



## Rules of BlueSkies by Butlins

### 1. PRELIMINARY

No regulations set out in any statute, or in any statutory instrument made under any statute, concerning companies shall apply of itself and without express reference as regulations or Rules of the Club.

These Rules include the Regulations and Schedules attached hereto

### 2. DEFINITIONS

In these Rules and the Regulations and Schedules attached hereto unless the context otherwise requires: -

#### **“Accommodation Assets”**

means Accommodation Units, Common Facilities, Moveables, title to which is held by an Owning Company from time to time under the Trust Deed and any other assets deriving therefrom;

#### **“Accommodation Type”**

means certain Accommodation Units of varying maximum occupancy ratings within a designated group of Accommodation Units at a particular Resort which may consist of several separate buildings within close proximity of each other;

#### **“Accommodation Unit”**

means a residential unit which forms part of the Accommodation Assets from time to time together with the common rights, amenities, services, fixtures and fitting therein and thereon and any other Accommodation Assets the use and enjoyment of which are necessary for the use and enjoyment of the residential unit;

#### **“Agreement to Purchase” or “Purchase Agreement”**

means an agreement in such form not inconsistent with the Rules as the Founder Member may from time to time specify pursuant to which a Member may apply to purchase Points Rights from the Founder Member or an Authorised Person or an Applicant may apply for Membership and to purchase Points Rights from the Founder Member conditional upon becoming a Member;

#### **“Aggregate Management Costs”**

means all costs arising from the management and administration of the Club (including its whole property and undertaking wherever situated and relevant proportion of costs related to the running of the Resort in which the Accommodation Assets are situated and to which the Members have access which may include a reasonable provision for reserves, bad debts and contingencies to creating a reserve fund for such items, the operation of the Points System and all reservation services associated therewith and the maintenance and management of the Accommodation Assets together with the costs relating to the use by the Club and its members of facilities, services and/or amenities at the Resort where the Accommodation Units are situated provided or procured by the Founder Member or Management Company to be apportioned and recoverable as Membership Fees from Members pursuant to Rule 14 and including (without prejudice to the generality of the foregoing) all costs and expenses attendant on the proper and continuing administration of the Club and the Owning Companies; the Management Company's costs and fees (if any) including all overhead expenses and outlays and outgoings properly incurred by such Management Company in the performance of its duties under the management agreement by which it is appointed including the salaries and wages of all relevant employees of the Management Company; all taxes, maintenance fees and other outgoings of whatever nature payable in respect of the Accommodation Assets and operation of the Points System; the costs and remuneration of any management sub-contractors; the costs and remuneration of the Trustee; the fees of any of the auditors and legal advisers of the Founder Member; the fees of the Management Company payable in respect of the services provided pursuant to the management agreement under which it is appointed (which fees shall be equivalent to an amount not greater than 15% of the Aggregate Management Costs) and the expenses of discharging any indemnity given by the Founder Member to any party;

**"Applicant"**

means a person who has applied to purchase Points Rights in terms of an Agreement to Purchase in the form set out in the Schedules;

**"Authorised Person"**

means any person or company, authorised by the Founder Member to whom authority may be delegated;

**"Bonus Points"**

means such Issuable Points as the Founder Member may issue to a Member by way of bonus from time to time;

**"Common Facilities"**

means facilities and amenities (if any) relating to Accommodation Units and serving in common for the use by Members during Use Periods;

**"Club"**

means BlueSkies by Butlins;

**"Deed of Trust"**

means the Deed of Trust executed by the Founder Member and the Trustee contemporaneously herewith a copy of which is annexed hereto;

**“Final Year”**

means the calendar year ending 31 December 2080;

**“the Founder Member”**

means Butlins Skyline Limited, a company incorporated in England and Wales whose registered office is at 1 Park Lane, Hemel Hempstead, Hertfordshire HP2 4YL, England or such other person or company as may acquire the rights and obligations of the Founder Member;

