceding that given time, as well as their respective dependants (ie any existing or surviving spouse, civil partner, child or step-child under 18 of any such individual).
- 4.9 These persons are collectively referred to in this booklet as "the Beneficiaries".
- 4.10 It is important to appreciate that under the terms of the Trust, the Beneficiaries are a defined class of persons for whose benefit (in its widest sense) the Trustee holds the shares. The fact that an individual is a member of the class of beneficiaries does not give that individual any right or expectation that he or she will personally derive any benefit from the Trust.

What governs the Trust?

- 4.11 The Trust is governed by the terms of the Trust Deed as well as the rules of English trust law.

What role does the Trust play in managing the Company?

- 4.12 None. That is the responsibility of the Directors of the Company.

The Trustee Directors must only ever deal with the shares and other assets held in the Trust "in the best interests of the Beneficiaries". What does this mean?

4.13 It means that the Trustee Directors must consider what action is or will be in the best interests not just of those who are employed by the Group at any given time, but also in the best interests of the wider class of Beneficiaries, having regard to the original purpose of the Trust. This applies to any action taken in relation to the shares and other assets held in the Trust, including the exercise of any voting or other rights attaching to such shares. The issue is necessarily a difficult and sensitive one for the Trustee Directors, who may have regard to such medium and longer-term factors as:

- ensuring the maintenance of long-term employment prospects; and
- ensuring the long-term prosperity of the Company on which the value of the Trust's shareholding depends.

5. THE CONSTITUTION

5.1 The Constitution comprises both:-

- the principles governing the relationships and the conduct of dealings between Employees and other stakeholders in the Company; and
- the Rules governing the establishment and operation of the Employees' Council

and is set out in full in Parts 2 and 3 of this document.

5.2 All employees and officers of the Company are expected to accept and at all times conduct themselves in a manner consistent with the terms of the Constitution.

6. THE EMPLOYEES' COUNCIL

6.1 The Employees' Council has [both a formal legal role in the selection of [an] Employee Director[s] of the Company and of Employee Trustee Directors of the Trust, and] an important role in setting the standards by which the Company operates, and ensuring compliance by all Employees and other stakeholders in the Company with the Constitution.

6.2 The Employees' Council will comprise up to [X] employees of the Company. It is intended that employees who wish to do so will be invited to nominate themselves, or any of their colleagues, to stand for election as members of the Employees' Council.

6.3 The Chief Executive Officer and Finance Director of the Company (or such other director of the Company who shall from time to time be nominated by the Directors) will each be ex officio members of the Employees' Council and will have the right to attend meetings of the Employees' Council but will have no rights to cast votes on any resolution of the Employees' Council. The Employees' Council may from time to time co-opt other persons, whether from within or outside the Group, to sit as members of the Employees' Council.

6.4 The Constitution includes the rules governing the timing and conduct of meetings of the Employees' Council.

6.5 The members of the Employees' Council may elect one of their number to act as President of the Employees' Council and to chair meetings of the Employees' Council.

7. EMPLOYEES

An employee of any member of the Group is more than just a 'hired hand'. Every employee is recognised as having a real contribution to make to the business of the Group, and the value of every employee is recognised.

PART 2

THE PRINCIPLES

1. *[The Company aims to attract and retain as employees individuals of ability and integrity, each of whom is committed to working with his or her colleagues in a manner and with a purpose which is consistent with these Principles. Relationships between Employees and between Employees and other stakeholders are based on the Company's core values of **effective teamwork, commitment, trust and respect**]. The Company shall endeavour to provide worthwhile and satisfying employment in a successful business.*
2. *Employees shall share with all other members of the Company the responsibilities, as well as the rewards, of ownership.*
3. *To the extent permitted by law, and subject always to the duties and obligations of the Directors, power and influence over, and responsibility for, the conduct of the affairs of the Company and of Employees shall be shared between:-*
 - *the Employees' Council; and*
 - *the Directors of the Company.*
4. *The Company shall aim to make sufficient profit from its trading operations to sustain its commercial viability, to finance its continued development, [to apply a share of profits by way of a distribution to Employees,] and to enable the Company to undertake other activities consistent with the Principles.*
5. *Relationships between Employees and between Employees and other stakeholders in the business shall be conducted with mutual respect and courtesy and, except as necessary or appropriate to recognise the differences between levels of individual responsibility, knowledge, expertise and experience, with equality.*
6. *The Company shall aim to secure that the respective contributions of individual Employees are recognised and fairly rewarded.*
7. *Employees shall only ever deal with customers and suppliers of members of the Group with honesty, integrity and in a manner consistent with the Group's values.*
8. *Employees shall aim to ensure that the Company contributes to the wellbeing of the communities in which the business of each member of the Group operates.*
9. *The business of the Company and of every other member of the Group shall be conducted in a manner which is not inconsistent with these principles.*
10. *These Principles shall only be amended or added to in accordance with the Rules.]*

Note: Words and phrases used in this Part 2 shall have the meanings given in the Glossary below.

PART 3

[RULES GOVERNING THE ESTABLISHMENT AND OPERATION OF THE EMPLOYEES' COUNCIL]

DEFINITIONS

1. *[In these Rules, words and phrases not otherwise defined shall have the meanings given in the Glossary below. The Glossary shall be deemed to form part of these Rules.]*

FUNCTION AND PURPOSE OF THE EMPLOYEES' COUNCIL

2. *The Employees' Council is intended to represent the interests of Employees in:-*
 - (a) *securing the practical and effective application of the Principles to the day-to-day conduct of the business of the Group;*
 - (b) *holding to account the Directors in the fulfilment of their duty to promote the success of the Company, having regard to the interests of employees;*
 - (c) *acting as a channel of communication as between the Employees and the Directors; and*
 - (d) *procuring the selection for appointment of [] Employee Director[s] of the Company and of up to [two] Employee Trustee Directors.*

COMPOSITION OF THE EMPLOYEES' COUNCIL

3. *The Employees' Council shall, subject to Rule 6, comprise not more than [X] individual members of whom:-*
 - (a) *[one] shall be a director of the Company who shall from time to time be nominated by the Directors of the Company **SAVE THAT** a member of the Employees' Council who is a director of the Company [(other than an Employee Director)] shall not be entitled to vote, and his or her vote shall not be counted in the quorum, on any resolution of the members of the Employees' Council;]*
 - (b) *up to [X] shall each be an Employee of a member of the Group (not being a Director) who has a minimum period of continuous employment within the Group of at least [X] months (or such longer period as the Employees' Council may from time to time resolve and notify to Employees) and who has been proposed by at least [3] other such Qualifying Employees (in such form as the Employees' Council may from time to time determine and notify to Employees) and who has been selected in preference to any other such Qualifying Employees who have been so proposed, by a ballot conducted [in accordance with the rules set out in the Appendix to these Rules].*
4. *The Employees' Council may determine that, for the purpose of securing a fair balance of representation of the interests of Employees from all sections of the workforce of the Group, one or more of the [X] members of the Employees' Council selected as mentioned in Rule 3, shall be selected to represent a defined section of the workforce and, in this event:-*
 - (a) *any Qualifying Employee proposing to stand for selection as the representative of that section of the workforce must be an individual who is engaged in that section and is*

proposed by at least [3] other Qualifying Employees, all of whom are likewise engaged in that section of the workforce; and

- (b) *not more than one individual shall be appointed to represent any one such section of the workforce.*

PRESIDENT OF THE EMPLOYEES' COUNCIL

- 5. *The members of the Employees' Council may, by simple majority, elect one of their number (not being a director of the Company) to hold office as President of the Employees' Council. A resolution for the selection and appointment of a President of the Employees' Council shall be held not more than [3] years after the last appointment of a member of the Employees' Council as President. The President shall cease to hold office as President of the Employees' Council if at any time he or she ceases to be a member of the Employees' Council. A member of the Employees' Council may hold office as President for more than one term. Any member of the Employees' Council may nominate themselves or any other member of the Employees' Council for election as President. Meetings of the Employees' Council shall be chaired by the President of the Employees' Council. In the absence of the President, the members of the Employees' Council shall decide by simple majority on the basis of one vote for each member present who is to act as chairman of the meeting and, in the event of a tie, the meeting shall be chaired by the longest serving Employee of the Company from among those present.*

CESSATION OF MEMBERSHIP OF THE EMPLOYEES' COUNCIL

- 6. *An individual shall stand down as a member of the Employees' Council if:-*
 - (a) *being a member nominated by the Directors pursuant to Rule 3(a):*
 - (i) *he or she ceases to hold office as a Director; or*
 - (ii) *he or she (and the President) is served notice in writing by the Directors calling upon him or her to step down as a member of the Employees' Council, and in this event the member concerned shall cease to be a member of the Employees' Council with effect from such date as shall be stated in the notice (being a date which is not earlier than that on which the notice is received by the member concerned);*
 - (b) *being a member selected by ballot of Qualifying Employees:-*
 - (i) *the member has served a term of [X] years on the Employees' Council; or*
 - (ii) *the Employees' Council has resolved (in a resolution on which the member has abstained from voting or on which his or her vote has not been counted) to call upon the member to stand down as a member of the Employees' Council for any reason whatsoever and in this event the member shall cease to be a member of the Employees' Council with effect from the passing of such resolution;*
 - (c) *being an Employee of a member of the Group, he or she ceases for whatever reason to be an Employee of any member of the Group (and does not immediately thereafter hold continuing employment with another member of the Group) and in this event the member concerned shall cease to be a member of the Employees' Council with effect from the date of cessation of employment within the Group or, if earlier, the date on which he or she gives or receives notice of termination of his or her employment with any member of the Group for any reason whatsoever.*

PROCEEDINGS OF THE EMPLOYEES' COUNCIL

7. *The Employees' Council shall meet together at least [twice] in every calendar year and may, if the President believes it is necessary or appropriate to do so, meet more frequently. If, at any time, more than one-half of the members of the Employees' Council so request the President in writing or by email, the President shall convene a meeting of the Employees' Council. All members of the Employees' Council shall be given reasonable notice in writing of a meeting of the Employees' Council. Meetings of the Employees' Council shall be held at a location chosen by the President which shall be at, or within reasonable distance of, the operational headquarters of the Company.*
8. *Subject to Rule 5, resolutions of the Employees' Council shall be determined on the basis of a simple majority of the number of votes cast and, for these purposes, each member of the Employees' Council shall have one vote save that in the event of an equal number of votes being cast for and against the resolution, the President shall (except on any resolution for the removal, or appointment, of any member of the Employees' Council as President of the Employees' Council) have a casting vote.*
9. *The Employees' Council may from time to time make and amend such other rules and regulations governing the procedures for the conduct of the business of the Employees' Council provided that no such rule or regulation shall, in the opinion of the President, be inconsistent with the other provisions of these Rules or with the Principles.*

RELATIONSHIP WITH THE DIRECTORS

10. *For the avoidance of doubt, any resolution of the Employees' Council calling upon the Directors to take any action or refrain from taking any action in relation to the management of the business of the Company, or in relation to the business of any other member of the Group shall be advisory only and the Directors shall not be bound to act in accordance with such resolution (or at all) if, in their opinion, to do so would not be in the best interests of the Company or of its shareholders or to do so would put the Directors (or any of them) in breach of their duties as directors of the Company.*
11. *The President shall act as the principal conduit for the passage of information and views as between the Employees' Council and the Directors and as between the Employees' Council and the Trustee Directors, and it shall be a duty of every member of the Employees' Council to ensure that the President is kept fully informed of any matter which is of relevance or of relevant interest to the Employees' Council and which relates to the business of any member of the Group.*

SELECTION OF EMPLOYEE DIRECTOR AND OF EMPLOYEE TRUSTEE DIRECTORS

12. *The Employees' Council shall, on any occasion on which it is invited to do so by the Directors, procure the selection, by whatever means (consistent with the Articles of Association of the Company) including, but not necessarily requiring, a ballot conducted in accordance with the rules set out in the Appendix to these Rules, the Employees' Council may determine, of:-*
 - (a) *[] duly qualified individual[s] for appointment as an Employee Director of the Company; and/or*
 - (b) *one or more duly qualified individuals for appointment as Employee Trustee Directors of the Trustee Company.*
13. *The procedure for the selection of an individual to be nominated for appointment as an Employee Trustee Director shall be implemented by the Employees' Council by a date*

sufficiently in advance of the date of retirement by rotation of an Employee Trustee Director so as to ensure that the identity of such individual is known and so that the appointment of such individual as an Employee Trustee Director can take effect at the conclusion of that date.

TRAINING OF EMPLOYEE DIRECTORS AND EMPLOYEE TRUSTEE DIRECTORS

14. *The Company shall procure that any individual appointed as an Employee Director or an Employee Trustee Director shall, at the expense of the Company, receive training which is necessary or appropriate to enable such individual to understand his or her duties and obligations, and to perform his or her role, as such a company director.*

REASONABLE COSTS OF THE EMPLOYEES' COUNCIL

15. *The reasonable costs and expenses of convening and holding a meeting of the Employees' Council (including any necessary and reasonable additional travelling costs of any members of the Employees' Council) shall be borne by the Company.*

TIME SPENT ON THE BUSINESS OF THE EMPLOYEES' COUNCIL

16. *Any time necessarily incurred by any Employee who is a member of the Employees' Council attending meetings of the Employees' Council, and any time necessarily incurred by the President in the business of, or relating to, the Employees' Council, shall, for the purposes of his or her contractual employment commitment, count as part of his or her time spent in fulfilment of that obligation.*

INTERPRETATION

17. *In the event of any disagreement or dispute as to the interpretation of these Rules or of any other rule or regulation made pursuant to Rule 9, the opinion of the President shall, in the first instance, be binding on all members of the Employees' Council, but if either the Directors or not fewer than 3 members of the Council shall give notice in writing to the President expressed to be given pursuant to this Rule 17, the matter shall be determined by a resolution of the Employees' Council.*

AMENDMENT OF THE PRINCIPLES

18. *The Employees' Council may from time to time and by resolution amend any of the Principles **SAVE THAT** no such resolution shall have effect unless the shareholders of the Company have passed an [ordinary/special] resolution approving such amendment. The Employees' Council shall procure that all Employees are given notice in writing of any proposed amendment to the Principles and that all Employees are given a reasonable opportunity to submit comments in writing on the proposed amendment to the Employees' Council. All such comments should be addressed to the President and sent to the registered office of the Company or to such other address as the Employees' Council may notify to shareholders. If any Shares held by the Trustee or by the trustee or trustees of a Share Incentive Plan are wholly beneficially owned by an Employee, the Company shall procure that for the purpose (only) of counting the votes cast on any such resolution to amend any of the Principles, the beneficial owner of a Share may direct how a vote attaching to such Share shall be cast, and every such vote shall be counted (to the exclusion of any vote purported to be cast otherwise by the registered holder of such Share).*

DUTY TO EXERCISE POWERS AS A MEMBER OF THE EMPLOYEES' COUNCIL IN THE INTERESTS OF THE COMPANY (ETC)

19. *Every member of the Employees' Council shall be bound to exercise his rights and powers as a member of the Employees' Council in a manner which is consistent with the Principles. A member of the Employees' Council must not use his or her position as such a member, or use any information received as such a member, to further their private interests or to frustrate or to influence policy, decisions or actions of the Company in a manner which is improper or inconsistent with the Principles.*

AMENDMENT OF THESE RULES

20. *The Employees' Council may from time to time, and by resolution in writing, alter or add to these Rules in any respect **SAVE THAT**, except in relation to minor amendments which, in the opinion of the President, are only to benefit the administration of the Employees' Council, no such resolution shall have effect unless the Directors (acting fairly and necessarily) have certified in writing to the Employees' Council that such alteration or addition is not inconsistent with the Principles or with company law, and shall not take effect to the detriment of the interests of any of the Company, its shareholders and its Employees in any respect.]*

APPENDIX

RULES GOVERNING A BALLOT OF EMPLOYEES

1. [ELIGIBILITY

- 1.1 The only persons eligible to vote in a ballot are those persons who at such date as shall be determined by the Employees' Council (being no later than the anticipated date of despatch of ballot papers and no earlier than 30 days before the anticipated date of such despatch), are Qualifying Employees.
- 1.2 For these purposes, the Company shall, as soon as reasonably practicable after being requested by the President of the Employees' Council to do so, notify the Employees' Council of those individuals who are expected to be Qualifying Employees on the date determined by the Employees' Council.

2. PRINTING OF BALLOT PAPERS

The Employees' Council shall cause to be produced (at the expense of the Company) a number of ballot papers sufficient for the holding of the ballot.

3. CONTENTS OF BALLOT PAPERS

- 3.1 Every ballot paper shall include the following:-
- (a) a statement that the method of voting is by the marking of the ballot paper in the boxes provided and that the Qualifying Employee wishing to vote should not sign or make any other mark on the ballot paper because otherwise his or her vote will not be counted; and
 - (b) a direction to the Qualifying Employee as to where the envelope provided is to be sent and the date by which the envelope is to reach the destination in order that the vote will be counted.

4. MARKING OF BALLOT PAPERS

- 4.1 Nothing shall be written or printed and no mark shall be made on any part of any ballot paper or envelope or be inserted in any envelope save as provided in these rules and in particular nothing shall be marked or indicated on any ballot paper or envelope or inserted in any envelope by any person which can in any way identify the individual who has cast the vote.
- 4.2 Any contravention of this rule by a Qualifying Employee voting shall render the ballot paper invalid and the vote shall not be counted.

5. VOTING IN SECRET

The ballot shall be conducted so as to secure that (as far as is reasonably practicable) those voting do so in secret.

6. ONE VOTE

No Qualifying Employee shall be entitled to more than one vote.

7. VOTING WITHOUT INTERFERENCE AND AT NO COST

7.1 Every Qualifying Employee who is entitled to vote in the ballot on the questions to be determined shall:

- (a) be allowed to vote without interference from, or constraint imposed by the Employees' Council, the directors of the Company or any of its officers, members or employees;
- (b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.