**“Home Priority”**

means the basis of exchange whereby Points may be exchanged in accordance with the Points System with priority reservation rights in respect of a fixed period in an Accommodation Type at a specified Resort each year for the duration of the Points Rights in accordance with the terms of Rule 10(e);

**“Home Priority Points”**

means Points that have been issued with a Home Priority basis of exchange;

**“Issuable Points”**

means the Points allocated to the Founder Member pursuant to his Issuable Points Rights in terms of Rule 9(a), together with any Points forfeited to the Founder Member in terms of Rule 4 and less any Bonus Points issued by the Founder Member;

**“Issuable Points Rights”**

means Points Rights held by the Founder Member and capable of issue to Members;

**“Management Company”**

means any company, or such other party as may at any time be appointed by the Founder Member to undertake the whole or any part of the management of the affairs of the Club and the administration of the Points System and the management, maintenance, repair and administration of any Resort which comprises any of the Accommodation Assets. In the absence of any such appointment references in these Rules to a Management Company shall be read and construed as references to the Founder Member;

**“Members”**

means the members from time to time of the Club including, where appropriate, the Founder Member;

**“Membership”**

means membership of the Club;

**“Membership Certificate”**

means a certificate issued to a Member pursuant to Rule 4(c), Rule 7(b)(ii) or 8(d)(ii);

**“Membership Fees”**

means the fees payable by the Members referred to in Rule 14;

**“Moveables”**

means the furnishings, equipment, utensils and appurtenances located at or in any Accommodation Unit;

**“Occupancy Rights”**

means the right to occupy and use unspecified Accommodation Units in an Accommodation Type at a Resort during Use Periods in accordance with the Points System;

**“Office”**

means the office of the Club;

**“Owning Company”**

means any non-trading company exclusively owned and controlled by the Trustee which holds unencumbered Title to the various Accommodation Assets from time to time (and includes any entity being the nominees of the Trustee and being exclusively owned and controlled by the Trustee);

**“Personal Representatives”**

means personal representatives, trustee in bankruptcy or liquidator or any other similar representatives in any jurisdiction;

**“Points”**

means the currency by which Use Periods are graded and which are issued to Members in the form of vouchers which can be exchanged for Occupancy Rights, merchandise, consumer goods, use of facilities, and such other goods or services as may be offered from time to time;

**“Points Grading”**

means the grading of Use Periods by means of Points as shown on the Points Tables;

**“Points Holding”**

means the number of Points which a Member has to his credit at any one time;

**“Points Rights”**

means the number of Points which a Member is entitled to be credited with each Year for the duration of the Points Rights on the anniversary of their purchase of the Points Rights or in the case of the Founder Member on 1<sup>st</sup> January each Year;

**“Points System”**

means the system of acquiring Points Rights issued in the form of a points voucher and the allocation of Points and their exchange for Occupancy Rights all as set forth in the Rules and in the Regulations;

**“Points Tables”**

means the tables to be included in the brochures to be prepared by the Management Company pursuant to Rule 12 and which shall contain the Points Grading and duration of Use Periods in Accommodation Units and Accommodation Types all as determined by the Founder Member in terms of Rule 6(d);

**“Resort”**

means a holiday resort complex wheresoever situated in the world owned or controlled by the Founder Member either comprising Accommodation Assets or of which Accommodation Assets form a part;

**“Regulations”**

means such regulations not inconsistent with the Rules as may be made by the Founder Member from time to time, and which are attached to these Rules or otherwise provided to Members from time to time following admission to Membership;

**“Rules”**

means these Rules of the Club as may be amended from time to time;

**“Title”**

means, subject to the provisions of the Trust Deed, the rights of any Owing Company in respect of Accommodation Assets being such rights and or estates as shall under the law of the jurisdiction concerned procure the vesting in the Owing Company of unencumbered rights in respect of Accommodation Units which may be an absolute freehold estate free of all encumbrances (or the equivalent of such an estate under the legal jurisdiction in which the Accommodation Unit is situated) provided that the Trustee shall be satisfied that the net effect of such rights shall be to secure for the Owing Company the exclusive occupation and enjoyment of Accommodation Units and in respect of Common Facilities and Moveables “Title” shall include such rights as shall enable reasonable enjoyment and use of the Common Facilities and Moveables;

**“Transfer Agreement”**

means an agreement in such form consistent with the Rules as the Management Company may from time to time specify pursuant to which Points Rights may be transferred by a Member (on condition that the transferee is or becomes a Member) and the transferee, if not already a Member, shall apply to the Founder Member for Membership whose decision on entry or not to Membership shall be absolute;

**“Trust Deed”**

means a deed of trust in such form not inconsistent with the Rules and which may comprise various Trust Deeds and “Deed of Trust” shall be construed accordingly;

**“Trustee”**

means any independent trustee referred to as such in a Trust Deed;

**“Unissuable Points Rights”**

means Points Rights held by the Company for the purposes envisaged in the Rules and in the Regulations and which shall not attract any Membership Fees;

**“Use Period”**

means a period of consecutive nights shown as such on a Points Table during which the Occupancy Rights of Members shall be exercisable;

**“Use Years”**

means in respect of Points Rights all Years during which the Member is entitled to be allocated with Points;

**“Year”**

means a calendar year from 1st January to 31st December (inclusive).

**3. INTERPRETATION**

Words importing the singular number only include the plural and vice versa and words importing the masculine gender only include the feminine and words denoting natural persons shall include legal persons and vice versa.

To the extent that any rights or duties at any time hereafter purportedly given to a Management Company (if any) under these Rules cannot be validly enforced by or against such Management Company because the rights or duties purportedly given as aforesaid have not been validly given, then such rights or duties shall be enforceable by or against the Founder Member.

**4. MEMBERS**

(a) The Founder Member and such other persons as are admitted to Membership in accordance with the Rules shall be Members. The Founder Member (or such person or persons as the Founder Membership may be transferred to pursuant to Rule 4(i)) shall be known as the Founder Member and Founder Membership shall be a separate class of Membership, the remaining Members being classed as

having Ordinary Membership. All the Members apart from the Founder Member shall be Ordinary Members.

- (b)** The Founder Member or an Authorised Person only shall have the power to admit persons to be Members and shall admit any person (except the Trustee) not being a minor, who has applied to be a Member and has agreed to acquire Points Rights subject only to his becoming a Member, all in terms of a validly executed Agreement to Purchase or Transfer Agreement. On admission to Membership each Member's name shall immediately be entered in the register of Members.
- (c)** On admission to Membership a person shall immediately be entitled to have their name entered in the register of Members and to receive a Membership Certificate issued by the Trustee on behalf of the Founder Member or an Authorised Person which Membership Certificate shall be prima facie evidence of the Member's Membership or in the event of a further transfer of such Points Rights by or on behalf of the Founder Member.
- (d)** No person shall be admitted to Membership unless he shall have agreed to be bound by the Rules and the Regulations and the Deed of Trust.
- (e)** A Member shall cease to be a Member if he ceases to own any Points Rights or in any of the following circumstances:-