8. BALLOT PAPERS

8.1 So far as is reasonably practicable every Qualifying Employee who is entitled to vote in the ballot shall be sent a ballot paper:-

- (a) by post to the last known address of the Qualifying Employee;
- (b) with the Qualifying Employee's pay notification; or
- (c) by email to the work-related email address of such Qualifying Employee.

8.2 In the case of service of ballot papers by post, ballot papers posted shall be deemed served 24 hours after posting.

9. DETERMINATION OF DATE OF COUNTING

The Employees' Council shall determine the date on which the counting of votes will commence.

10. NOTICE

10.1 Notice shall be published at the Registered Office of the Company that a ballot will take place.

10.2 The notice shall specify the subject matter or matters of the ballot and also as appropriate:-

- (a) the date by which the ballot papers will be sent to Qualifying Employees; and
- (b) the date before which the ballot papers must reach the Company's Registered Office which must be at least 48 hours and not more than 21 days after service of the ballot papers.

11. DATE OF SENDING OUT BALLOT PAPERS

The Employees' Council shall determine the day by which the ballot papers shall be sent to Qualifying Employees, which shall be not less than 7 days before the date on which the counting of votes will commence.

12. VOTING PAPER AND ENVELOPES

12.1 The Employees' Council shall secure that every Qualifying Employee shall have sent to him, by the date determined under Rule 9:

- (a) by any of the methods referred to in Rule 8, a ballot paper; and

- (b) by either of the methods (a) or (b) referred to in Rule 8, an envelope capable of being sealed on which is printed or written "ballot paper", and which is addressed to "The Counting Offices", followed by the address of the Company's Registered Office. The envelope shall bear a postage stamp or other stamp or mark showing that the envelope may be returned to the head office by post without direct cost to the voter.

The ballot shall not be invalidated by the accidental omission to issue a ballot paper to a Qualifying Employee.

13. LATE DELIVERY OF BALLOT PAPER

Where in any particular circumstances, it is not, or it is no longer, reasonably practicable for a Qualifying Employee to be sent a ballot paper and envelope by the date determined under Rule 10.2(a), a ballot paper and envelope shall be sent to him under Rule 12 as soon as is reasonably practicable after that date so as to give him a convenient opportunity to vote by post.

14. CHECKLIST

The name of each Qualifying Employee to whom a ballot paper is sent shall be checked off or recorded in a list or other record of Qualifying Employees.

15. RETURN OF BALLOT PAPERS

Every Qualifying Employee who desires to vote must return his ballot paper personally or by post (duly marked and in the envelope provided) to arrive at the Company's Registered Office before the date on which the counting of votes is to commence and the Employees' Council shall secure that such envelopes are placed unopened (as and when received) in a locked receptacle and are so retained until the time fixed for the counting of the votes.

16. FAIR AND ACCURATE COUNTING

The ballot shall be conducted so as to secure that the votes given in the ballot are fairly and accurately counted (any inaccuracy in counting being disregarded for the purposes of this rule if it is accidental and on a scale which could not affect the rules of the ballot).

17. REJECTION OF BALLOT PAPERS

The Employees' Council, or a majority of the members of the Employees' Council, shall decide whether any ballot paper shall be rejected as being invalid under Rule 4 and shall immediately separate any ballot paper so rejected and mark it "rejected".

18. COUNTING

Counting of the votes shall be undertaken by the Employees' Council at a duly convened meeting of the Employees' Council and the declaration of the President of the Employees' Council as to the results shall be conclusive.

19. INFORMING EMPLOYEES OF RESULTS

- 19.1 As soon as practicable after the ballot the Employees' Council shall take such steps as are reasonably necessary to ensure that all persons entitled to vote in the ballot are, in the case of a ballot for the selection of an Employee Director or an Employee Trustee Director, informed of the names of the candidate, or candidates who, having had the greatest number of votes cast in their favour, have been duly elected and, in any other case, are informed of:-

- (a) the number of votes cast;
- (b) the number of votes rejected; and
- (c) the number of votes cast respectively for and against each motion.

20. DEPOSIT OF BALLOT PAPERS IN A SECURE PLACE

The Employees' Council shall secure that the ballot papers which have been counted and those which have been rejected are respectively placed in sealed parcels which are then deposited in a secure place and kept so deposited for at least 12 months and that the lists or other records of Qualifying Employees used for the ballot are also kept available for at least 12 months.]

GLOSSARY

In this document:

"Beneficiaries"	means those employees of members of the Group, past, present and future (and their dependants), who together form the class of potential beneficiaries of the Trust as specified in the trust deed governing the Trust
"the Company"	means [INSERT NAME] Limited
["the Constitution"	means the Principles and the Rules (as set out in this document and amended from time to time)]
"the Directors"	means the directors of the Company
["Employee Director"	means a director of the Company who has been selected for appointment by employees of members of the Group in accordance with such procedure as is determined from time to time by the Employees' Council]
"Employee Trustee Director"	means a director of the Trustee Company who has been selected for appointment by employees of members of the Group in accordance with such procedure as is determined from time to time by the Employees' Council
"Employee"	means an individual who is for the time being an employee of any member of the Group
"the Employees' Council"	means the council of the representatives of employees of members of the Group as constituted and governed by the Rules
"the Group"	means the Company and every other company which is for the time being a subsidiary (as defined in s1059 of the Companies Act 2006) and under the control (as defined in s995 of the Income Taxes Act 2007) of the Company
"the President"	means the President of the Employees' Council (see Rule 5 in Part 3 of this document)
["the Principles"	means the principles set out in Part 2 of this document in accordance with which Employees and, if different, members of the Company, are expected to ensure that the business of the Company and the conduct of all shareholders in the Company, is conducted]
"Qualifying Employee"	means an employee of a member of the Group who, at the relevant date, has a minimum period of continuous employment within the Group of at least [] months (or such longer period as the Employees' Council may from time to time resolve and notify to Employees) ending on that relevant date
"the Rules"	means the Rules set out in Part 3 of this document (and amended from time to time) governing the establishment and operation of

the Employees' Council

"Shares" means shares in the Company

"the Trust" means The [INSERT NAME] Employees' Share Trust

"the Trustee" or "the Trustee Company" means [INSERT NAME] Employees' Trustees Limited, a company limited by guarantee which is a wholly-owned subsidiary of the Company

"the Trustee Directors" means the directors of the Trustee Company (including any Employee Trustee Director)

PART B

MODEL ARTICLES OF ASSOCIATION OF A COMPANY WITH EMPLOYEE OWNERSHIP

Company Number: []

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

of

[INSERT NAME] LIMITED

("the Company")

(Adopted by written special resolution on [date])

1. DEFINED TERMS

1.1 In these Articles, unless the context requires otherwise:

"the Act"	means the Companies Act 2006 (as amended)
"the Companies Acts"	has the meaning given by section 2 of the Companies Act 2006 which may, by virtue of that or any other such enactment, be cited together with the Act as the "Companies Acts" (with or without the addition of an indication of the date of any such enactment)
"Compulsory Transfer Notice"	means a transfer notice deemed to be given pursuant to Articles 7.14, 7.15 or 7.22(b)
"Control"	has the meaning given in section 995 of the Income Tax Act 2007
"Director"	means a director of the Company
"the Directors"	means the board of directors of the Company
"Employee"	means a bona fide employee of a member of the Group
"Employees' Council"	means the body mentioned in Article 9

“Employee Director”	means a Director whose appointment and removal as a Director is as mentioned in Article 11
“Employees’ Share Scheme”	has the meaning given in section 1166 of the Act
“the Group”	means the Company and any other company which is for the time being both a subsidiary of the Company and under the Control of the Company
“HMRC”	means Her Majesty’s Revenue and Customs
“ITEPA”	means the Income Tax (Earnings and Pensions) Act 2003
“Leaves”	means ceases to hold employment within the Group
“Leaving Date”	means, in relation to an Employee or former Employee, the date on which he or she Leaves
“the Model Articles”	means, the model articles for private companies limited by shares contained in Schedule 1 of the Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended prior to the date of adoption of these Articles
“the Principles”	means the principles set out in Part 2 of the document entitled ‘Guide to the Constitution of [name of the Company]’ as that document is amended from time to time
“securities”	has the meaning given in section 420 of ITEPA
“Share Incentive Plan”	means a share incentive plan approved by HMRC pursuant to section 488 and Schedule 2 of ITEPA
“Shares”	means shares in the capital of the Company
“Statutory Market Value”	means, in relation to any Shares, the market value of such Shares determined in accordance with Part 8 of the Taxation of Chargeable Gains Act 1992 (as amended or re-enacted)
“Transferee”	means a person who agrees to acquire Shares in accordance with these Articles
“Transfer Notice”	means, in respect of any Shares, a notice given or deemed to be given to the Company that the holder of such Shares wishes, or is obliged, to offer such Shares for sale and transfer in accordance with the provisions of these Articles
“Transfer Price”	means the price per Share at which Transfer Shares may be sold and transferred as determined in accordance with these Articles
“Transfer Shares”	means Shares which are the subject of a Transfer Notice
“Transferor”	means a person wishing, or obliged, to offer Shares for sale

and transfer pursuant to these Articles

- “the Trust” means The [INSERT NAME] Employees’ Share Trust established by the Trust Deed
- “the Trust Deed” means the trust deed dated [.....] between the Company and [INSERT NAME] Employees’ Trustees Limited, a company limited by guarantee registered in England & Wales with registered no. [.....] (being the original trustee of that trust), which established the Trust (as amended from time to time)
- “the Trustee” means the trustee or trustees for the time being of the Trust (and references to the Trustee shall be construed as referring only to such person or persons acting in their capacity as trustee of that trust)
- “Voluntary Transfer Notice” means a Transfer Notice voluntarily given pursuant to Article 7.5

For the purposes of these Articles:

- (a) a person shall not be treated as ceasing to hold office or employment within the Group unless and until he or she is no longer an employee or director of any member of the Group;
- (b) references to any statute order or regulation includes a reference to such statute as amended, modified, re-enacted or replaced from time to time;
- (c) words and phrases which are defined or referred to in or for the purposes of the Companies Acts have the same meanings in these Articles unless they are already defined within the Articles or the context otherwise requires;
- (d) headings are for ease of reference and shall not affect the interpretation of these Articles.

2. APPLICATION OF THE MODEL ARTICLES

2.1 The Model Articles shall apply to the Company save as expressly excluded or modified by these Articles or as are inconsistent with the provisions of these Articles.

2.2 Model Articles 14(1) – 14(4), 26, 27(2) shall not apply.

3. PRIVATE LIMITED COMPANY

3.1 The Company is a private company and no shares or debentures of the Company may be offered for sale to the public.

4. SHARE CAPITAL

4.1 The share capital of the Company at the date of the adoption of these Articles is £[.....] divided into [.....] Shares.

5. MATTERS REQUIRING SPECIAL CONSENT

5.1 The following matters shall each require either the prior consent in writing of members together holding Shares representing at least 75 per cent of the issued equity share capital of the Company or the passing of a special resolution of the members of the Company at a general meeting of the company:

- (a) [the grant of any right to subscribe for shares in the capital of the Company or any other member of the Group otherwise than pursuant to an Employees' Share Scheme;
- (b) an issue of any shares in the capital of the Company otherwise than pursuant to the exercise of a right granted as mentioned in sub-clause (a) above and authorised pursuant to this Article 5.1 or a right granted as mentioned in sub-clause 5.2(a) below and authorised pursuant to Article 5.2;
- (c) the transfer of any shares in the capital of the Company (not being a transfer permitted by Article 7.4) to any person other than an existing member of the Company;
- (d) a winding-up of the Company or of any other member of the Group (other than a company which is dormant);
- (e) the disposal of the whole or a substantial part of the undertaking or assets of the Company;
- (f) any change of status of the Company to a public limited company or application for any shares in the Company or in any parent undertaking of the Company to be dealt in on a public market;
- (g) the removal of [INSERT NAME] Employees' Trustees Limited as trustee of the Trust;
- (h) the appointment of any person, other than [INSERT NAME] Employees' Trustees Limited, as trustee of the Trust.]

5.2 The following matters shall each require either the prior consent in writing of members together holding Shares representing at least 50 per cent of the issued equity share capital of the Company or the passing of an ordinary resolution of the members of the Company at a general meeting of the company:

- (a) [the grant of any right to subscribe for shares in the capital of the Company pursuant to an Employees' Share Scheme;
- (b) the acquisition by the Company or by any other member of the Group (other than by the Trustee) of an interest in the equity share capital of the Company;
- (c) the payment of dividends;
- (d) the payment to an Employee or Employees of a bonus out of the profits of the Company which would otherwise be available for distribution (as mentioned in section 830 of the Act);
- (e) the payment or award to any Employee of a bonus (in cash or kind) of an amount which represents more than [25] per cent of the annual rate of basic salary payable to such Employee, being a bonus paid otherwise than in accordance with a binding obligation to make such payment or award under the terms of such Employee's contract of employment;

- (f) the disposal or the entering into of a binding agreement to dispose, to a person who is not a member of the Group, of:
 - (i) shares or securities in any member of the Group;
 - (ii) any business or assets with a value in excess of £[] or, if less, 10 per cent of the net asset value of the Group;
- (g) the making of a loan to any person in excess of £[] or, if less, 10 per cent of the net asset value of the Group;
- (h) any alteration of or addition to the Trust Deed.]

6. LIEN ON SHARES

- 6.1 The Company shall have a first and paramount lien on all Shares (whether or not such shares are fully-paid) registered in the name of a person indebted or under liability to the Company (whether such person is the sole holder of the shares or one of two or more joint holders) for all moneys (whether presently payable or not) payable at a fixed time or called, and to all distributions and other moneys and property attributable to such shares.
- 6.2 The Directors may at any time declare any Share to be wholly or in part exempt from the provisions of this Article 6.
- 6.3 The Company's lien on a Share shall extend to any amounts presently payable to the Company by the registered holder of such share or if such registered holder has died, his or her estate.

7. TRANSFERS OF SHARES

- 7.1 No Share or any interest in a Share may be transferred otherwise than in accordance with the provisions of this Article and Model Article 26 shall have effect subject to the following provisions of these Articles.
- 7.2 For the purpose of ensuring that a transfer of Shares is duly authorised or required under these Articles, the Directors may require any member or legal representatives of any deceased member or any person named as transferee in any transfer lodged for registration or such other person as the Directors may reasonably believe to have information relevant to such purpose, to furnish to the Company such information and evidence as the Directors 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 that member's name. Failing such information and evidence being furnished to the satisfaction of the Directors within a period of 28 days after such request, the Directors may refuse to register the transfer in question.
- 7.3 Subject to Article 7.2, the Directors shall be bound to register a transfer of any Share made in accordance with the following provisions of this Article 7 but may otherwise 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 unless they suspect that the proposed transfer may be fraudulent.

Permitted transfers

- 7.4 Any Share may at any time be transferred without restriction as to price or otherwise:
 - (a) to the Trustee;

- (b) by the Trustee to any individual who is within the class of beneficiaries of the Trust;
- (c) by the Trustee to the trustee or trustee of any other trust for the benefit of persons who are employees of members of the Group and which is an Employees' Share Scheme;
- (d) to the trustee or trustees of a Share Incentive Plan;
- (e) by the trustee or trustees of a Share Incentive Plan to any individual pursuant to and in accordance with the rules of such Share Incentive Plan;
- (f) to any person appointed as the Trustee upon a change of trustee, or upon the appointment of a new trustee, of the Trust;
- (g) to any person appointed as trustee upon a change of trustee, or the appointment of a new trustee, of a Share Incentive Plan;
- (h) to any person appointed as trustee of any such other trust as mentioned in subparagraph (c) above upon a change of trustee, or the appointment of a new trustee, of such trust; or
- (i) subject to the Companies Act, to the Company for cancellation or to be held in treasury.

Voluntary transfers

7.5 Subject to Article 7.18, any person wishing to transfer a Share or any interest in a Share otherwise than as mentioned in Article 7.4 must give to the Company a Transfer Notice in writing in respect of such Share. A Voluntary Transfer Notice, once given, may not be withdrawn without the agreement of the Directors. A Voluntary Transfer Notice may be given subject to a condition that it shall be revoked if either:

- (a) the Transferor and the Directors cannot reach agreement as to the Transfer Price (as mentioned in Article 7.19(a)); or
- (b) offers are not received by the Directors for all of the Transfer Shares.

Effect of a Transfer Notice

7.6 A Transfer Notice shall constitute the Company as agent of the Transferor for the sale and transfer of the Shares in respect of which such Transfer Notice is given or is deemed to be given at a price per Share determined in accordance with the following provisions of these Articles.