  - (i) if by giving at least seven clear days notice in writing lodged at the Office and accompanied by his Membership Certificate he resigns from Membership; or
  - (ii) if his Membership is cancelled pursuant to Rule 7(d) or Rule 13; or
  - (iii) if his Membership ceases pursuant to Rule 8(f).
- (f)** If a Member ceases to be a Member notwithstanding the termination of his Membership (and all rights attaching thereto) he (or his Personal Representatives) shall continue to own the Points Rights owned and shall remain responsible for all continuing liabilities in respect thereof (including Membership Fees and any other appropriate dues or charges) until such time as he (or his Personal Representatives) transfers the Points Rights pursuant to Rule 8 or they are sold on his (or their) behalf pursuant to Rule 4(g). However, his continuing to own such Points Rights shall not entitle him to exercise any Occupancy Rights or other rights or to receive any allocation of Points (which rights and allocation of Points shall instead be forfeited to the Founder Member) in respect thereof except in the case of Rule 8(f) where his Personal Representatives shall continue to be entitled to exercise the rights and receive Points allocations in respect thereof.
- (g)** If the former Member fails to complete the transfer of his Points Rights within one month of his ceasing to be a Member pursuant to Rule 4(e)(i) or Rule 4(e)(ii) or his Personal Representatives fail to complete the transfer of his Points Rights within one year of his ceasing to be a Member pursuant to Rule 8(f) then the Founder Member may without further notice (but shall not be required to) sell any Points Rights belonging to the said former Member. Any such sale shall be effected by the Management Company and all matters relating to the sale (including the price payable) shall be at the discretion of the Founder Member. On completion of the sale the Founder Member shall be entitled to deduct from

the proceeds of sale (a) the whole expenses of the sale (b) any legal expenses incurred in the sale or for any advice prior to the sale (c) a reasonable charge to cover the work of the Founder Member to the extent that this is not covered by any agent's commission or solicitor's fees (d) all sums due by the former Member to the Club and/or the Founder Member (e) any outstanding monies due by the former Member to the Founder Member in terms of the relevant Purchase Agreement and (f) any outstanding loan (together with any interest and other charges) due by the former Member in connection with the Points Rights and thereafter the Founder Member will remit the deductions as appropriate and remit the net proceeds of sale to the former Member. To the extent that the proceeds of sale are insufficient to meet all the deductions the former Member shall remain liable therefor. For the purposes of such a sale, the former Member will surrender the Membership Certificate to the Founder Member when called upon to do so (and in the absence of surrender such Membership Certificate shall be void), and the former Member shall be deemed hereby to have irrevocably appointed the Founder Member as his attorney and/or agent to carry through the sale and to grant all deeds or other documents in implementation thereof.

In the case of a joint ownership of Points Rights the Founder Member shall have the right to demand from the first named Member or from any other former joint Member it may choose any sums which are payable by the former Member of those Points Rights.

- (h)** Rule 4(e)(i) and Rule 7(d) shall not apply to the Founder Member.
- (i)** The Founder Member shall be entitled to transfer the Founder Membership on such terms and subject to such conditions not inconsistent with the Rules as it in its sole discretion shall deem appropriate and the Trustee shall acknowledge any such transfer to the proposed assignee of the Founder Member in order that such assignment may be or become fully effective and binding on the parties.

## **5. MEETINGS**

- (a)** Where the Founder Member (or the Trustee acting jointly with the Founder Member or separately as the case may be) deems it necessary or appropriate, it shall, in the name of the Club, or it shall instruct the Trustee to, or the Trustee shall in its own right, convene a general meeting of the Club at such time and in such place as it shall specify on 21 (twenty-one) days written notice to Members. For the avoidance of doubt there will be no necessity to hold any annual general meetings.
- (b)** Ordinary Members (in the case of joint Members only the first named in the Agreement to Purchase) shall be entitled to receive written notice of and to attend and to speak at general meetings of the Club and shall have a right to vote on a show of hands or on a poll upon the basis of one vote for such number of points as shall represent the Points registered in the Member's name from time to time.
- (c)** The Founder Member shall be entitled to receive written notice of and to attend and to speak at general meetings of the Club and, subject as provided further in this Rule, shall have a right to vote on a show of hands or on a poll shall have one vote in respect of each Issuable Point not already issued to a Member to which it was entitled at close of business on the day preceding the date of issue



of the notice in respect of that general meeting. Until all the Issuable Points have been issued to Ordinary Members and whilst the Founder Member manages the Club and/or the Points System, the Founder Member shall always be granted such number of votes at a general meeting (irrespective of the number of Points held by the Founder Member) as shall equal one more than the number of votes cast at the relevant general meeting.