7.7 The Directors shall, within 14 days beginning with the date on which the Transfer Notice is given or is deemed to be given, first offer the Transfer Shares to the Trustee, and if and insofar as the Trustee does not, within the period of [21] days following receipt of such offer, accept such offer in respect of any of the Transfer Shares:

- (a) offer the Transfer Shares for sale at the Transfer Price to any one or more of the following persons (and, if more than one, in such proportions as the Directors may determine):
 - (i) the trustee or trustees of any Share Incentive Plan established by the Company;
 - (ii) any one or more Employees;

- (iii) the trustee or trustees of any such other trust as is mentioned in sub-paragraph (c) of Article 7.4;
 - (iv) the Company; or
 - (b) offer the Transfer Shares, or the balance remaining of the Transfer Shares, to all of the holders of Shares (other than the Transferor) by making an offer of such Shares to each of such holders in proportion to or as nearly as may be in proportion to their respective holdings of Shares (“**a General Offer**”); or
 - (c) offer a proportion of the Transfer Shares as mentioned in (a) above and make a General Offer in respect of the balance of the Transfer Shares.
- 7.8 If a General Offer is made, the Directors shall also invite each holder of Shares to state in his reply to the General Offer the number of additional Shares (if any) in excess of his proportion which such holder desires to purchase. If any holder of Shares does not accept the General Offer in respect of his respective proportion in full, the Shares not so accepted shall be used to satisfy requests for additional Shares as nearly as may be in proportion to the number of Shares already held by those holders who have made such requests respectively, provided that no holder shall be obliged to purchase more Shares than he shall have applied for. If any Shares shall not be capable of being so offered without fractions of those Shares being offered to the holders of Shares in proportion to their existing holdings, such Shares shall be offered to the holders of Shares, or some of them, in such proportions or in such manner as the Directors shall determine.
- 7.9 If or to the extent that any offer or offers made as mentioned in Article 7.7(a) is or are not accepted in respect of all of the Transfer Shares within 28 days of such offer or offers having been made, the Directors shall make a General Offer in respect of the balance of such Shares.
- 7.10 A General Offer shall be open for acceptance for 60 days or such shorter period as the Directors may determine from the date on which it is made and insofar as it is not then accepted, it shall lapse.
- 7.11 If after the expiry of any such General Offer any Shares remain unsold or if any Transferee fails to complete his purchase of Shares within 28 days of the time from his date of acceptance of any such offer, the Directors may offer such Shares for sale at the Transfer Price to any such other person or persons as the Directors may determine **PROVIDED ALWAYS** that, if any such person is not already a member of the Company, the admission of such person or persons as a member of the Company is, in the opinion of the Directors, in the best interests of the Company.
- 7.12 If any such offer to purchase Transfer Shares is accepted in respect of any number of Transfer Shares, the Transferor shall (save, in the case of a Voluntary Transfer Notice, if a condition imposed as mentioned in Article 7.5 is not satisfied) be bound to accept such offer and to transfer such Shares in accordance with, and subject to, the provisions of this Article 7.
- 7.13 If in any case the Transferor, after having become bound to sell any Transfer Shares, defaults in transferring them, the Directors may receive the purchase money on his behalf, and the Transferor shall be deemed to have appointed as his attorney any Director for the purpose of authorising such Director to execute a transfer of such Shares on behalf of the Transferor in favour of the Transferee. The receipt of the Company for the purchase money shall be a good discharge to the Transferee and such purchase monies shall be paid by the Company into a separate bank account in the name of the Transferor.

Compulsory Transfer Notice

- 7.14 If any holder of Shares, being an Employee, Leaves, he or she (“**the Relevant Person**”) shall thereupon be deemed to have given a Transfer Notice (as mentioned in Article 7.5) in respect of all of the Shares which he then holds on [the first anniversary of] the Leaving Date of the Relevant Person.
- 7.15 If any person not being an Employee (“**the Newly-Acquiring Shareholder**”) acquires Shares in pursuance of rights or interests obtained by that, or any other, person at a time when that, or such other, person (“**the Relevant Person**”) was an Employee, the Newly-Acquiring Shareholder shall, upon acquiring such Shares, be deemed to have given a Transfer Notice in respect of all such Shares [on the first anniversary of the Leaving Date of the Relevant Person].
- 7.16 The provisions of Articles 7.5 to 7.13 (inclusive) shall apply in relation to any transfer of Shares made pursuant to the application of Articles 7.14, 7.15 and 7.22(b).
- 7.17 If no willing purchaser can be found from amongst the persons to whom the Transfer Shares have been offered by the Directors for any of the Transfer Shares in respect of which a Compulsory Transfer Notice is given or deemed to be given, the balance remaining of the Transfer Shares shall, subject to Article 9, remain registered in the name of the Transferor but the Company shall have the right, exercisable at any time, to require the Transferor to sell and transfer such Shares to a willing purchaser at the Transfer Price.
- 7.18 If on any occasion a Compulsory Transfer Notice is deemed to be given in respect of any Shares, any Voluntary Transfer Notice previously given or deemed to be given in respect of such Shares shall cease to be of any effect so that the provisions of this Article 7 shall apply in relation to such Compulsory Transfer Notice and shall cease to apply in relation to such Voluntary Transfer Notice.

Transfer Price

- 7.19 The Transfer Price shall:
- (a) if the Transfer Notice is a Voluntary Transfer Notice, be such price as the Transferor and Transferee and the Directors may agree or, in the absence of such agreement, the market value of the Transfer Shares at the time of transfer of the Transfer Shares, determined as mentioned in Articles 7.20 or 7.21; or
 - (b) if the Transfer Notice is a Compulsory Transfer Notice, be (subject to Article 7.21), the market value of the Transfer Shares at the Leaving Date or, if the Shares are transferred pursuant to the Company exercising its right under Article 7.17, at the time of transfer of the Transfer Shares, determined (in either case) as mentioned in Article 7.20.

Valuation of a Share

- 7.20 Subject to Article 7.21, the market value of any Shares at a given time shall be the amount which is certified in writing to the Directors to be, in the expert opinion of an independent adviser (not being the auditors of any member of the Group) nominated by the Directors and who, in their opinion, is appropriately qualified to value shares in unquoted companies, the Statutory Market Value of the Shares at that time. Upon receipt of such certificate, the Directors shall as soon as practicable inform all members of the market value so determined. It shall be the responsibility of the Directors to obtain such an opinion as soon as reasonably practicable after

a Transfer Notice has been given or has been deemed to be given. The costs of obtaining any such certificate shall be borne by the company [unless the Transfer Notice is a Voluntary Transfer Notice, in which case the Transferor shall bear such costs].

- 7.21 If for any purpose the company has reached agreement with HMRC as to what is the Statutory Market Value of a Share as at the relevant time, the Directors may determine that such Statutory Market Value shall be taken to be the market value of Shares for the purposes of Article 7.19 and, in this event, the provisions of Article 7.20 shall not apply in relation to the relevant transfer of such Shares.

Transmission of Shares

- 7.22 In the application of Regulations 27 to 29 of the Model Articles to the Company:
- (a) any person becoming entitled to a Share in consequence of the death or bankruptcy of a holder of a Share shall give a Transfer Notice in respect of such Share before he elects in respect of that Share to be registered himself or to execute a transfer;
 - (b) if a person so becoming entitled shall not have given a Transfer Notice in respect of any Share within three months of the death or bankruptcy, the Directors may at any time thereafter give notice requiring such a person within 14 working days to give a Transfer Notice in respect of all of the Shares to which he has so become entitled and for which he has not previously given a Transfer Notice and if it does not do so he shall at the end of such 14 day period be deemed to have given a Transfer Notice in respect of those Shares in relation to which he has still not given a Transfer Notice.

8. [SUSPENSION OF VOTING RIGHTS AFTER MEMBER LEAVES

- 8.1 *Shares held by an Employee who acquired such Shares pursuant to a right or opportunity made available by reason of the [office or] employment of such person with any member of the Group shall, if such person Leaves, immediately cease to carry any right to vote on a resolution of members or to attend or be counted in the quorum at a general meeting of members of the Company.*
- 8.2 *The suspension of voting rights, and of the right to attend and be counted in the quorum at a general meeting of members of the Company, attaching to Shares held by a former Employee shall cease to have effect when such Shares are transferred to any other person or persons pursuant to the provisions of Article 7.]*

9. EMPLOYEES' COUNCIL

- 9.1 The Directors shall procure the establishment of a body of Employees and [at least one] Director to be known as the Employees' Council of which:
- (a) the selection and appointment and removal of its members; and
 - (b) the governance and regulation of its affairs

are conducted in accordance with a written set of rules initially approved by [ordinary resolution of the members of the Company]¹ and which may from time to time be amended or added to by resolution in writing of the Employees' Council in accordance with those rules.

¹ Note: See paragraph 1.6 of Part 1 of the Guide to the Constitution

10. DIRECTORS

- 10.1 The minimum number of Directors shall be [3].
- 10.2 The maximum number of Directors shall be [5].
- 10.3 The Directors from time to time may choose any one of their number to act as Chairman of the Company.

11. [EMPLOYEE DIRECTOR(S)]

- 11.1 *At least [] of the Directors shall be an Employee who has, or Employees each of whom have, been selected and nominated for appointment, and who shall resign, or be removed, from office as a Director in accordance with such procedure as may from time to time be determined by the Employees' Council.*
- 11.2 *An Employee Director shall be appointed for an initial fixed term of [3] years beginning with the date of his or her appointment as a Director and shall automatically cease to hold office as a Director at the end of that period and if there will then be no Employee Director, the remaining Directors shall, as soon as practicable, call upon the Employees' Council to select and nominate an eligible Employee to hold office as a Director.*
- 11.3 *As soon as practicable after the Company receives notice in writing of the name and address of an Employee who has been selected and nominated for appointment as an Employee Director, the remaining Directors or the members shall procure that such individual is appointed to hold office as an Employee Director [SAVE THAT neither the remaining Directors nor the members shall be obliged to appoint such individual as a Director if, in their unanimous opinion, such appointment would not be in the best interests of the Company and in this event the Secretary of the Company shall invite the Employees' Council to select and nominate another eligible Employee for appointment as an Employee Director].*
- 11.4 *The Employees' Council may at any time, by giving notice in writing to the Company, request that an Employee Director be removed from office as a Director and, if such Employee Director does not resign as a Director, the Directors shall requisition a written resolution of members of the Company pursuant to section 168 of the Act.]*

12. [DECISION-MAKING BY DIRECTORS]

In making any decision, the Directors shall have regard to the Principles and to the views of the Employees' Council and Model Article 7 shall be construed accordingly.]

13. CONFLICTS OF INTEREST

- 13.1 The Directors may authorise, to the fullest extent permitted by law, any matter proposed to them which would otherwise result in a Director infringing his duty under section 175 of the Act to avoid a situation in which such Director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company and which may reasonably be regarded as likely to give rise to a conflict of interest.
- 13.2 Authorisation of a matter under Article 13.1 is effective only if:
- (a) the matter has been proposed to the Directors by its being submitted in writing for consideration at a meeting of the Directors or for the authorisation of the Directors by resolution in writing and in accordance with the Directors' normal procedures or in such other manner as the Directors may approve;

- (b) any requirement as to quorum at the meeting of the Directors at which the matter is considered is met without counting the Director in question and any other interested Director; and
 - (c) the matter has been agreed to without the Director in question and any other interested Director voting or would have been agreed to if their votes had not been counted.
- 13.3 Any authorisation of a matter under Article 13.1 shall extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised.
- 13.4 The Directors may authorise a matter on such terms and for such duration, or impose such limits or conditions on it, as the Directors may decide and may vary the terms of duration of such an authorisation (including any limits or conditions imposed on such authorisation) or revoke such authorisation. A Director shall comply with any obligations imposed on him by the Directors pursuant to any such authorisation.
- 13.5 Any terms imposed by the Directors under Article 13.4 may include (without limitation):
 - (a) whether the Director may vote (or be counted in the quorum) at a meeting of the Directors or any committee or sub-committee of the Directors in relation to any resolution relating to the relevant matter;
 - (b) whether the Director is to be given any documents or other information in relation to the relevant matter; and
 - (c) whether the Director is to be excluded from discussions in relation to the relevant matter at a meeting of the Directors or any committee or sub-committee of the Directors or otherwise.
- 13.6 The Director shall not be required to disclose any confidential information obtained in relation to the relevant matter (other than through his position as a Director of the Company) to the Company or to use to apply it in performing his duties as a Director if to do so would result in a breach of a duty or obligation of confidence owed to him in relation to or in connection with that matter.
- 13.7 A Director does not infringe any duty he owes to the Company by virtue of sections 171 to 177 of the Act if he acts in accordance with such terms, limits and conditions (if any) as the Directors may impose in respect of its authorisation of the Director's conflict of interest or possible conflict of interest under Article 13.1.
- 13.8 A Director shall not, save as otherwise agreed by him, be accountable to the Company for any benefit which he (or a person connected with him) derives from any matter authorised by the Directors under Article 13.1 and any contract, transaction or arrangement relating thereto shall not be liable to be avoided on the grounds of any such benefit.
- 13.9 A reference in these Articles to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

14. ANNUAL GENERAL MEETING

- 14.1 The Company must hold a general meeting as its annual general meeting not less than once in each calendar year beginning 1 January and not more than [fifteen] months after the last preceding annual general meeting.

- 14.2 A notice calling an annual general meeting of the Company must state that the meeting is an annual general meeting.
- 14.3 The members of the Company may require the Company to give, to members of the Company entitled to receive notice of the next annual general meeting, notice of a resolution which may properly be moved and is intended to be moved at that meeting.
- 14.4 A resolution may properly be moved at an annual general meeting unless:
- (a) it would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the constitution of the Company or otherwise);
 - (b) it is defamatory of any person; or
 - (c) it is frivolous or vexatious.
- 14.5 The Company shall give notice of a resolution once it has received requests that it do so from [the Employees' Council or] members representing at least [5] per cent of the total voting rights of all the members who have a right to vote on the resolution at the annual general meeting to which the requests relate (excluding any voting rights attached to any shares in the Company held as treasury shares).
- 14.6 A request mentioned in Article 14.5:
- (a) may be in hard copy form or in electronic form;
 - (b) must identify the resolution of which notice is to be given;
 - (c) must be authenticated by the person or persons making it; and
 - (d) must be received by the secretary of the Company not later than:
 - (i) 6 weeks before the annual general meeting to which the requests relate; or
 - (ii) if later, the time at which notice is given of that meeting.
- 14.7 If the Company is required to give notice of a resolution, it must send a copy of such resolution to each member of the Company entitled to receive notice of the annual general meeting in the same manner as notice of the meeting and at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting.
- 14.8 The expenses of the Company in complying with the requirements of this Article 14 shall be borne by the Company and not by the members who requested the circulation of the resolution.

PART C

MODEL TRUST DEED OF AN EMPLOYEES' SHARE TRUST

[INSERT NAME] Limited

and

[INSERT NAME] Employees' Trustees Limited

THE [INSERT NAME] EMPLOYEES' SHARE TRUST

Model Trust Deed

**establishing a discretionary trust
to acquire and hold shares in a private company with employee ownership**

“Director”	a director of the Company
“Employee”	an individual who is a bona fide employee of a member of the Group
“Employee Trustee Director”	a director of the Trustee who is appointed and holds office as such in accordance with the rules set out in SCHEDULE 2
“Employees’ Share Scheme”	has the meaning given in section 1166 of the Companies Act 2006
“Financial Institution”	a bank, as that term is defined in section 991 of the Income Tax Act 2007, or a building society
“the Group”	the Company and any other company which for the time being is: <ul style="list-style-type: none"> (a) under the Control of the Company; and (b) a subsidiary of the Company
“HMRC”	Her Majesty’s Revenue & Customs
“Holding Company”	a parent undertaking (as defined in section 1162 of the Companies Act 2006) which is a body corporate
“the Initial Trustee Directors”	those persons named as such in Rule 13 of SCHEDULE 2
“Independent Trustee Director”	a Trustee Director who is not [and has never been] an employee or director of any member of the Group
“ITEPA”	the Income Tax (Earnings and Pensions) Act 2003 (as amended)
“Market Value”	has the meaning given in Part 8 of the Taxation of Chargeable Gains Act 1992
“NICs”	National Insurance contributions
“the Original Trustee”	[INSERT NAME] Employees’ Trustees Limited
“PAYE”	Part II of ITEPA and the regulations made under section 684 of ITEPA
“Principal Beneficiary”	has the meaning given in Clause 2
“Residual Beneficiary”	such Charity as is mentioned in sub-clause 4.4(a) [or such other person as is mentioned in sub-clause 4.4(b)]
“a Section 86 Trust”	a trust for the benefit of employees as mentioned in section 86 of the Inheritance Tax Act 1984

“securities”	has the meaning given in section 420 of ITEPA
“Share Incentive Plan”	a share incentive plan approved by HMRC pursuant to section 488 and Schedule 2 of ITEPA
“Shares”	fully paid ordinary shares in the capital of the Company
“subsidiary”	has the meaning given in section 1159 of the Companies Act 2006
“this Trust”	the settlement constituted by this Trust Deed (which, unless and until the Trustee otherwise determines, shall be known as “The [INSERT NAME] Employees’ Share Trust”)
“this Trust Deed”	this deed (including the Schedules) as varied or added to from time to time pursuant to and in accordance with Clause 17
“the Trust Fund”	<p>means:</p> <ul style="list-style-type: none"> (a) the sum of £10 referred to in Recital (D) paid to the Original Trustee; and (b) all property at any time added thereto by way of further settlement, accumulation of income, capital accretion, payment transfer or loan or otherwise and whether contributed by the Company or any other person; and (c) all other property from time to time representing (a) and (b) respectively <p>but excluding any such sum as is mentioned in Clause 3.6</p>
“the Trust Period”	<p>the period beginning with the date of this Trust Deed and ending upon the first to happen of the following, namely:</p> <ul style="list-style-type: none"> (i) the expiry of 125 years; or (ii) the date when an order for the winding-up of the Company is made or a resolution is passed for the voluntary winding-up of the Company (otherwise than for the purposes of, and followed by, an amalgamation or reconstruction in circumstances in which substantially the whole or the undertaking assets and liabilities of the Company pass to a successor company); or (iii) such date as the Trustee shall by deed with the Company’s prior written consent declare

to be the end of the Trust Period (not being a date earlier than the date of such deed)

“the Trustee”	the Original Trustee or such other person or persons appointed as trustee or trustees of this Trust (and references to the Trustee shall be construed as referring only to such person or persons acting in their capacity as trustee of this Trust)
“Trustee Director”	a director of the Trustee who is appointed and holds office as such pursuant to the provisions of SCHEDULE 2 (as amended from time to time)
“UK”	the United Kingdom of Great Britain and Northern Ireland

1.2 For the purposes of the interpretation of this Trust Deed:

- (a) words denoting the singular shall include the plural and vice versa;
- (b) words denoting the masculine gender shall include the feminine;
- (c) no account shall be taken of the clause headings which have been inserted for ease of reference only;
- (d) references to any statutory provision shall be read and construed as references to such provision as amended or re-enacted from time to time;
- (e) references to clauses are to Clauses of this Trust Deed;
- (f) the provisions of section 993 of the Income Tax Act 2007 shall apply for the purpose of determining if persons are connected.

2. THE PRINCIPAL BENEFICIARIES OF THIS TRUST

2.1 Subject to Clause 2.2, an individual is a Principal Beneficiary on a given day if, on that day, such individual:

- (a) is an Employee; or
- (b) was (but is no longer) an Employee at some time during the Trust Period and within the period of [3] years ending on that day; or
- (c) is on that day a Dependant of any such individual as is mentioned in sub-clauses (a) or (b) above.

2.2 Subject to Clause 8 (s86 Inheritance Tax Act 1984), the Trustee may at any time and from time to time by deed exclude any person or every member of a defined class of persons from being such a Principal Beneficiary for such period or from such time (not being earlier than the date of such deed) as the Trustee may in its absolute discretion determine and specify in such deed.

3. PAYMENTS TO THE TRUSTEE

- 3.1 Any member of the Group may from time to time at its sole discretion transfer pay or credit sums of money to the Trustee to be held on the trusts of this Trust Deed.
- 3.2 Any member of the Company, the Company itself or any Holding Company of the Company may transfer Shares to the Trustee to be held on the Trusts of this Trust Deed.
- 3.3 All amounts contributed to this Trust shall be treated for all purposes as capital monies and shall be invested and applied by the Trustee in the manner provided for in Clauses 4 and 6.
- 3.4 Transfers, payments or credits made to the Trustee by any member of the Group shall be entirely at the discretion of that member of the Group and nothing in this Trust Deed shall confer on the Trustee any right to receive any such transfer, payment or credit or create any trust of the money intended to be transferred, paid or credited unless and until such sum has actually been transferred, paid or credited to the Trustee.
- 3.5 Any loan made by the Company or any other person to the Trustee shall be on such terms as the lender and the Trustee may agree **PROVIDED THAT** any loan to the Trustee made by any member of the Group shall not be on terms which are more favourable to the lender than if such loan had been made on terms negotiated at arm's length between persons not connected with each other.²

Funding of employer's NICs

- 3.6 The Company and the Trustee may agree that a proportion of any sum proposed to be paid by way of contribution to the Trust Fund by any member of the Group ("**the Contributing Company**"), being an amount representing the amount of employer's primary Class 1 NICs for which any member of the Group would be liable to account if the balance of such contribution were to be applied in the provision of benefits to Principal Beneficiaries ("**the NIC Proportion**"), shall not form part of the Trust Fund but shall instead be held by the Trustee as nominee of the Contributing Company and shall be invested by the Trustee as the Company directs and applied in funding the liability to employer's Class 1 secondary NICs of any member of the Group which arises in consequence of the payment or appointment of any benefit out of the Trust Fund to or for the benefit of a Principal Beneficiary who is an Employee of that member of the Group.

4. PRINCIPAL TRUSTS

- 4.1 Subject to the following provisions of this Clause 4, and of Clauses 6, 7, 8 and 9, the Trustee shall during the Trust Period hold the capital and income of the Trust Fund **UPON TRUST to pay or apply any amount of such capital and income** to or for the benefit of all, or any such one or more, of the Principal Beneficiaries in such amounts, and either absolutely or upon such trusts and with or subject to such powers or provisions (whether dispositive or administrative) and generally in such manner as the Trustee may, in its discretion, determine and appoint at any time, and from time to time, during the Trust Period **PROVIDED THAT** no exercise of this power shall invalidate any prior payment, application or appointment of either the capital or income of the Trust Fund or affect any part of the capital or income of the Trust Fund to which any person has already become indefeasibly entitled.

² Note: If the Company is a 'close company' (per Chapter 2, Part 10 CTA 2010), any loan by the Company or its holding company or a member of the Group may give rise to penal tax charges under s455 et seq CTA 2010.

4.2 In default of and subject to any appointment made pursuant to Clause 4.1, and subject to the provisions of Clauses 6, 7, 8 and 9, the following trusts shall apply to the capital and income of the Trust Fund:

- (a) (i) the Trustee may **accumulate the income** of the Trust Fund by investing such income, and the resulting income, from time to time in any manner authorised by this Trust Deed as an accretion to the capital of the Trust Fund and as one fund with such capital for all purposes, but the Trustee may at any time apply such accumulations or any part of such accumulations as if it were income arising in the current year;
- (ii) subject to sub-clause (i) above, the Trustee shall **pay or apply the income** of the Trust Fund to or for the benefit of all or any such one or more of the Principal Beneficiaries as the Trustee may in its discretion determine and, if more than one, in such proportions and in such manner in all respects as the Trustee shall from time to time in its discretion determine;
- (b) the Trustee may at any time and from time to time during the Trust Period realise the whole or any part or parts of the Trust Fund and may pay or apply the resulting proceeds to or for the benefit of all or any such one or more of the Principal Beneficiaries in such manner as the Trustee shall in its discretion think fit.

4.3 No part of the Trust Fund may at any time during the Trust Period be applied for the benefit of any person who is not a Principal Beneficiary.

Residual trusts

4.4 Subject to Clauses 4.2 and 9, the Trustee shall, at the expiry of the Trust Period, hold the capital and income of the Trust Fund upon trust absolutely for [the persons mentioned in such one or other of the following sub-clauses ((a) or (b)) as the Trustee shall in its discretion appoint :]³

- (a) all or such one or more of the Principal Beneficiaries then living in such proportions as the Trustee shall by irrevocable deed appoint but so that if there is no Principal Beneficiary then living, upon trust absolutely for such Charity as the Trustee shall in its discretion determine or, in default of any such appointment, on trust for charitable purposes only; [or
- (b) the Company or, if the Company has ceased to exist, such other company (if any) as, in consequence of a compromise or arrangement or reconstruction or amalgamation sanctioned by the court pursuant to sections 899 or 900 of the Companies Act 2006 or a scheme involving a merger as mentioned in section 904 of the Companies Act 2006, or a division of the undertaking property and liabilities of the Company as mentioned in section 919 of the Companies Act 2006, then carries on the whole or any part of the business and undertaking formerly carried on by the Company or, in default of any such appointment, upon trust for charitable purposes only]³.

³ Note: The inclusion of the words in [] in Clause 4.4 is only appropriate (if at all) if the Company is not a 'close company' (per Chapter 2, Part 10 CTA 2010). If (i) the Company is a close company and (ii) such wording is included in the trust deed, then, if any participator or former participator is, or has been 'connected with' the Company (per section 286 TCGA 1992), the trust will, by reason of Clause 9, still qualify as a 's.13 IHTA trust' (see Clause 9), but the power in sub-clause 4.4(b) could not ever be exercised in favour of the Company.]

5. PERPETUITY PERIOD

- 5.1 The provisions of Clause 5.2 shall automatically cease to apply to this Trust Deed and the reference in the definition of “the Trust Period” to “the expiry of 125 years” shall be deemed to be omitted from this Trust Deed if by law this Trust becomes exempt from the 125 year perpetuity period imposed by the Perpetuities and Accumulations Act 2009.
- 5.2 The perpetuity period applicable to this Trust shall be the period beginning with the date of this Trust Deed and ending on the 125th anniversary of the date of this Trust Deed.

6. APPLICATION OF THE TRUST FUND

- 6.1 Subject to Clause 6.2, and except as otherwise expressly permitted or provided for by this Trust Deed, the Trustee shall exercise the powers and discretions mentioned in Clause 4 by applying the Trust Fund only:
- (a) in the acquisition of Shares or, subject to Clause 6.4, other securities, and shall be under no obligation to diversify the investment of the Trust Fund **PROVIDED THAT** the amount or value of any consideration given by the Trustee for the acquisition of Shares or any interest in Shares from any person other than a Principal Beneficiary shall not in any event exceed the Market Value of such Shares or interest;
 - (b) in the repayment of sums borrowed;
 - (c) in the payment of interest on sums borrowed;
 - (d) in any such manner as is mentioned in Clause 7 and otherwise for so long as the Trustee holds Shares or other securities, by managing such Shares or securities by the exercise of the rights attaching to them; and
 - (e) in meeting the expenses of the Trustee and of any Trustee Director incurred in the proper performance of his or her duties as a Trustee Director.
- 6.2 Insofar as the Trust Fund or any part of it is not applied as mentioned in Clause 6.1, it may be:
- (a) placed on current or deposit account with a Financial Institution and the Trustee shall not otherwise be required to invest such funds; or
 - (b) advanced on loan, with or without security, and upon such terms as to repayment and interest as the Trustee shall in its discretion determine **PROVIDED THAT** any loan made to any member of the Group shall be on terms which are no less favourable to the Trust Fund than if it had been made in a transaction at arm’s length between unconnected persons.
- 6.3 Subject to the powers and discretions mentioned in Clause 7, the Trustee shall hold Shares and exercise the rights attaching to such Shares in a manner which, in the discretion of the Trustee, is in the best interests of the Principal Beneficiaries as a class.
- 6.4 Subject to Clause 6.2(b) (making of loans), the Trustee may only acquire securities other than Shares:
- (a) if such securities are shares or debentures issued to the Trustee in exchange in circumstances mentioned in section 135(1) of the Taxation of Chargeable Gains Act 1992; or

- (b) if such securities are acquired by the Trustee as a result of a reorganisation, and the original shares which such securities represent are Shares (construing “reorganisation” and “original shares” in accordance with section 126 of that Act); or
- (c) pursuant to a scheme of reconstruction (as defined in Schedule 5AA of that Act).

6.5 In exercising any power to give effect to the trusts of this Trust, the Trustee shall have regard to the purpose for which this Trust is established, as mentioned in Recital (A) to this Trust Deed.

6.6 The Trustee may not hold as part of the Trust Fund any assets other than cash, Shares, other securities or any debt (not being a debt on a security) owed by any person to whom the Trustee has advanced funds on loan pursuant to Clause 6.2.

7. PROVISION OF BENEFITS TO PRINCIPAL BENEFICIARIES

7.1 Subject to the provisions of Clauses 6, 8 and 9, the Trustee may exercise the powers and discretions provided by Clauses 4.1 and 4.2 to apply the capital and income of the Trust Fund:

- (a) for the benefit of all or any such one or more of the Principal Beneficiaries as the Trustee may in its discretion determine:
 - (i) by transferring Shares, or a beneficial interest in Shares, to a Principal Beneficiary, either absolutely or subject to any conditions, by way of sale (for a consideration not exceeding the Market Value of such Shares or interest) or gift; or
 - (ii) by granting to a Principal Beneficiary rights to acquire Shares or interests in Shares pursuant to an Employees’ Share Scheme established by the Company or otherwise on terms approved by the Company; or
 - (iii) by transferring Shares either by way of sale (for a consideration not exceeding the Market Value of such Shares) or gift to the trustee or trustees of a Share Incentive Plan for the purpose of enabling awards of Shares to be made, or Shares to be acquired on behalf of participants, pursuant to such Share Incentive Plan;
 - (iv) by purchasing Shares (or other securities) or interests in Shares (or other securities) from a Principal Beneficiary upon such terms, not being inconsistent with the articles of association of the Company or other company which has issued such securities, as to price and payment, as the Trustee may determine;
 - (v) by subscribing for Shares, or purchasing the beneficial interest in Shares, jointly with any Principal Beneficiary upon terms such that the aggregate consideration paid by the Trustee for the whole or the undivided beneficial interest in such Shares is no more than the Market Value of such Shares **PROVIDED THAT** the Trustee is of the opinion that such acquisition is on terms which, taken altogether, are or are likely to be advantageous to such Principal Beneficiary;
- (b) by appointing in favour of any such one or more of the Principal Beneficiaries as the Trustee may in its discretion determine a revocable or irrevocable interest in the whole or any part of the income of the Trust Fund upon such terms as the Trustee may determine;

- (c) by paying to any such one or more of the Principal Beneficiaries as the Trustee may in its discretion determine the whole or any part of the income of the Trust Fund for a given year on the basis that such a payment shall form part of the earnings from the employment of such Principal Beneficiary;
- (d) by funding the cost of the provision of any benefit-in-kind to any such one or more of the Principal Beneficiaries as the Trustee may in its discretion determine

PROVIDED THAT the Trustee shall not exercise any of its powers in any such manner without the prior approval of the Directors in writing if to do so would or might reasonably be expected to give rise to either:

- (i) a liability on the part of any member of the Group to pay employer's secondary Class 1 or Class 1A NICs; or
- (ii) a charge to income tax under Chapter 2 of Part 7A of ITEPA 2003 (employment income provided through third parties) and consequently an obligation on the part of any member of the Group to account to HMRC for income tax charged under that Chapter.

Making good to an employer income tax due under PAYE on a notional payment

- 7.2 If the Trustee makes any notional payment of PAYE income (as mentioned in section 710 of ITEPA) to a Principal Beneficiary in consequence of which the person treated for the purposes of PAYE as the employer of such Principal Beneficiary, or any other person, is liable to account to HMRC for any amount of, or on account of, income tax on such earnings, the Trustee may pay to such person (for the benefit of such Principal Beneficiary) a sum which, after deduction of income tax and NICs under PAYE, is sufficient to make good to such person the amount for which such person is so liable to account.

8. SECTION 86 INHERITANCE TAX ACT 1984

The Trustee shall not during the Trust Period exercise in any manner any power or discretion vested in the Trustee by this Trust Deed if in consequence:

- (a) this Trust would cease to be a Section 86 Trust; or
- (b) any part of the Trust Fund would thereafter:
 - (i) cease to be held upon the trusts of a Section 86 Trust; but
 - (ii) be held upon trusts in which no interest in possession subsists.

9. EXCLUSION FROM BENEFIT TO SATISFY SECTION 13 INHERITANCE TAX ACT 1984

- 9.1 If at any time a disposition of property is made to the Trustee by a company which is at that time a close company (within the meaning of section 439 Corporation Tax Act 2010), and the property is to be held as an addition to the Trust Fund, then, except as mentioned in Clause 9.2, no part of such property ("**Relevant Property**") may be applied at any time for the benefit of any such person as is mentioned in sub-section (2) of section 13 Inheritance Tax Act 1984 construing that section in accordance with sub-sections 13(3) and 13(5).
- 9.2 Subject always to Clauses 4, 6 and 7, the restriction imposed by Clause 9.1, upon the application of Relevant Property for the benefit of the persons referred to in that Clause, shall not restrict the Trustee from exercising a power to make a payment which is the income of any

person for any of the purposes of income tax, or would be the income for any of those purposes of a person not resident in the UK if he were so resident.

10. RELATIONSHIP WITH THE COMPANY

- 10.1 The Trustee may confer with and seek advice from and generally consult the Company on any matter or question relating to the provisions of this Trust Deed, but the Trustee shall not be bound to act in accordance with the advice or wishes of the Company.
- 10.2 The Trustee shall be entitled to rely, without further enquiry, on all information supplied to the Trustee by the Company and any notice in writing given by the Company to the Trustee in respect of the eligibility of any person as a Principal Beneficiary shall be conclusive in favour of the Trustee.

11. OTHER POWERS OF THE TRUSTEE

- 11.1 The Trustee shall (in addition to all other powers vested in it by this Trust Deed or by law) have the following powers but only insofar as the exercise of such powers is not inconsistent with the provisions of Clause 4:
- (a) power to borrow monies from any person, firm or company (including any member of the Group) on the security of the whole or any part of the Trust Fund or on personal security (including personal security of the Trustee Directors only or in conjunction with security given by the Trustee) only for a purpose for which the Trust Fund may be applied in accordance with the provisions of this Trust Deed and on such terms as to interest (if any) and repayment as the Trustee shall in its absolute discretion think fit **PROVIDED THAT** any loan from any member of the Group shall be on terms which are no more favourable to such member of the Group than if it had been made in a transaction at arm's length between unconnected persons;⁴
 - (b) power to enter into any agreement for the sale or other disposition of any shares or securities forming part of the Trust Fund upon any terms for any consideration whatsoever and give warranties, indemnities and undertakings for such purpose;
 - (c) power (whether or not affecting the security or apparent security of the Trust Fund) in relation to any shares or securities of or other interest in a company for the time being subject (directly or indirectly) to the trusts of this Trust Deed ("**the Relevant Company**") to concur in any scheme or arrangement for the reconstruction of the Relevant Company or for the sale of all or any part of the property and undertaking of the Relevant Company to another company or person or other companies or persons or for the acquisition of the securities of the Relevant Company or for Control of the Relevant Company by another company or person or other companies or persons or for the amalgamation of the Relevant Company with another company or for the demerger of the Relevant Company or for the release modification or variation of any rights privileges or liabilities attached to the securities or other interest or any of them and to give warranties and indemnities for such purposes with power to accept any securities shares or other interest of any description of the reconstructed or purchasing or new company or demerged company or companies in lieu of or in exchange for all or any of the original securities shares or other interest and with power to retain any property so accepted as aforesaid for any person for which the original property could have been retained;

⁴ Note: See note to Clause 3.5

- (d) power (either for the purpose of any appropriation in exercise of any power conferred on the Trustee or for any other purpose whatsoever) to value or to have valued by such person or persons as the Trustee thinks fit any assets for the time being comprised in the Trust Fund;
- (e) power to obtain from a solicitor, barrister, chartered accountant or other appropriately qualified professional adviser, at the expense of the Trust Fund, advice on any matter on or in relation to which the Trustee considers that such advice is desirable or on the proper discharge by the Trustee or by all or any one or more of the Trustee Directors of their duties as trustees of the Trust or as Trustee Directors and to act upon such advice and in particular to institute prosecute and defend in accordance with such advice any suit action or other proceedings without having to obtain the directions of the Court;
- (f) power to join with any member of the Group in establishing and giving effect to an Employees' Share Scheme for the benefit of employees (and former employees) of the Company or of any one or more members of the Group;
- (g) power to hold as bare trustee or nominee (whether or not subject to any restrictions or conditions) for any Principal Beneficiary any Shares or securities or any interest in any Shares or other securities upon such terms as the Trustee may determine.

11.2 In addition to all the powers vested in trustees by Clause 11.1 and by law, the Trustee shall have the additional powers set out in SCHEDULE 1, but only insofar as the exercise of such powers shall not be inconsistent with the other provisions of this Trust Deed.

11.3 Each such power shall be a separate power in addition and without prejudice to the generality of all other powers vested in the Trustee, and the Trustee may exercise all or any such powers from time to time without the intervention of any Beneficiary and in such manner and to such extent as the Trustee shall in its absolute discretion think fit.