- (d) At every general meeting a chairman appointed by the Founder Member shall preside. At all meetings in the case of an equality of votes the chairman shall have the casting vote. Any resolution to be proposed otherwise than by the Founder Member at any general meeting of the Club shall unless otherwise provided in these Rules be submitted in writing to the Founder Member not less than 28 days before the date of the meeting and shall be signed by the proposer and seconder and at least 5% in number of the Ordinary Members of the Club not being in breach of any provision of these Rules. Any such resolution involving a change in these Rules shall require the consent of the Founder Member, the Trustee and a 75% majority of all votes cast. At all general meetings of the Club the quorum shall be four Members present in person. For the avoidance of doubt no Member who is in breach of any provision of these Rules shall be entitled to exercise any rights in respect of resolutions or meetings.
- (e) The normal rules for convening and holding general meetings and the use of proxies shall apply and the Trustee's decision on the interpretation of such normal rules shall be final and binding on the Members.

## **6. THE POINTS SYSTEM**

The Points System shall be conducted in the following way: -

- (a) Forthwith upon execution: -
  - (i) For and in the interests of the Members, the Founder Member shall undertake to carry out all of the obligations and duties of management set out in Rule 18.
- (b) Subject to the provisions and rights of the Founder Member set out herein the Founder Member alone shall be entitled to transfer Accommodation Assets to the Trustee in the manner contemplated in Rule 6(c).
- (c) The Founder Member shall transfer or procure the transfer of the Title to Accommodation Assets to the Trustee or as the Trustee may direct to be held in trust to secure the Members' Occupancy Rights. The Founder Member shall be responsible for the management, maintenance and administration of the Accommodation Assets but may appoint a Management Company to fulfil these responsibilities if it so elects. If a Management Company is appointed its costs in fulfilling the responsibilities agreed to be undertaken by such Management Company shall be borne by the Members as part of the Membership Fees.
- (d) Upon the transfer of each Accommodation Unit pursuant to Rule 6(c), the Founder Member shall, subject to Rule 6(e), determine the total number of annual Points, the total number and duration of Issuable Points Rights and Unissuable Points Rights relative thereto and the Points Grading thereof.

Subject to Rule 6(e) the Founder Member may from time to time change the determinations made pursuant to this Rule 6(d):

- (i) for the purposes of making annual adjustments to take into account varied entertainment offerings and other such seasonal changes at Resorts;
  - (ii) on the introduction of additional Accommodation Units at the same Resort from time to time;
  - (iii) for such other purposes, provided that any such change shall not become effective unless the Trustee shall first certify in writing that such change does not prejudice the interests of Members and does not in any way release the Club or the Founder Member from any responsibility until the proposed change is certified as aforesaid. In the event of a disagreement between the Founder Member and the Trustee on an issue under this Rule 6(d)(ii) which is not resolved within 14 days of the proposed change being notified to the Trustee by the Member, the parties agreeing to act in good faith to resolve such disagreement within such 14 day period, the issue may be referred to an independent expert for determination. The expert shall act as an expert and not as an arbitrator. The expert's written decision on the matters referred to him shall be final and binding in the absence of manifest error or fraud.
- (e)** The total number and duration of Points Rights in the Points System shall never be more than the total number of annual Points relative to the duration of Accommodation Assets. Furthermore:
- (i) The total number of Points Rights issued with Use Years included in any particular Year shall not exceed the total number of annual Points relative to Accommodation Units entitled to be occupied during that Year.
  - (ii) The total number of annual Points relative to all Accommodation Assets shall not be changed other than by the transfer of new Accommodation Assets to the Trustee.
  - (iii) For the purposes of these Rules the duration of Points Rights means the number of Years in which they will entitle their owner to be credited with Points and the duration of Accommodation Assets means the number of Years during which the owner will be potentially entitled to occupy the relevant Accommodation Unit. On the expiry of their duration Points Rights shall lapse and shall be immediately deleted from the Club's records.
- (f)** The Founder Member shall procure that maintenance of the balance required by Rule 6(e) is each Year checked and certified by the Trustee or such independent third party as the Trustee and the Founder Member may agree such that in the absence of any agreement the appointment of such independent third party shall be subject to the provision for arbitration in Rule 24. Upon the application of either the Founder Member or the Trustee such third party shall be appointed by the President for the time being of the Institute of Arbitrators (UK). In the event that the balance required by Rule 6(e) fails to be maintained then the Founder Member shall within 60 days procure the transfer of sufficient additional Accommodation Assets to the Trustee pursuant to Rule 6(c) to redress the balance.