12. [WAIVER OF DIVIDENDS]

12.1 The waiver of dividends provided for Clause 12.2 shall not apply if the Company specifies in a notice in writing to the Trustee that such waiver shall not apply in respect of any specified dividend payment and/or a dividend payment in respect of any given number or proportion of Shares or other securities held in the Trust Fund and/or dividends to be paid during any period of time (being in any event a dividend for which the record date is not earlier than the date on which such notice is given to the Trustee).

12.2 Whilst and for so long as any Shares or other securities are held in the Trust Fund and no beneficial interest in such Shares or other securities has been vested in any Principal Beneficiary, the Trustee shall waive any right to dividend payments in respect of such Shares or other securities.]

13. THE TRUSTEE

Power of appointment and removal of a trustee

13.1 Subject to the following provisions of this Clause 13, the Company shall have the power exercisable by deed to remove any person as Trustee of this Trust and to appoint a new or additional Trustee in the place of such person **PROVIDED ALWAYS** that the power conferred by this Clause 13 shall only be exercisable and capable of taking effect from the date on which the first mentioned Trustee receives notice in writing of such removal or, if later, the date on which the new Trustee accepts office as such new Trustee.

13.2 The statutory power of appointing new or additional Trustees shall not apply to this Trust.

Who may be a Trustee

13.3 Subject to Clause 13.4, the trustees of this Trust shall at all times comprise:

- (a) a company which is a wholly-owned subsidiary of the Company and which is resident in the UK for UK tax purposes; or
- (b) a minimum of [3], and a maximum of [5] individual trustees, all of whom are resident in the UK for UK tax purposes and at least one of whom is not a director or employee of a member of the Group and is not connected with any such director or employee; or
- (c) an independent trustee services company (whether or not a trust corporation) which holds itself out as providing trustee services to clients and which is resident in the UK for UK tax purposes.

Single corporate Trustee

13.4 For so long as the Trustee holds Shares, or shares or other securities in the Company or in a Holding Company of the Company, the Trustee shall comprise a single corporate Trustee:

- (a) which is resident in the United Kingdom for UK tax purposes; and
- (b) the articles of association of which provide that the directors of such company may only be appointed and removed and hold office in accordance with provisions which are consistent with the rules set out in SCHEDULE 2.

Suspension of power to remove and appoint a new Trustee upon a change of Control

13.5 If the Company comes under the Control of any person or persons other than either (i) the person who is, or the persons who are, members of the Company and who together have Control of the Company at the date of this Trust Deed or (ii) the Trustee, neither the power of the Company to remove the Trustee from office as trustee of this Trust nor the power to appoint any other person or persons as trustee of this Trust shall be capable of being exercised before the end of the period of [30] days beginning with the date of such change of Control.

Retirement of a Trustee

13.6 Any trustee of this Trust may, at any time, by giving notice in writing to the Company and to the remaining trustee of this Trust (if any), retire from office as a trustee of this Trust at the expiry of one month from the date when such notice is received by the Company or any shorter period agreed in writing by the Company **PROVIDED THAT** such retirement shall not take effect unless and until immediately thereafter there will be (whether by virtue of an appointment taking effect immediately upon such retirement or otherwise) at least the minimum number of persons required by Clause 13.3 to be the trustees of this Trust.

Change of Trustee

13.7 An outgoing Trustee shall execute and do or make all such transfers or other documents acts or things as may be necessary for vesting the Trust Fund in the new Trustee or placing it under its control and shall be bound and entitled to assume that any new Trustee is a proper person to have been appointed in accordance with this Clause 13 **PROVIDED ALWAYS** that if an outgoing Trustee is liable as a Trustee for any duties or taxes, that Trustee shall not be bound to

transfer the Trust Fund unless reasonable security is provided for indemnifying such outgoing Trustee (and, in the case of an individual, his estate) against such liability.

- 13.8 On every change in the trusteeship, the name of the Trustee for the time being shall be endorsed upon this Trust Deed and signed by two Trustee Directors of the new Trustee, or one Trustee Director and the Secretary of the new Trustee, and any person dealing with the affairs of this Trust shall be entitled to rely upon any such endorsement (or the latest of such endorsements if more than one) as sufficient evidence that the person or persons named is or are duly constituted the Trustee or Trustees.

No obligation to interfere in the business of the Company

- 13.9 Neither the Trustee nor any Trustee Director shall be under any obligation to become a director or officer or to interfere or otherwise participate in the management of the Company or any other company or body corporate notwithstanding that the Trustee has (whether directly or indirectly) a substantial holding in or Control of such company or body nor shall the Trustee be under any obligation to seek information about the affairs of such company or body other than such information as is normally available to, or supplied to a holder of, the relevant proportion of the then issued shares or securities of such a company or body (including the payment or non-payment of dividends) wholly to its directors or other persons managing such company or body and the Trustee shall not (so long as it has no actual notice of any act of dishonesty on the part of such directors or others connected with such company or body) be liable for any loss to the capital or income of the Trust Fund occasioned by the failure of the Trustee to interfere or otherwise participate in or enquire into the affairs of such company or body and no Beneficiary shall be entitled to compel, control or forbid the exercise in a particular manner of any voting or other rights which may at any time be vested in the Trustee with regard to such company or body.

Discretionary nature of trusteeship

- 13.10 Every power or discretion conferred on the Trustee shall be an absolute and uncontrolled power or discretion and neither the Trustee nor any Trustee Director shall be held liable for any loss or damage occurring as a result of the Trustee concurring or refusing or failing to concur in an exercise or proposed exercise of such power or discretion and neither the Trustee nor any Trustee Director shall be obliged to give any Beneficiary (or any person who would, but for the exercise or non-exercise of any such power or discretion, be a Beneficiary) any reason or justification for any exercise or non-exercise of any such power or discretion.

14. REMUNERATION OF AN INDEPENDENT TRUSTEE OR INDEPENDENT TRUSTEE DIRECTOR

Any such Trustee as is mentioned in Clause 13.3(c) and any Independent Trustee Director, being an individual engaged in any profession or business, shall be entitled to be paid all usual professional or proper charges for work done by him, his firm or his company in connection with the trusts declared in this Trust Deed, whether in the ordinary course of his profession or business or not, including acts which a trustee, not being in any profession or business, could have done personally.

15. INTERESTS OF A TRUSTEE AND TRUSTEE DIRECTORS

- 15.1 No decision of or exercise of a power by the Trustee shall be invalidated or questioned on the grounds that the Trustee or any individual Trustee Director had an interest in a personal or fiduciary capacity in the result of any decision or in the exercise of any power and any such person may vote in respect thereof and be taken into account for the purposes of a quorum notwithstanding his interest.

- 15.2 A Principal Beneficiary who is a Trustee Director may retain all benefits to which he becomes entitled under this Trust Deed and shall not be liable to account for any property paid to or applied for his benefit.
- 15.3 A Trustee Director shall not be precluded from acquiring, holding or dealing with any shares or securities issued by any member of the Group or from entering into any contract or other transaction with any member of the Group or being interested in any such contract or transaction and none of the Trustee Directors shall be in any manner whatsoever liable to account to any Beneficiary or any member of the Group for any profits made or benefits obtained by them under or in connection with such contract or transaction.
- 15.4 Any of the Trustee Directors may be employed and remunerated as a director or other officer or employee or as agent or adviser of any member of the Group and any other company, body or firm in any way connected with the Trustee or the Trust Fund and may keep as his property (and without being liable to account therefor) any remuneration, fees or profits received by him in any such capacity, notwithstanding that his situation or office may have been obtained, held or retained by means or by reason of his position as one of the Trustee Directors or of any shares securities property rights or powers whatever belonging to or connected with the Trust Fund.

16. PROTECTION OF TRUSTEE AND TRUSTEE DIRECTORS

- 16.1 In the professed execution of the trusts and powers under this Trust Deed or vested in the Trustee by law, neither the Trustee nor any Trustee Director shall be liable for any loss arising by reason of any mistake or omission made in good faith by him or by reason of any other matter including fraud, negligence or default of another Trustee Director, nominee, agent, officer or other delegate unless such Trustee or Trustee Director is fraudulent, or in wilful default or grossly negligent.
- 16.2 Neither the Trustee nor any Trustee Director shall be liable for any loss or damage to the Trust Fund or the income of the Trust Fund arising from any improper investment or purchase made by the Trustee or authorised by the Trustee Directors in good faith, or for the negligence or fraud of any agent engaged by the Trustee, although such engagement was not strictly necessary or expedient or by reason of any mistake or omission made in good faith by the Trustee or any Trustee Director.
- 16.3 The Company **HEREBY COVENANTS** with the Trustee and the Trustee Directors jointly and severally for themselves and as trustees for their successors in title or office (as the case may be) that it will at all times hereafter keep each of them and each of their successors in title or office (as the case may be) as Trustee and Trustee Directors and each of their estates and effects fully indemnified and saved harmless against all claims, losses, demands, actions, proceedings, charges, expenses, costs, damages, taxes, duties and other liabilities that may be suffered or incurred by it or them or by any of them in connection with the execution of the trusts and powers under this Trust Deed other than liabilities arising as a consequence of fraud or wilful default or, in the case of a Trustee Director who is engaged in the business of providing a trustee service for a fee, negligence and save to the extent that any such liability is capable of being discharged at the expense of the Trust Fund.

17. AMENDMENT OF THIS TRUST DEED

- 17.1 Subject to the following provisions of this Clause 17, the Trustee and the Company may at any time or times during the Trust Period by deed alter or add to the provisions of this Trust Deed if, in the opinion of the Company, such alteration or addition is necessary and appropriate to give effect to the purpose of this Trust as mentioned in Recital (A) to this Trust Deed **PROVIDED ALWAYS** that no exercise of the power given in this sub-clause may:

- (a) amend Clauses 4.4 (residual beneficiaries), 5 (perpetuity period), 6.5 (purposes of the Trust), 6.6 (restriction on assets held), 8 (section 86 Inheritance Tax Act 1984), 9 (section 13 Inheritance Tax Act 1984), 13.5 (removal of Trustee upon a change of Control), 16.3 (Trustees' indemnity), this Clause 17 (amendment of this Trust Deed) and the provisos to Clauses 6.1(a) and 6.2(b);
- (b) confer on any person who is not a Beneficiary any eligibility or entitlement to benefit under this Trust;
- (c) cause this Trust to cease at any time during the Trust Period to be either:
 - (i) a Section 86 Trust; or
 - (ii) an Employees' Share Scheme;
- (d) reduce or adversely affect the rights or interest of any Principal Beneficiary (or former Principal Beneficiary) insofar as such right or interest has been granted, awarded or created pursuant to the earlier exercise by the Trustee of a power under this Trust Deed; or
- (e) extend the power conferred by this sub-clause 17.1 or remove the restrictions contained in this proviso.

17.2 The provisions of SCHEDULE 2 to this Trust Deed may only be amended to or added to in accordance with the provisions of that Schedule.

17.3 The Trustee and the Company may at any time or times during the Trust Period by deed or deeds so as to bind successive Trustees restrict the future exercise of all or any of the powers (including this power) conferred upon the Trustee by this Trust Deed either wholly or to the extent specified in any such deed.

17.4 Every power, authority or discretion conferred upon the Trustee or any other person and not expressly made exercisable only during a period allowed by law shall (notwithstanding anything to the contrary expressed or implied in this Trust Deed) only be exercisable during the Trust Period and during such further period if any (whether definite or indefinite) as in the case of the particular power authority or discretion the law may allow.

18. NOTICES TO THE TRUSTEE

18.1 Any notice in writing to be given to the Trustee pursuant to, or in connection with, this Trust, shall be given by:

- (a) delivering it by hand or by sending by first class post to the secretary of the Trustee; or
- (b) emailing it to the email address of the secretary of the Trustee, being an address notified to the Company in writing **SAVE THAT** an email shall be treated as not having been duly given or received if the sender receives notice that such email is undeliverable for any reason or, when received by the recipient, such email has been accompanied by a caution or warning that it could contain, or be subject to, a virus which could alter, damage or interfere with any computer software or email.

19. PROPER LAW

This Trust is established under the laws of England and Wales and the rights of the Beneficiaries and the rights, powers and duties of the Trustee under this Trust and the

construction of every provision of this Trust Deed shall be determined according to the laws of England and Wales.

20. EFFECT OF THIS TRUST

20.1 Neither the provisions of this Trust Deed nor this Trust shall form part of any contract of employment between any Beneficiary and any member of the Group or former member of the Group nor shall it confer on any Beneficiary (or former Beneficiary) any legal or equitable rights whatsoever against the Company or any other present or past member of the Group.

20.2 A Principal Beneficiary ceasing to hold the employment by virtue of which he is or may be a Principal Beneficiary shall not be entitled to any compensation for any loss of any right or benefit or prospective right or benefit under this Trust Deed which such individual might otherwise have enjoyed.

20.3 No Principal Beneficiary shall be entitled to question or challenge the exercise by the Trustee of any of the powers and duties of the Trustee under this Trust.

21. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The provisions of the Contract (Rights of Third Parties) Act 1999 shall not apply to this Trust Deed.

22. DISCRETIONARY NATURE OF THIS TRUST

The trusts hereby declared are irrevocable.

SCHEDULE 1

ADDITIONAL POWERS OF THE TRUSTEE

1. Power to accept additions to the Trust Fund and to administer the Trust Fund as one fund for all purposes.
2. Power to invest or hold or allow to remain in the name or under the control of any person as nominee of the Trustee the whole or such part of the Trust Fund as the Trustee shall in its absolute discretion think fit and the Trustee shall not be liable for any loss to the Trust Fund or the income thereof occasioned by the exercise of this power.
3. Power to apply the Trust Fund or any part of it or the whole or any part of the income of the Trust Fund in paying any stamp duty or stamp duty reserve tax payable in respect of any transfer of or agreement to transfer securities or any interest in securities to a Beneficiary.
4. Power to allot, appropriate, partition or apportion any property whatever which forms (or the future proceeds of sale of which will form) part of the Trust Fund in such manner as the Trustee shall in its absolute discretion (without the necessity of obtaining any consent) consider just according to the respective rights of the persons interested.
5. Power to pay any taxes (together with any related interest or penalties or surcharges) for which the Trustee may become liable.
6. Power to deduct from any payment made to a Principal Beneficiary and to pay over to the employer of such Principal Beneficiary an amount equal to the income tax and NICs for which such employer is liable to account to HMRC in accordance with the regulations governing liability and collection of income tax under PAYE and NICs.
7. If any transfer of property under this Trust Deed is to be made to a Beneficiary who has not attained the age of 18 years, the Trustee may make such transfer direct to such Beneficiary and the Trustee shall be discharged from obtaining a receipt or seeing to the application of such payment.
8. Power to make any payment which is to be made to any Beneficiary by paying it into the bank or building society account of such Beneficiary and the Trustee shall be discharged from obtaining a receipt or seeing to the application of such payment.
9. Power to employ and pay at the expense of the capital or income (as may be proper) of the Trust Fund any agent in any part of the world and whether a lawyer, banker, accountant, stockbroker or other agent to transact any business or do any act required to be transacted or done in the execution of the trusts of this Trust including the receipt and payment of money and the execution of documents.
10. Power in its absolute discretion to enter into any transaction with any other person or persons whether that person or persons is or are acting in a fiduciary capacity or not (being a transaction which apart from foregoing provisions of this Trust Deed the Trustee could properly have entered into if it or any of the Trustee Directors had not been or had not also been interested in such other person or persons) notwithstanding that the Trustee or any Trustee Director may be or may also be interested in such other person or persons and in like manner in all respects as if the Trustee or any Trustee Director were not interested in such other person or persons.

SCHEDULE 2

RULES GOVERNING THE APPOINTMENT AND REMOVAL OF DIRECTORS OF THE TRUSTEE COMPANY

(Clause 13.4)

The following provisions of this Schedule shall apply for the purposes of determining the appointment and removal of directors of the Original Trustee and of any other corporate Trustee of this Scheme.

Interpretation

1. In this Schedule:

“the Company Directors”	means the directors of the Company
[“the Constitution”	means the constitution of the Company as described in the document entitled “Guide to the Constitution of [INSERT NAME] Limited” (as amended from time to time)]
“Employee Trustee Director”	means a bona fide employee of a member of the Group who has not given or received notice of termination of employment with any member of the Group and who has been selected and nominated to hold office as a Trustee Director pursuant to and in accordance with the provisions of this Schedule
[“the Employees’ Council”	means the body of that name established (or to be established) in accordance with the Constitution]
“Independent Trustee Director”	means an individual who: (a) is not [and never has been] a director or employee of any other member of the Group; and (b) [in the opinion of the Company Directors, possesses the appropriate experience and expertise to act as a director of the corporate trustee of a company with employee ownership; and] (c) has been nominated to hold office as a Trustee Director by the Company Directors
“ordinary resolution”	has the meaning given in section 282 of the Companies Act 2006
“the Trustee Company”	means the Original Trustee or such other company which is the sole corporate trustee of the Trust

“Trustee Director” means a director of the Trustee Company

Appointment and removal of Trustee Directors

2. Subject to the following provisions of this Schedule, each Trustee Director shall be appointed, and may be removed from office as a Trustee Director, by ordinary resolution of the members of the Trustee Company.
3. The Company (as member of the Trustee Company) shall procure that at all times:
 - (a) there shall be at least [three] and not more than [five] Trustee Directors, all of whom are resident in the UK for UK tax purposes;
 - (b) at least one Trustee Director shall be an Independent Trustee Director, and not less than [one-half] of the other Trustee Directors shall be Employee Trustee Directors; and
 - (c) every Trustee Director who is not an Independent Trustee Director must be an individual who is, or has been, an employee or director of a member of the Group.

Independent Trustee Director(s)

4. An Independent Trustee Director may be appointed a Trustee Director upon such terms as to remuneration and otherwise as may be agreed at the time of his appointment by the Company (on the one hand) and the Independent Trustee Director (on the other hand) **PROVIDED ALWAYS** that such an appointment shall be valid only if the terms provide that such Independent Trustee Director may be removed at any time in accordance with the rules of this Schedule.

Retirement of Independent Trustee Director(s)

5. An Independent Trustee Director shall automatically cease to hold office as a Trustee Director if he or she becomes a director or employee of any other member of the Group or if all of the other Trustee Directors together determine that his or her independence has been compromised for any reason and give notice in writing to that effect to such Independent Trustee Director.

Employee Trustee Directors

6. No person shall be appointed to hold office as an Employee Trustee Director unless:
 - (a) he or she has been selected and nominated to hold office as a Trustee Director in accordance with a procedure determined by the Employees' Council and which is not inconsistent with the terms of the Constitution;
 - (b) he or she has confirmed in writing his or her willingness to hold such office.

Retirement of Employee Trustee Directors

7. An Employee Trustee Director shall automatically cease to hold office as a Trustee Director if he or she gives or receives notice of termination of employment with any member of the Group or ceases for any reason to be an Employee or retires by rotation.
8. On the [third] anniversary of the first acquisition by the Trustee of Shares and, for so long as the Trustee holds Shares or other securities in the Company, at the end of every subsequent anniversary of that date, one Employee Trustee Director shall retire by rotation.

9. The Employee Trustee Director to retire by rotation shall be the [one] who [has/have] been longest in office since his or her last appointment or reappointment, but as between persons who became or were last reappointed Employee Trustee Directors on the same day the one to retire shall (unless they otherwise agree among themselves) be determined by lot.
10. The procedure for the selection of an individual to be nominated for appointment as an Employee Trustee Director shall be implemented [by the Employees' Council] by a date sufficiently in advance of the date of retirement by rotation of an Employee Trustee Director so as to ensure that the identity of such individual is known and so that the appointment of such individual as an Employee Trustee Director can take effect at the conclusion of that date.
11. An Employee Trustee Director retiring by rotation shall be eligible to be nominated as a candidate to fill the vacancy.

Retirement of Trustee Directors

12. A Trustee Director shall retire and his office as a director of the Trustee shall be vacated if:
 - (a) that person ceases for any reason to be resident in the UK for the purposes of UK taxation;
 - (b) that person ceases to be a Trustee Director by virtue of any provision of the Companies Act 2006 or is prohibited from being a director by law;
 - (c) a bankruptcy order is made against that person;
 - (d) a composition is made with that person's creditors generally in satisfaction of that person's debts;
 - (e) a registered medical practitioner who is treating that person gives a written opinion to the Trustee Company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months; or
 - (f) notification is received by the Trustee Company from that person that that person is resigning from office as a Trustee Director, and such resignation has taken effect in accordance with its terms.

Initial Trustee Directors

13. The directors of the Original Trustee initially appointed to hold office as such shall be the individuals whose names appear in Column A of the table below, each of whom has been selected to hold such office in the capacity referred to opposite his or her name in Column B of that table and in accordance with the rules of this Schedule applicable to such Independent Trustee Director, Employee Trustee Director or other Trustee Director.

Table of Initial Trustee Directors of the Original Trustee

<i>Column A</i> <i>Name of Director</i>	<i>Column B</i> <i>Status of Trustee Director</i>
[name of director(s)]	Independent Trustee Director(s)
[name of director(s)]	Employee Trustee Director(s)
[name of director(s)]	other Trustee Director(s)

Quorum for business

- 14. The quorum for the conduct of business of the Trustee Directors shall:
 - (a) if there are [5] Trustee Directors, be [3] Trustee Directors, of whom at least one is an Independent Trustee Director and at least one is an Employee Trustee Director; or
 - (b) if there are fewer than [5] Trustee Directors, be [2] Trustee Directors, of whom one is an Independent Trustee Director and at least one is an Employee Trustee Director.

Relationship with the provisions of the Trust Deed

- 15. The provisions of this Schedule shall have effect subject to the provisions of the Trust Deed so that in the event of any conflict between the provisions of this Schedule and those of the Trust Deed, the provisions of the Trust Deed shall prevail.

Amendment of this Schedule

- 16. This Schedule may only be amended or added to by deed executed by the Company and the Trustee [**SAVE THAT** no such amendment or addition shall have effect unless it has been approved by a written resolution of the Employees' Council signed by a simple majority of all of the members of the Employees' Council].

EXECUTED AS A DEED by the parties on the date which first appears in this Deed.

EXECUTED as a **DEED** (but not delivered)
until dated) by **[INSERT NAME]** acting by:)

Director

Director/Secretary

EXECUTED as a **DEED** (but not delivered)
until dated) by **[INSERT NAME]**)
EMPLOYEES' TRUSTEES LIMITED acting)
by:

Director/Authorised Signatory

Director/Authorised Signatory

PART D

NOTES ON THE MODEL TRUST DEED

(References in these notes to “the Company” are to the company with employee ownership)

1. General

- 1.1 The settlement created by the trust deed (“the Trust”) is intended to be a vehicle for holding shares in a company for the benefit of employees of that company or group. The Trust is suitable to be used for this purpose whether the shares held, or to be acquired, represent only a small proportion of the issued share capital, a controlling interest, or indeed the entire issued share capital of the Company. Although changes made to company law in 2013 allow a private company to hold its own shares in treasury, the use of such an ‘employees’ trust’ can offer greater commercial flexibility and avoid certain tax disadvantages which apply if shares are to be purchased by the Company itself, rather than by a third person such as an employees’ trust.
- 1.2 The Trust is a discretionary settlement for the benefit of a class of beneficiaries defined as bona fide employees of the Company, or if that is the holding company of a group of companies, members of that group. It also includes those who may become such employees after the date of the deed. It excludes any employee who ceases to be so employed before the date of the deed and anyone who, at the relevant time, has ceased to be such an employee more than [3] years before that time. The class is also extended to include dependants of such employees, thus mirroring the definition of an “employees’ share scheme” in section 1166 of the Companies Act 2006. The reference to “bona fide” employees is likewise included to conform to the requirements of that definition.
- 1.3 It is necessary for the trust to qualify as such an employees’ share scheme in order to ensure that, for example, if the Company becomes a public company, any financial assistance provided to the trust by the Company will, if all other relevant conditions are satisfied, fall within the scope of the exemption in s682(2) from the general prohibition against the provision of financial assistance by a public company for the acquisition of its own shares. It also ensures that the requirements of certain exemptions and exclusions from statutory restrictions upon the conduct of financial business in the Financial Services and Markets Act 2000 will be satisfied.
- 1.4 The trust is on terms intended to ensure that at the time of its creation, the settlement ranks as a ‘trust for the benefit of employees’ as mentioned in s86 Inheritance Tax Act 1984 (“IhTA”). For the trust to qualify as a ‘s86 trust’ is a pre-requisite for exemptions from certain charges to inheritance tax which otherwise apply to, or in relation to transfers made to or by, a discretionary settlement.

The model trust deed has been reviewed by HMRC which has confirmed to BIS that a trust deed in this form will satisfy the requirements of s86 IhTA at the time of its creation and that, if appropriate, the inclusion of the wording in Clause 9 will ensure that the additional requirements of s13 IhTA (see below) are also satisfied.

- 1.5 If the Company is a ‘close company’ (per s439 Corporation Tax Act 2010) any ‘transfer of value’ by that or any other close company to the trust could give rise to a charge to inheritance tax on the part of ‘participators’ (per s102 IhTA and s454 CTA 2010). Such a charge will not arise if the trust also satisfies the additional requirements of s13 IhTA. These require that:

- (a) the trusts permit the trust fund to be applied for the benefit of all or most of the employees of the Company or, if it is a holding company, of members of the group; and
- (b) the trusts must not permit any of the trust fund to be applied *at any time* for the benefit of any person who (i) is a participator in the company making the contribution or (ii) a participator in any other close company which has contributed assets to the trust fund or (iii) any other person who has been such a participator in any such company at any time after, or during the 10 years before, the contribution made by that company or (iv) any person who is connected (per section 286 TCGA 1992 as extended by section 270 IHTA 1984) with any such person mentioned in (i), (ii) or (iii).
- 1.6 However, the participators referred to in (b) above do not include any participator who is not beneficially entitled to, or to rights entitling him to acquire, 5 per cent or more of, or of any class of the shares comprised in, the issued share capital, or who, on a winding-up, would not be entitled to 5 per cent or more of the assets. Further, in determining whether the trusts permit the trust fund to be applied as mentioned at (b) above, no account is taken of any power to make a payment which is income of any person for the purposes of income tax.
- 1.7 The trust deed includes provision intended to ensure that the additional requirements of s13 IHTA are met in relation to the trust.
- 1.8 The deed makes provision for the trustee to acquire shares out of monies provided by the company, or possibly an existing shareholder in the company, and either hold such shares on an indefinite basis or take steps for such shares to be made available for acquisition by employees.
- 1.9 The settlement is “discretionary” in the sense that the questions of how and when any shares (or other benefits) are to be distributed out of the trust fund, or how the trust fund is to be applied consistent with the purposes of the settlement, are at the discretion of the trustee. The deed provides for the trustee to have all the powers necessary to enable the trustee either to hold shares, and manage them by exercising the rights attaching to them, or to apply the shares, and any income of the trust (typically dividends on the shares) in the ways summarised below.
- 1.10 The provisions of the deed are ‘enabling’, not prescriptive: the trustee has the flexibility to determine how the trust fund is applied, but is under no obligation to apply it in a particular manner at any time for the benefit of all, or any, of the members of the class of beneficiaries. Likewise, members of the class of beneficiaries have no right to call for the trust fund to be distributed or applied at any time in any manner. Their only entitlement is to have the trustee manage the trust fund in accordance with the provisions of the deed.
- 1.11 It is for the trustee to determine from time to time how the trust fund is to be applied. It follows that the identity of the trustee(s) and, in the case of a corporate trustee, who controls the decision-making process of that company, is important. The deed makes provision for the trustee(s) to be :
- a sole corporate trustee which is a subsidiary of the company with employee ownership; or
 - between [3] and [5] individual trustees; or
 - an independent trustee services company.
- 1.12 The power to remove and appoint a new trustee is vested in the Company.

- 1.13 However, the trust deed provides that, for so long as the trust holds shares or other securities in the Company (or its holding company), the trustee must be **a sole corporate trustee company which is a subsidiary of the company with employee ownership** and which has articles of association which are consistent with the rules set out in Schedule 2 to the trust deed. The use of such a corporate trustee which is wholly-owned by the Company protects against the risks of potential unlimited personal liability which (in theory at least) attach to individuals acting as trustees. It also ensures a continuity of trusteeship notwithstanding that individual directors of the trustee company may, for example, retire on ceasing to be employees of the Company or group.
- 1.14 The rules in Schedule 2 prescribe the provisions regulating the appointment and removal of directors of the trustee company (“trustee directors”) who are responsible for the conduct of the business of the trustee company and therefore for the determination of decisions of the trustee. These rules can only be altered by agreement between the Company and the trustee company (acting by its trustee directors), and no such alteration can have effect without the approval of the Employees’ Council. The trust deed can be altered (if at all) only by agreement between the Company and the trustee company (acting by its trustee directors).
- 1.15 All trustees and trustee directors must be UK resident.

Establishing an HMRC-approved share scheme or granting EMI share options

- 1.16 It is a requirement of the statutory provisions governing Share Incentive Plans (“SIPs”), savings-related share option plans (“SAYE Share Option Plans”), Company Share Option Plans (“CSOPs”) and the grant of Enterprise Management Incentive (“EMI share options”) that the shares to be acquired by participating employees must be shares in a company which is not under the control of another body corporate. It follows that care is needed if a corporate trustee holds, or is expected to acquire, a controlling interest in the plan company. Share options outstanding when such a controlling interest is acquired (or, in the case of EMI share options, not exercised within 90 days thereafter) will no longer qualify for favourable tax treatment and no further awards may then be made under a SIP.

2. Summary of the provisions of the model trust deed

Parties

The parties to the trust deed are the Company and the company which is to act as the corporate trustee of the Trust (“**the Trustee**”). Before the trust deed is executed, it will be necessary for the Company to incorporate, or acquire from company formation agents, the company which is to be the Trustee as a directly wholly-owned subsidiary of the Company. The model envisages that the Trustee will be a company limited by guarantee (as mentioned in the Nuttall Report). It could instead be a company limited by shares.

Recitals

Recital A summarises the purpose of the Trust. To establish the trust fund, it is necessary for the Company to make an initial (capital) contribution. This is typically no more than £10, as mentioned in Recital C. Recital D summarises how the Trust will acquire shares in the Company.

Clause 1 – definitions

This sets out a glossary of the defined terms used in the trust deed.

Clause 2 – the principal beneficiaries

This defines the class of persons who may benefit from the Trust. During the Trust Period (125 years or until the Trustee wishes to bring the Trust to an end or the Company is wound up), those persons are employees of the Company or of the group as mentioned above, and their dependants. The class could be extended to include persons who were employees before the date of the trust deed, but are no longer. The inclusion of dependants in the class ensures that if, for example, an employee dies, benefits may be provided after the date of death to any such dependant.

The Trustee has power to exclude any person or category of persons from the class of beneficiaries for any period, provided that this will not prejudice the s86 status of the Trust. It might be appropriate to exercise this power so as, for example, to exclude employees of a newly-acquired subsidiary of the Company. The Trustee may not extend the class of principal beneficiaries and the trust deed may not be altered so as to extend the class of principal beneficiaries (see Clause 15).

An employee or other member of the class of principal beneficiaries has no enforceable right, as against either the Trustee or his or her employer company, to benefit in any manner from the trust fund. The only rights of a discretionary beneficiary are to have the Trust administered in accordance with its terms. Otherwise, the questions of if, when, and how an employee or other beneficiary may in fact benefit from the Trust are for the exclusive determination of the Trustee acting in accordance with the terms of the trust deed.

Clause 3 – payments to the Trustee

It is envisaged, and the trust deed provides, that the Company will make cash contributions to the Trust to be used to acquire shares in the Company. The Trustee has no right to receive or call for any contributions from the Company or any member of the group. Contributions may also be made by shareholders of the Company in the form of cash or shares. Advice should always be sought as to the tax consequences of such a transfer of value being made to the Trust by a shareholder.

The Company or any other person may lend money to the Trust, but no such loan may be on terms which are such as to provide benefit to a person who is not a member of the class of beneficiaries. If the Company is a close company, a loan to the Trust at a time when the Trust holds shares or a right to acquire shares in the Company, or when any beneficiary is a shareholder in, or a loan creditor of, the Company, will give rise to a penal charge to tax under s455 CTA 2010 (“Loans to Participators”).

The trust deed provides, in Clause 3.6, for part of a contribution by a member of the group to be “ring-fenced” and held by the Trustee otherwise than as part of the trust fund, on the basis that such moneys can be invested and applied in funding charges to employer’s secondary Class 1 NICs arising when shares or other benefits are awarded to employees. This may help to protect against uncapped and unexpected future liabilities of an employer company to employers’ NICs arising from the acquisition by employees of shares if, by reason of the existence of the Trust, or otherwise, the shares rank as ‘readily convertible assets’.

Clause 4 – principal trusts

The principal obligations of the Trustee are to hold the trust fund upon trust for the benefit of such one or more of the principal beneficiaries as the Trustee may in its discretion from time to time decide during the Trust Period. During the Trust Period, the trust fund may not be applied for the benefit of any person who is not a principal beneficiary (as defined).

Income of the trust fund (any dividends or interest) may be accumulated and added to the capital of the trust fund. Such income will generally be chargeable to income tax at the special rates applicable to “accumulated or discretionary income”. Such income may be applied for the benefit of any one or more of the principal beneficiaries as the Trustee may in its discretion determine (eg by paying bonuses to employees or providing for a distribution of shares acquired by subscription or purchase out of such dividend or other income). Complex tax rules may, if all relevant conditions are met, enable the Trustee to claim a repayment of tax by way of compensation for the lack of a tax credit to employees to whom payments are made out of the income of the Trust (see s496A – B ITA 2007). The trust deed could be drafted to include a waiver of dividends (see Clause 10), thereby avoiding any dividend income on which tax would be charged.

The “Trust Period” is defined as 125 years or, if shorter, the period ending when the Company is wound up (otherwise than as part of a reconstruction) or when the Trustee declares it to end.

Residual beneficiaries

At the end of the Trust Period, the Trustee has a duty to apply the trust fund for the benefit of either:

- (a) such one or more of the principal beneficiaries then living, in such proportions as the Trustee shall determine or, if there is no such principal beneficiary alive, for such charity as the Trustee shall specify (or, in default of any such appointment, for charitable purposes only); or
- (b) the Company or, if the Company has then ceased to exist, such other company as, in consequence of a reconstruction, merger or division (etc) then carries on the whole or any part of the business and undertaking formerly carried on by the Company or, in default, upon trust for charitable purposes.

The inclusion of the provisions mentioned in (b) above is only appropriate (if at all) if the Company is not a ‘close company’ (per Chapter 2, Part 10 CTA 2010). If (i) the Company is a close company and (ii) such wording is included in the trust deed, then, if any participator or former participator is, or has been ‘connected with’ the Company (per section 286 TCGA 1992), the trust will, by reason of Clause 9, still qualify as a ‘s.13 IHTA trust’ (see Clause 9), but the power in sub-clause 4.4(b) could not ever be exercised in favour of the Company.

The term “beneficiaries” includes both the principal beneficiaries and those persons mentioned in (a) and (b) above.

Clause 5 – perpetuity period

Presently it is a requirement of trust law that a trust may not exist beyond the statutory perpetuity period of 125 years. The Government is considering allowing employee trusts to exist in perpetuity and if this proposal becomes law, the trust deed provides that the 125 year perpetuity period and the corresponding limit on the Trust Period shall automatically cease to apply to the Trust.

Clause 6 – application of the trust fund

This clause imposes restrictions on how the Trustee may apply the trust fund. Except as otherwise expressly permitted, the trust fund may only be applied:

- (a) in acquiring shares in the Company;

- (b) in repaying the capital and interest on sums borrowed;
- (c) in such manner as is mentioned in Clause 7 (provision of share benefits), but otherwise by managing the shares and exercising the rights attaching to them;
- (d) in meeting expenses of the Trustee and of any trustee director.