- (g) Unissuable Points Rights shall be held by the Founder Member for the purposes of providing Use Periods for maintenance, repair and upkeep of Accommodation Assets and to reduce demand to provide greater flexibility for reservations.
  - (h) In exchange for transferring Accommodation Assets to the Trustee pursuant to Rule 6(c) the Founder Member shall, subject to the terms of the Rules, be entitled to all Issuable Points Rights arising therefrom and any Issuable Points allocated pursuant thereto. The Founder Member shall alone have the right to issue such Issuable Points to Members or Applicants at such price and subject to such conditions (not inconsistent with the provisions of Rule 7 or any other provisions of the Rules) as the Founder Member may determine in its sole discretion from time to time. Points Rights issued to Members shall revert to the Founder Member at the end of their final Use Year if their duration has not expired.
  - (i) Where new Accommodation Assets are transferred to the Trustee pursuant to Rule 6(c) the number of annual Points relative thereto shall be determined in a manner consistent with existing Accommodation Assets.
  - (j) Title to the Accommodation Assets shall be held by the Trustee pursuant to the terms of the Trust Deed. The Founder Member shall be entitled to request the Trustee to return any surplus Accommodation Assets to it or its nominees at any time but only if there are sufficient Issuable Points Rights to retain the balance required by Rule 6(e) and the Trustee shall do so promptly following such request. Otherwise, the Founder Member shall not be entitled to request the Trustee to dispose of any interest or otherwise deal in any Accommodation Assets without the sanction of a Resolution of the Club in General Meeting.
- (i) In the event that the Trustee returns any Accommodation Assets to the Founder Member then the number of annual Points relative thereto shall be determined in a manner consistent with the existing Accommodation Assets and an equivalent number of Issuable and Unissuable Points Rights and shall be cancelled.

## **7. ISSUE OF POINTS RIGHTS**

- (a) The Founder Member or an Authorised Person shall be entitled to issue Points Rights to the extent that there are Points Rights available for issue in accordance with the Points System.
- (b) The Founder Member or an Authorised Person may sell Points Rights in the following manner: -
  - (i) it shall enter into an Agreement to Purchase with the Member or Applicant to whom the Points Rights are to be issued, which shall state the Points Rights' Use Years and in the case of Home Priority the Accommodation Type and Resort to which the priority relates and which Agreement to Purchase shall be stamped (if necessary) and delivered to the Trustee;
  - (ii) within 120 days of receipt of a duly executed Agreement to Purchase together with confirmation from the Founder Member that the price has been paid in full the Trustee shall procure that the Club's records are adjusted to reflect the

issue of any Points Rights to an Applicant and that a Membership Certificate is issued which Certificate shall be prima facie evidence of his ownership of the Points Rights.

- (c) The Trustee shall be entitled to charge a reasonable fee for the registration of an issue of Points Rights which fee shall be agreed in advance with the Founder Member and may be revised by agreement between the Trustee and the Founder Member from time to time.
- (d) In the event that any Member fails without good cause to pay on the due date any monies payable to the Founder Member in terms of an Agreement to Purchase or otherwise or any monies payable to a lender in respect of a loan in connection with the Points Rights then the Founder Member shall at any time thereafter be entitled (without prejudice to any other rights or remedies available whether or not exercised) after giving to the Member 30 (thirty) days written notice of its intention to do so, to cancel his Membership by notice in writing to the Member and in that event the provisions of Rule 4(f) and Rule 4 (g) shall apply.

## **8. TRANSFER OF POINTS RIGHTS**

- (a) A Member shall not be entitled to transfer any Points Rights to which he is entitled except in accordance with the following provisions of this Rule 8.
- (b) The Founder Member at its sole discretion may buy back points from a Member wishing to transfer in accordance with the Regulations.
- (c) The Founder Member has the right of first refusal in respect of a proposed transfer of Points Rights by a Member to a third party, provided that any such transfer to the Founder Member shall be on the same terms and conditions, including financing, as the proposed third party had offered to the Member. The Member shall give to the Founder Member 30 (thirty) days written notice of his proposed transfer to a third party. If within that 30 (thirty) day period, the Founder Member decides not to exercise his right to the transfer of the Points Rights to itself, the Member shall be entitled to transfer in accordance with the provisions of this Clause.
- (d) Any Member may sell or otherwise dispose of Points Rights in the following manner:
  - (i) he or his personal representatives as the case may be, shall deliver to the Founder Member or the Management Company (as the case may be) the following documents: -
    - (A) a Transfer Agreement validly executed by the Member or his Personal Representatives and by the proposed transferee;
    - (B) the relevant Membership Certificate(s) and such other documentation as the Management Company may reasonably require to evidence the Members' good title to the Points Rights, the validity of the transfer and the transferee's proposed Membership ; and

- (C) a fee payable pursuant to Rule 7(c) above to the Founder Member and to the Trustee.
- (e) Within 120 days of receipt of all the items referred to in Rule 8(d)(i) the Founder Member subject to Rules 8 and any regulation introduced pursuant to Rule 8(b) shall: -
  - (i) if the Member has transferred all of the Points Rights to which he is entitled, procure that the Member's Membership is terminated by the Trustee and that his name is deleted from the Register of Members; and
  - (ii) procure that the Club's records are adjusted to reflect the transfer of the Points Rights to the transferee and that a new Membership Certificate or Membership Certificates is or are issued by the Trustee as appropriate;
- (f) Whenever Points Rights are transferred any unused Points deriving therefrom shall automatically be transferred with them.
- (g) In the event of the death or insolvency of any Member, or the winding up of a Member being a corporation, his Membership shall terminate and Rule 4(f) shall apply. However, his Personal Representatives may agree to sell the Points Rights of such Member to a third party or to vest same in a beneficiary and in either case the terms of this Rule 8 shall apply to any resulting transfer. In the event of no such agreement being made, or the Points Rights not being transferred to a beneficiary within one year of the date of death, insolvency or winding up as the case may be, the Founder Member shall be entitled, but not obliged, to exercise its rights under or pursuant to Rule 4(g).
- (h) The Founder Member or the Trustee may refuse to register or give effect to a transfer where the transferor has failed to pay any sums due by him to the Club, the Management Company or to the Trustee.
- (i) No Member shall be entitled to transfer any Points Rights to an incorporated body or to any commercial organisation unless the Founder Member has previously given its consent in writing to such transfer.
- (j) No Member shall be entitled to transfer any Points Rights unless and until all monies payable to the Founder Member in relation to the purchase thereof and any outstanding loan (together with any interest and other charges) due by the transferor in connection therewith have been paid in full including any applicable fee charged by the Founder Member for facilitating the transfer. Any purported transfer contrary to this Rule 8(j) may be or become voidable at the discretion of the Founder Member.
- (k) Save with the prior written consent of the Founder Member, no Member shall be entitled to use any third party resale entity or person in respect of his Points, Points Rights or Membership.
- (l) No limitation or restriction as to the transfer of any Points Rights as contemplated herein shall in any way apply to the Founder Member.
- (m) The Founder Member has the absolute right to approve or not admission to Membership of each transferee.