Insofar as the trust fund is not applied in any such manner, it may be placed on deposit with a bank or other financial institution (as defined) or advanced on loan on terms which do not provide benefit to any person who is not a principal beneficiary.

It should however be noted that any loan to an employee by the Trustee will give rise to a penal charge to income tax under the “disguised remuneration” rules.

The Trustee may only acquire other securities by way of a ‘share for share’ exchange or reorganisation or scheme of reconstruction.

The Trustee may not hold as part of the trust fund any assets other than cash, shares in the Company, other securities or any debt owed by any person to whom the Trustee has loaned funds.

Clause 7 – provision of benefits to principal beneficiaries

Subject to the restrictions in clauses 4, 6, and the restrictions necessary to satisfy the requirements of s13 IHTA 1984 (see above), the Trustee may apply the trust fund for the benefit of all or any such one or more of the principal beneficiaries as the Trustee may determine:

- (a) by selling or gifting shares;
- (b) by granting options to acquire shares pursuant to a scheme established by the Company or otherwise on terms approved by the directors of the Company;
- (c) by gifting or selling shares to the Trustee of an HMRC-approved Share Incentive Plan (to enable awards of shares to be made in a tax-efficient manner);
- (d) by purchasing shares from principal beneficiaries;
- (e) by joining with one or more principal beneficiaries in acquiring and holding shares jointly pursuant to a joint share ownership plan;
- (f) by appointing in favour of principal beneficiaries interests in the income of the trust fund;
- (g) by paying out income in the form of cash bonuses;
- (h) by funding the cost of the provision of benefits-in-kind.

The Trustee may not do any of the above without the approval of the directors of the Company if to do so would give rise to a liability on the part of any member of the group to pay employer’s secondary Class 1 or Class 1A NICs, or would give rise to a liability on the part of any member of the group to account for tax and NICs under PAYE under the ‘disguised remuneration’ rules. The former would be the case if, by reason of the existence of the Trust or otherwise, the shares rank as “readily convertible assets” (per s702 ITEPA 2003).

Warning: Care must be taken to ensure that unexpected and penal charges to income tax and NICs do not arise under the “disguised remuneration” rules (in Part 7A, ITEPA 2003) in

consequence of a “relevant step” being taken by a “relevant third person” (which would include the Trustee), as mentioned in those rules. Professional advice should always be taken in relation to the application of, or any available exclusion or exemption or relief from, those rules.

If the Trustee makes a ‘notional payment’ of PAYE income (per s710 ITEPA 2003) to a principal beneficiary, in consequence of which the employer is obliged to account for income tax on such earnings, the Trustee may also pay to the principal beneficiary concerned a grossed-up bonus of an amount sufficient to make good to the employer the tax due on the notional payment.

Clause 8 – section 86 Inheritance Tax Act 1984

No power of the Trustee may be exercised in a manner if, in consequence, either:

- (a) the Trust ceased to be a s86 trust; or
- (b) any part of the trust fund would then cease to be held upon the trusts of a s86 trust but would then be held upon discretionary trusts in which no interest in possession subsists.

This clause would, subject always to clauses 4, 6 and 7, permit property forming part of the trust fund to be appointed in favour of one or more of the principal beneficiaries upon interest in possession trusts, notwithstanding that such property will thereby cease to be held upon a s86 trust. In any such case, care is needed as a charge to inheritance tax may then arise under s72(2)(a) IHTA 1984.

Clause 9 – section 13 Inheritance Tax Act 1984

If any property is contributed to the Trust by a close company, then no part of that property may be applied at any time for the benefit of any person mentioned in s13(2) IHTA 1984, except as otherwise mentioned in that section (see 1.5 and 1.6 and the notes on Clause 4: residual beneficiaries above).

Clause 10 – relationship with the Company

The Trustee can (and would normally be expected to) consult with the Company on any matter relating to the Trust, but is not required to act in accordance with the wishes of the Company.

The Trustee is entitled to rely on information supplied by the Company, without any further enquiry. In particular, the Company is entitled to rely on the Company’s statement as to whether a particular employee is or is not a principal or eligible beneficiary.

Clause 11 – other powers of the Trustee

It is necessary for a trust deed to include all the powers a trustee might need to exercise over the lifetime of the trust. The Trustee is expressly given powers which it might need to use to fulfil the purposes of the trust, and benefit employees, in the ways described above.

These include the powers:

- to borrow money using the trust fund as security, or on personal security (such as that of the trustee directors);
- to enter into an agreement to sell shares held by the Trust;
- to take part in any scheme of reconstruction of the Company, or in a sale of the Company;

- to value or have valued shares or any other assets held in the Trust;
- to obtain professional advice, at the expense of the trust fund, on any matter for which the trustee thinks it desirable, or on the performance of the trustee directors' duties;
- to act on such professional advice, and in particular, to take part in legal proceedings;
- to join with the Company in giving effect to an employees' share scheme;
- to hold shares, or any interest in shares, as bare trustee or nominee for a principal beneficiary.

The Trustee also has the additional administrative powers set out in Schedule 1. Such powers may only ever be exercised in a manner consistent with the principal trusts described above.

Clause 12 – Waiver of Dividends

If included, this clause provides for a waiver of dividends on shares held in the trust fund as long as the beneficial interest in such shares is held by the Trustee, and not by an employee. Unless such a waiver is included from the outset, the Trustee will not otherwise be able to waive dividends without receiving some sufficient 'quid pro quo' such that the Trustee is not thereby benefiting the Company.

The Company may give written notice suspending such waiver, thereby allowing the trustee to accept a particular dividend, or a dividend paid in relation to particular shares.

Clause 13 – the Trustee

The Company has the power to remove and appoint a new Trustee of the Trust. However, for so long as the Trustee holds shares in the Company or shares or other securities in a holding company of the Company, the Trustee must be a single corporate trustee resident in the UK with articles of association which provide that the directors of such trustee company may only be appointed and removed and hold office in accordance with the rules set out in Schedule 2 to the trust deed.

Schedule 2 provides that the directors of the trustee company (the trustee directors) must comprise at least [3] and not more than [5] individuals, at least one of whom is an independent trustee director and not less than one-half of the others are selected and appointed by the Employees' Council, as provided for in the articles of association of the Company (the employee trustee directors).

Otherwise, if the Trust ceases to hold shares in the Company or shares or securities in a holding company of the Company, the trustee or trustees may comprise:

- (a) a wholly-owned subsidiary of the Company; or
- (b) a minimum of [3] and a maximum of [5] individual trustees, at least one of whom is not a director or employee of the Company or any other member of the group and is not connected with any such director or employee; or
- (c) an independent trustee services company.

All trustees must be resident in the UK for UK tax purposes.

To protect against a 'raid' on the trust fund in the event of a change of control of the Company, the power to remove the trustee and appoint a new trustee (and, as a term of the articles of the trustee company, the power of the Company, as member of the trustee company, to remove or appoint a new director of the trustee company) is suspended for [30] days. This allows time for the incumbent trustee company, under the control of its incumbent board of directors, to determine the future application of the trust fund.

A trustee may retire by giving notice to the Company, but only if there will then be at least the minimum number of persons required to be trustees. An outgoing trustee is bound to do all that is necessary to vest the trust fund in the new or additional trustee.

Any change of trustee must be noted on the trust deed.

The Trustee is not obliged to interfere in the conduct or participate in the management of the Company or any other member of the group.

Clause 14 – remuneration of an independent trustee or independent trustee director

An independent trustee director, or an independent trustee services company, is entitled to be remunerated for such holding such office.

Clause 15 – interests of a trustee and trustee directors

The ownership structure envisaged by the model documentation allows for employees and directors of the Company or of a member of the group to hold office as trustee directors. As a general rule and in the absence of provision to the contrary, a person may not benefit from his position as trustee. This clause provides that:

- (a) a decision or exercise of a power by the Trustee is not invalidated by reason of the fact that a trustee director has a personal interest in the matter;
- (b) a trustee director may retain benefits to which he becomes entitled pursuant to the operation of the Trust without being obliged to give up such benefits;
- (c) a trustee director is not precluded from having any interest in or contractual transaction with the Company or any member of the group and is not liable to account for any profit from such interest or transaction; and
- (d) a trustee director may be employed and remunerated by the Company or any member of the group without having to account for any profit from that position.

Clause 16 – protection of Trustee and trustee directors

Neither the Trustee nor any trustee director is liable for any loss arising from any mistake or omission made in good faith by him or by reason of any other matter including fraud, negligence or default on the part of another trustee director unless he himself is fraudulent or in wilful default or grossly negligent.

Neither the Trustee nor any trustee director is liable for any loss arising from any improper investment or purchase made by the Trust in good faith, or for the negligence or fraud of any agent engaged by the Trustee.

The Company indemnifies the Trustee and trustee directors against all losses and other liabilities incurred in connection with the execution of the trusts and powers under the trust deed, other than liabilities arising in consequence of fraud or wilful default or, in the case of the

independent trustee director providing his services for a fee, negligence. This indemnity by the Company does not apply insofar as any such liability can properly be discharged out of the trust fund.

Clause 17 – amendment of this trust deed

The Trustee and the Company may together amend the terms of the trust deed by executing a deed.

However, certain provisions may not be amended and are, in effect, 'entrenched'. These entrenched provisions include those relating to:

- the identity of the residual beneficiaries (clause 4.4);
- the perpetuity period (clause 5);
- the need to have regard to the purpose for which the Trust is established (clause 6.5);
- the restriction on the type of assets which may be held in the trust fund (clause 6.6);
- the requirement that the Trust remain a trust for the benefit of employees as mentioned in s86 IHTA 1984 (clause 7.3);
- the requirement that the Trust satisfy the requirements of s13 IHTA 1984 (clause 7.4);
- the removal of the Trustee upon a change of control of the Company (clause 11.5);
- the indemnity in favour of the Trustee and trustee directors (clause 14.3); and
- the amendment of the trust deed (clause 15).

Further, no alteration or addition to the trust deed may confer on any person who is not a beneficiary any entitlement to benefit under the Trust or cause the Trust to cease to be either a s86 trust or an employees' share scheme.

Schedule 2 may only be amended or added to with the approval of the Employees' Council.

The Trustee and the Company may at any time restrict the future exercise of any of their powers under the trust deed.

Quite apart from the provisions of the trust deed itself, it is a requirement of the Articles of Association of the Company that the agreement by the Company to any alteration or amendment to the trust deed requires the prior consent in writing of members together holding shares representing at least [50] per cent of the issued equity share capital of the Company or the passing of an ordinary resolution of members at a general meeting.

Clause 18 – notices to the Trustee

This provides how notices required to be given pursuant to or in connection with the Trust may be given to the Trustee.

Such a notice may be hand-delivered, sent by first-class post, or emailed. A notice will not be validly delivered by email if the sender receives notice that the email is undeliverable, or if, when received, the recipient is warned that the email could contain a virus.

Clause 19 – proper law

The interpretation of the trust, and all matters relating to the trust, are to be determined according to the law of England and Wales.

Clause 20 – effect of this Trust

The existence of the Trust does not afford to employees of the Company or any member of the group any rights or additional rights under their contracts of employment.

An employee who leaves is not entitled to any, or any additional, compensation for the loss of any benefit or potential benefit they might otherwise have enjoyed by reason of the existence of the Trust.

Employees are not entitled to challenge the exercise by the Trustee of any of its powers or duties relating to the Trust.

Clause 21 – Contracts (Rights of Third Parties) Act 1999

The provisions of this Act will not apply to the trust deed. This is intended to prevent any third party, who is not a party to the trust deed, from acquiring any rights under it.

Clause 22 – discretionary nature of the Trust

The trusts created by the trust deed may not be revoked.

Schedule 1 – additional powers of the Trustee

This sets out additional administrative powers considered necessary or appropriate to enable the Trustee to give effect to the trusts and principal powers in the trust deed.

Schedule 2 – rules governing the appointment and removal of directors of the trustee company

This sets out the rules governing the appointment and removal of trustee directors. In the event of any conflict between the rules in this Schedule and the provisions of the trust deed, the latter shall prevail.

PART E

MODEL ARTICLES OF A TRUSTEE COMPANY

ARTICLES OF ASSOCIATION OF THE TRUSTEE COMPANY (A GUARANTEE COMPANY)

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Company Number: [REDACTED]

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY GUARANTEE

ARTICLES OF ASSOCIATION

of

[INSERT NAME] EMPLOYEES' TRUSTEES LIMITED

("the Company")

(Adopted by written special resolution on [date])

PART 1

INTERPRETATION AND LIMITATION OF LIABILITY

1. DEFINED TERMS

1.1 In these articles, unless the context requires otherwise:

"articles"	means the articles of association of the Company
"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 15.2
"chairman of the meeting"	has the meaning given in article 25.3
"Companies Acts"	means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the Company
"the Company with Employee Ownership"	means [INSERT NAME] Limited (registered in England and Wales with number [REDACTED])
"the Constitution"	means the constitution of the Company with Employee Ownership as described in the document entitled "Guide to the Constitution of [INSERT NAME] Limited" (as amended from time to time)
"Control"	has the meaning given by section 995 of the Income Tax Act 2007
"document"	includes, unless otherwise specified, any document

	sent or supplied in electronic form
“electronic form”	has the meaning given in section 1168 of the Companies Act 2006
“Employee Trustee Director”	means a bona fide employee of a member of the Group who has not given or received notice of termination of employment with any member of the Group and who has been selected and nominated to hold office as a Trustee Director pursuant to and in accordance with these articles
“the Employees’ Council”	means the body of that name established (or to be established) in accordance with the Constitution
“the Group”	means the Company with Employee Ownership and any other company which for the time being is: <ul style="list-style-type: none"> (a) is under the Control of the Company with Employee Ownership; and (b) is a subsidiary of the Company with Employee Ownership
“Independent Trustee Director”	means an individual who: <ul style="list-style-type: none"> (a) is not [and never has been] a director or employee of any other member of the Group; and (b) [in the opinion of the directors of the Company with Employee Ownership, possesses the appropriate experience and expertise to act as a director of the corporate trustee of a Company with Employee Ownership; and] (c) has been nominated to hold office as a Trustee Director by the directors of the Company with Employee Ownership
“member”	has the meaning given in section 112 of the Companies Act 2006
“ordinary resolution”	has the meaning given in section 282 of the Companies Act 2006
“participate”	in relation to a Trustee Directors’ meeting, has the meaning given in article 13.1
“proxy notice”	has the meaning given in article 31.1
“special resolution”	has the meaning given in section 283 of the Companies Act 2006

“subsidiary”	has the meaning given in section 1159 of the Companies Act 2006
“the Trust”	means the settlement constituted by a trust deed made between the Company with Employee Ownership and the Trustee and presently known as “the [INSERT NAME] Employees’ Share Trust”
“Trustee”	means the Company acting in its capacity as trustee of the Trust
“Trustee Director”	means a director of the Company, and includes any person occupying the position of director, by whatever name called
“UK”	means the United Kingdom of Great Britain and Northern Ireland
“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

1.2 Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Companies Act 2006 as in force on the date when these articles become binding on the Company.

2. LIABILITY OF MEMBERS

The liability of each member is limited to £1, being the amount that each member undertakes to contribute to the assets of the Company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for:

- (a) payment of the Company’s debts and liabilities contracted before he ceases to be a member;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) adjustment of the rights of the contributories among themselves.

PART 2

DIRECTORS

APPOINTMENT AND REMOVAL OF DIRECTORS

3. APPOINTMENT AND REMOVAL OF TRUSTEE DIRECTORS

3.1 Subject to the following provisions of these articles, each Trustee Director shall be appointed, and may be removed from office as a Trustee Director, by ordinary resolution.

3.2 For so long as the Company is a trustee of the [INSERT NAME] Employees’ Share Trust, there shall at all times be:

- (a) at least [three] and not more than [five] Trustee Directors, all of whom are resident in the UK for UK tax purposes;
- (b) at least one Trustee Director who is an Independent Trustee Director and not less than [one-half] of the other Trustee Directors shall be Employee Trustee Directors; and
- (c) every Trustee Director who is not an Independent Trustee Director shall be an individual who is, or has been, an employee or director of a member or former member of the Group

SAVE THAT the number of Independent Trustee Directors shall not exceed one-third in number of the Trustee Directors.

3.3 In the event of any change of Control of the Company with Employee Ownership, the power of the members of the Company to remove and appoint a Trustee Director shall be suspended for the period of [30] days beginning with the date of such change of Control.

4. **[INDEPENDENT TRUSTEE DIRECTOR(S)]**

4.1 An Independent Trustee Director may be appointed a Trustee Director upon such terms as to remuneration and otherwise as may be agreed at the time of his appointment by the Company (on the one hand) and the Independent Trustee Director (on the other hand) **PROVIDED ALWAYS** that such an appointment shall be valid only if the terms provide that such Independent Trustee Director may be removed at any time in accordance with these articles.

4.2 An Independent Trustee Director shall automatically cease to hold office as a Trustee Director if he or she becomes a director or employee of any other member of the Group or if all of the other Trustee Directors together determine that his or her independence has been compromised for any reason and give notice in writing to that effect to such Independent Trustee Director.

4.3 If, in consequence of a reduction in the number of Trustee Directors, the number of Independent Trustee Directors would otherwise exceed the limit on the number of Independent Trustee Directors in article 3.2, one or more of the Independent Trustee Directors shall immediately resign from office as a Trustee Director so as to ensure that such limit is not exceeded, and in the event of disagreement as to which Independent Trustee Director(s) should resign, an Independent Trustee Director who was most recently appointed or last re-appointed a Trustee Director shall resign in preference to an Independent Trustee Director who was earlier appointed or last re-appointed.]

5. **EMPLOYEE TRUSTEE DIRECTORS**

5.1 No person shall be appointed to hold office as an Employee Trustee Director unless:

- (a) [he or she has been selected and nominated to hold office as a Trustee Director in accordance with a procedure determined by the Employees' Council and which is not inconsistent with the terms of the Constitution; and]
- (b) he or she has confirmed in writing his or her willingness to hold such office.

6. **RETIREMENT OF EMPLOYEE TRUSTEE DIRECTORS**

6.1 An Employee Trustee Director shall automatically cease to hold office as a Trustee Director if he or she [gives or receives notice of termination of employment with any member of the Group or ceases for any reason to be an employee of any member of the Group or retires by rotation].

- 6.2 On the [third] anniversary of the first acquisition by the Trustee of shares in the Company with Employee Ownership and, for so long as the Trustee holds shares or other securities in the Company with Employee Ownership, at the end of every subsequent anniversary of that date, one Employee Trustee Director shall retire by rotation.
- 6.3 The Employee Trustee Director to retire by rotation shall be the [one] who has [have] been longest in office since his or her last appointment or reappointment, but as between persons who became or were last reappointed Employee Trustee Directors on the same day the one to retire shall (unless they otherwise agree among themselves) be determined by lot.
- 6.4 An Employee Trustee Director retiring by rotation shall be eligible to be nominated as a candidate to fill the vacancy.

7. RETIREMENT OF DIRECTORS

A Trustee Director shall retire and his office as a director of the Company shall automatically be vacated if:

- (a) that person ceases for any reason to be resident in the UK for UK tax purposes; or
- (b) that person ceases to be a director by virtue of any provision of the Companies Act 2006 or is prohibited from being a director by law;
- (c) a bankruptcy order is made against that person;
- (d) a composition is made with that person's creditors generally in satisfaction of that person's debts;
- (e) a registered medical practitioner who is treating that person gives a written opinion to the Trustee Company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months; and
- (f) notification is received by the Trustee Company from that person that that person is resigning from office as a Trustee Director, and such resignation has taken effect in accordance with its terms.

8. INITIAL TRUSTEE DIRECTORS

The initial Trustee Directors shall be the individuals whose names appear in Column A of the table below, each of whom has been selected to hold such office in the capacity referred to opposite his or her name in Column B of that table and in accordance with the rules of this Schedule applicable to such Independent Trustee Director, Employee Trustee Director or other Trustee Director.

Table of Initial Trustee Directors of the Original Trustee

<i>Column A</i> <i>Name of Director</i>	<i>Column B</i> <i>Status of Trustee Director</i>
[name of director(s)]	Independent Trustee Director(s)
[name of director(s)]	Employee Trustee Director(s)
[name of director(s)]	other Trustee Director(s)

DIRECTORS' POWERS AND RESPONSIBILITIES

9. DIRECTORS' GENERAL AUTHORITY

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

DECISION-MAKING BY DIRECTORS

10. DIRECTORS TO TAKE DECISIONS COLLECTIVELY

The general rule about decision-making by Trustee Directors is that any decision of the Trustee Directors must be either a majority decision at a meeting or a decision taken in accordance with article 11.

11. UNANIMOUS DECISIONS

11.1 A decision of the Trustee Directors is taken in accordance with this article when all eligible Trustee Directors indicate to each other by any means that they share a common view on a matter.

11.2 Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible Trustee Director or to which each eligible Trustee Director has otherwise indicated agreement in writing.

11.3 References in this article to eligible Trustee Directors are to Trustee Directors who would have been entitled to vote on the matter had it been proposed as a resolution at a Trustee Directors' meeting.

11.4 A decision may not be taken in accordance with this article if the eligible Trustee Directors would not have formed a quorum at such a meeting.

12. CALLING A DIRECTORS' MEETING

12.1 Any Trustee Director may call a meeting of the Trustee Directors by giving notice of the meeting to the Trustee Directors or by authorising the secretary of the Company (if any) to give such notice.

12.2 Notice of any Trustee Directors' meeting must indicate:

- (a) its proposed date and time;
- (b) where it is to take place; and

- (c) if it is anticipated that Trustee 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.

12.3 Notice of a meeting of the Trustee Directors must be given to each Trustee Director, but need not be in writing.

13. PARTICIPATION IN DIRECTORS' MEETINGS

13.1 Subject to the articles, Trustee Directors participate in a Trustee Directors' meeting, or part of a meeting of Trustee Directors, when:

- (a) the meeting has been called and takes place in accordance with the 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.

13.2 In determining whether Trustee Directors are participating in a meeting of Trustee Directors, it is irrelevant where any Trustee Director is or how they communicate with each other.

13.3 If all the Trustee 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.

14. QUORUM FOR DIRECTORS' MEETINGS

14.1 At a meeting of the Trustee Directors, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

14.2 The quorum for the conduct of business of the Trustee Directors shall:

- (a) if there are [5] Trustee Directors, be [3] Trustee Directors, of whom at least one is an Independent Trustee Director and at least one is an Employee Trustee Director; or
- (b) if there are fewer than [5] Trustee Directors, be [2] Trustee Directors, of whom one is an Independent Trustee Director and at least one is an Employee Trustee Director.

14.3 If the total number of Trustee Directors for the time being is less than the quorum required, the Trustee Directors must not take any decision other than a decision to call another meeting of the Trustee Directors or a general meeting so as to enable the members to appoint, or if there is only one member, to call upon that member to select and appoint one or more additional Trustee Directors in accordance with the articles.

15. CHAIRING OF DIRECTORS' MEETINGS

15.1 The Trustee Directors may appoint a Trustee Director to chair their meetings.

15.2 The person so appointed for the time being is known as the chairman.

15.3 The Trustee Directors may terminate the chairman's appointment at any time.

15.4 If the chairman is not participating in a meeting of the Trustee Directors within ten minutes of the time at which it was to start, the participating Trustee Directors must appoint one of themselves to chair it.

16. CASTING VOTE

- 16.1 If the numbers of votes for and against a proposal are equal, the chairman or other Trustee Director chairing the meeting has a casting vote.
- 16.2 But this does not apply if, in accordance with the articles, the chairman or other Trustee Director is not to be counted as participating in the decision-making process for quorum or voting purposes.

17. CONFLICTS OF INTEREST

- 17.1 Subject to articles 17.2 and 17.6, if a proposed decision of the Trustee Directors is concerned with an actual or proposed transaction or arrangement with the Company in which a Trustee Director is interested, that Trustee Director is not to be counted as participating in the decision-making process for quorum or voting purposes.
- 17.2 If article 17.3 applies, a Trustee Director who is interested in an actual or proposed transaction or arrangement with the Company is to be counted as participating in the decision-making process for quorum and voting purposes.
- 17.3 This paragraph applies when:
- (a) the conflict arises by reason only of the fact that the Trustee Director is:
 - (i) an employee or director of the Company with Employee Ownership or of any other member of the Group; or
 - (ii) is an employee or director of another member of the Group;
 - (b) the Trustee Director's conflict of interest arises from:
 - (i) a guarantee given, or to be given, by or to a Trustee Director in respect of an obligation incurred by or on behalf of the Company;
 - (ii) arrangements pursuant to which benefits are made available to employees or former employees of the Company with Employee Ownership or any other member of the Group which do not provide special benefits for Trustee Directors or former Trustee Directors.
- 17.4 Subject to paragraph 17.6, if a question arises at a meeting of Trustee Directors or of a committee of Trustee Directors as to the right of a Trustee Director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any Trustee Director other than the chairman is to be final and conclusive.
- 17.5 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairman, the question is to be decided by a decision of the Trustee Directors at that meeting, for which purpose the chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.
- 17.6 The Trustee Directors may authorise, to the fullest extent permitted by law, any matter proposed to them which would otherwise result in a Trustee Director infringing his duty under section 175 of the Companies Act 2006 to avoid a situation in which such Trustee Director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company and which may reasonably be regarded as likely to give rise to a conflict of interest.

- 17.7 Authorisation of a matter under article 17.6 is effective only if:
- (a) the matter has been proposed to the Trustee Directors by its being submitted in writing for consideration at a meeting of the Trustee Directors or for the authorisation of the Trustee Directors by resolution in writing and in accordance with the Trustee Directors' normal procedures or in such other manner as the Trustee Directors may approve;
 - (b) any requirement as to quorum at the meeting of the Trustee Directors at which the matter is considered is met without counting the Trustee Director in question and any other interested Trustee Director; and
 - (c) the matter has been agreed to without the Trustee Director in question and any other interested Trustee Director voting or would have been agreed to if their votes had not been counted.
- 17.8 Any authorisation of a matter under article 17.6 shall extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised.
- 17.9 The Trustee Directors may authorise a matter on such terms and for such duration, or impose such limits or conditions on it, as the Trustee Directors may decide and may vary the terms of duration of such an authorisation (including any limits or conditions imposed on such authorisation) or revoke such authorisation. A Trustee Director shall comply with any obligations imposed on him by the Trustee Directors pursuant to any such authorisation.
- 17.10 Any terms imposed by the Trustee Directors under article 17.9 may include (without limitation):
- (a) whether the Trustee Director may vote (or be counted in the quorum) at a meeting of the Trustee Directors or any committee or sub-committee of the Trustee Directors in relation to any resolution relating to the relevant matter;
 - (b) whether the Trustee Director is to be given any documents or other information in relation to the relevant matter; and
 - (c) whether the Trustee Director is to be excluded from discussions in relation to the relevant matter at a meeting of the Trustee Directors or any committee or sub-committee of the Trustee Directors or otherwise.
- 17.11 The Trustee Director shall not be required to disclose any confidential information obtained in relation to the relevant matter (other than through his position as a Trustee Director of the Company) to the Company or to use to apply it in performing his duties as a Trustee Director if to do so would result in a breach of a duty or obligation of confidence owed to him in relation to or in connection with that matter.
- 17.12 A Trustee Director does not infringe any duty he owes to the Company by virtue of sections 171 to 177 of the Act if he acts in accordance with such terms, limits and conditions (if any) as the Trustee Directors may impose in respect of its authorisation of the Trustee Director's conflict of interest or possible conflict of interest under article 17.6.
- 17.13 A Trustee Director shall not, save as otherwise agreed by him, be accountable to the Company for any benefit which he (or a person connected with him) derives from any matter authorised by the Trustee Directors under article 17.6 and any contract, transaction or arrangement relating thereto shall not be liable to be avoided on the grounds of any such benefit.
- 17.14 A reference in these articles to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

18. DIRECTORS' DISCRETION TO MAKE FURTHER RULES

Subject to the articles, the Trustee 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 Trustee Directors.

19. DIRECTORS' REMUNERATION

19.1 Except as mentioned in article 4.1, Trustee Directors are not entitled to remuneration for their services to the Company as Trustee Directors.

19.2 An Independent Trustee Director is not accountable to the Company for any remuneration which he or she receives as a Trustee Director in accordance with article 4.1.

20. DIRECTORS' EXPENSES

The Company may pay any reasonable expenses which the Trustee Directors properly incur in connection with their attendance at:

- (a) meetings of Trustee Directors;
- (b) general meetings; or
- (c) otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the Company.

PART 3

MEMBERS

BECOMING AND CEASING TO BE A MEMBER

21. APPLICATIONS FOR MEMBERSHIP

No person shall become a member of the Company unless:

- (a) that person has completed an application for membership in a form approved by the Trustee Directors, and
- (b) the existing member or members has or have, by ordinary resolution, approved the application or, if the new member or members are to be appointed upon or in consequence of the withdrawal from membership of a sole member of the Company, the Trustee Directors have approved the application.

22. TERMINATION OF MEMBERSHIP

22.1 A member may withdraw from membership of the Company by giving 7 days' notice to the company in writing provided always that a sole member of the Company may not withdraw from membership of the Company before the appointment of one or more other members of the Company.

22.2 Membership of the Company is not transferable.

- 22.3 A person's membership terminates when that person dies or ceases to exist or when such person withdraws from membership in accordance with article 22.1.

ORGANISATION OF GENERAL MEETINGS

23. ATTENDANCE AND SPEAKING AT GENERAL MEETINGS

- 23.1 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.
- 23.2 A person is able to exercise the right to vote at a general meeting when:
- (a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
 - (b) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- 23.3 The Trustee Directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- 23.4 In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.
- 23.5 Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

24. QUORUM FOR GENERAL MEETINGS

- 24.1 If the Company has only one member, every resolution of the member shall be passed as a written resolution in accordance with Chapter 2 of Part 13 of the Companies Act 2006.
- 24.2 If the Company has more than one member, no business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum and for these purposes a quorum shall be any number of members being more than one-half of the members of the Company.

25. CHAIRING GENERAL MEETINGS

- 25.1 If the Company has more than one member and the Trustee Directors have appointed a chairman, the chairman shall chair general meetings of members if present and willing to do so.
- 25.2 If the Trustee Directors have not appointed a chairman, or if the chairman is unwilling to chair such meeting or is not present within ten minutes of the time at which such meeting was due to start:
- (a) the Trustee Directors present, or
 - (b) (if no Trustee Directors are present), the meeting

must appoint a Trustee Director or member to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting.

25.3 The person chairing a meeting in accordance with this article is referred to as “the chairman of the meeting”.

26. ATTENDANCE AND SPEAKING BY DIRECTORS AND NON-MEMBERS

26.1 Trustee Directors may attend and speak at general meetings of members, whether or not they are members.

26.2 The chairman of the meeting may permit other persons who are not members of the Company to attend and speak at a general meeting.

27. ADJOURNMENT

27.1 If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting must adjourn it.

27.2 The chairman of the meeting may adjourn a general meeting at which a quorum is present if:

- (a) the meeting consents to an adjournment, or
- (b) it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

27.3 The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.

27.4 When adjourning a general meeting, the chairman of the meeting must:

- (a) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the Trustee Directors, and
- (b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

27.5 If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the Company must give at least 7 clear days’ notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given):

- (a) to the same persons to whom notice of the Company’s general meetings is required to be given, and
- (b) containing the same information which such notice is required to contain.

27.6 No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

VOTING AT GENERAL MEETINGS

28. VOTING: GENERAL

A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

29. ERRORS AND DISPUTES

29.1 No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

29.2 Any such objection must be referred to the chairman of the meeting whose decision is final.

30. POLL VOTES

30.1 A poll on a resolution may be demanded:

- (a) in advance of the general meeting where it is to be put to the vote, or
- (b) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.

30.2 A poll may be demanded by:

- (a) the chairman of the meeting;
- (b) the Trustee Directors;
- (c) two or more persons having the right to vote on the resolution; or
- (d) a person or persons representing not less than [one tenth] of the total voting rights of all the members having the right to vote on the resolution.

30.3 A demand for a poll may be withdrawn if:

- (a) the poll has not yet been taken, and
- (b) the chairman of the meeting consents to the withdrawal.

30.4 Polls must be taken immediately and in such manner as the chairman of the meeting directs.

31. CONTENT OF PROXY NOTICES

31.1 Proxies may only validly be appointed by a notice in writing (a "proxy notice") which:

- (a) states the name and address of the member appointing the proxy;
- (b) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;
- (c) is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the Trustee Directors may determine; and
- (d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.

31.2 The Company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

- 31.3 Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.
- 31.4 Unless a proxy notice indicates otherwise, it must be treated as:
- (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and
 - (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

32. DELIVERY OF PROXY NOTICES

- 32.1 A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the Company by or on behalf of that person.
- 32.2 An appointment under a proxy notice may be revoked by delivering to the Company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- 32.3 A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- 32.4 If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

33. AMENDMENTS TO RESOLUTIONS

- 33.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:
- (a) notice of the proposed amendment is given to the Company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine), and
 - (b) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.
- 33.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:
- (a) the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and
 - (b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- 33.3 If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution.

PART 4

ADMINISTRATIVE ARRANGEMENTS

34. MEANS OF COMMUNICATION TO BE USED

- 34.1 Subject to the articles, anything sent or supplied by or to the Company under the articles may be sent or supplied in any way in which the Companies Act 2006 provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the Company.
- 34.2 Subject to the articles, any notice or document to be sent or supplied to a Trustee Director in connection with the taking of decisions by Trustee Directors may also be sent or supplied by the means by which that Trustee Director has asked to be sent or supplied with such notices or documents for the time being.
- 34.3 A Trustee Director may agree with the Company that notices or documents sent to that Trustee 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.

35. COMPANY SEALS

- 35.1 Any common seal may only be used by the authority of the Trustee Directors.
- 35.2 The Trustee Directors may decide by what means and in what form any common seal is to be used.
- 35.3 Unless otherwise decided by the Trustee Directors, if the Company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.
- 35.4 For the purposes of this article, an authorised person is:
- (a) any Trustee Director of the Company;
 - (b) the secretary of the Company (if any); or
 - (c) any person authorised by the Trustee Directors for the purpose of signing documents to which the common seal is applied.

36. INSPECTION OF ACCOUNTS AND OTHER RECORDS

- 36.1 A sole member of the Company shall have the right to inspect any of the Company's accounting or other records or documents on giving reasonable notice to the Trustee Directors.
- 36.2 Subject to article 36.1, except as provided by law or authorised by the Trustee 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 member.

37. PROVISION FOR EMPLOYEES ON CESSATION OF BUSINESS

The Trustee 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 Trustee Director or

former Trustee Director or shadow Trustee 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.

DIRECTORS' INDEMNITY AND INSURANCE

38. INDEMNITY

- 38.1 Subject to article 38.2, a relevant Trustee Director of the Company or an associated company may be indemnified out of the Company's assets against:
- (a) any liability incurred by that Trustee Director in connection with any negligence, default, breach of duty or breach of trust in relation to the Company or an associated company;
 - (b) any liability incurred by that Trustee Director in connection with the activities of the Company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006); or
 - (c) any other liability incurred by that Trustee Director as an officer of the Company or an associated company.
- 38.2 This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.
- 38.3 In this article:
- (a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and
 - (b) a "relevant Trustee Director" means any Trustee Director or former Trustee Director of the Company or an associated company.

39. INSURANCE

- 39.1 The Trustee Directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant Trustee Director in respect of any relevant loss.
- 39.2 In this article:
- (a) a "relevant Trustee Director" means any Trustee Director or former Trustee Director of the Company or an associated company;
 - (b) a "relevant loss" means any loss or liability which has been or may be incurred by a relevant Trustee Director in connection with that Trustee Director's duties or powers in relation to the Company, any associated company or any pension fund or employees' share scheme of the Company or associated company; and
 - (c) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

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Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

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