## **9. ALLOCATION OF POINTS**

**(a)** The Founder Member shall procure that: -

- (i) On the Anniversary each year of the original purchase of Points Rights each Member is allocated with that number of Points to which he is entitled in terms of his Points Rights in the form of a voucher; and
- (ii) on the date upon which a Accommodation Unit is transferred to the Trustee in accordance with Rule 6 the Founder Member is allocated with such number of Points as bears the same proportion to the total number of Issuable Points Rights determined in respect of that Accommodation Unit as the remainder of the current Year bears to a full year any fractions of a Point being rounded down to the nearest whole Point; and
- (iii) on 1st January each year the Founder Member is allocated with that number of Points to which it is entitled in terms of its Issuable Points Rights.

Points allocated pursuant to the foregoing Rules 9(a)(ii) and (iii) shall be Issuable Points.

**(b)** Following the allocation of Points pursuant to Rule 9(a): -

- (i) The Founder Member shall be entitled to issue any Issuable Points to Members as Bonus Points or to use such Issuable Points to reserve and exercise Occupancy Rights or to exchange them for merchandise, consumer goods, use of facilities, or other goods or service, in accordance with the provisions of Rule 10.
- (ii) Where an Agreement to Purchase specifies the current Year as the first Use Year then the Founder Member shall be deemed to have issued the same number of Bonus Points to the Purchaser as the number of Points Rights sold and the Founder Member's records shall be amended accordingly.
- (iii) A Member shall be entitled to use Points forming part of his Points Holding to reserve and exercise Occupancy Rights or to exchange them for merchandise, consumer goods, use of facilities, or other goods or services, in accordance with the provisions of Rule 10.

**(c)** Save as provided in Rule 10(b) all Points shall lapse twelve calendar months after the date on which they were allocated and no Member shall be entitled to issue, or use to reserve or exercise Occupancy Rights or use to exchange for merchandise, consumer goods, use of facilities, or other goods or services, any Points which have lapsed. All Points which have lapsed shall immediately be deleted from the Founder Member's records.

## **10. OCCUPANCY RIGHTS**

**(a)** Each Member shall be entitled to use Points forming part of his Points Holding or borrowed in terms of Rule 10(b) at any time and from time to time to reserve and exercise Occupancy Rights in unspecified Accommodation Units in specified Accommodation Types in accordance with the then current Points

Tables but subject to the rules applicable to reservations and use as contained in the Regulations from time to time and the payment of any appropriate fee as set out from time to time in the Schedule of Club Fees attached to the Regulations.

- (b) A Member shall not be entitled to carry Points forward to following Use Years or borrow Points from following Use Years for use in the current Use Year except as may be provided in the Regulations from time to time.
- (c) The reservation and use of Occupancy Rights in any year by a Member is subject to such limitations on availability as may arise from time to time by reason of competing applications for such Occupancy Rights by other Members and the ranking of such competing applications shall be determined by the Management Company on the basis of the Regulations from time to time in force or in the absence of any such Regulations on such other basis as is fair and reasonable.
- (d) Members, when reserving and using Occupancy Rights, shall at all times adhere to the Regulations. Once a Member has reserved Occupancy Rights he shall, subject to the terms of the Regulations, be entitled to use such Occupancy Rights in any manner he chooses and in particular he shall be entitled, subject to the Regulations, to allow third parties to utilise such Occupancy Rights (provided he has obtained from the Founder Member in advance a guest certificate for such third party) and to use such Occupancy Rights for the purpose of participating in any exchange programmes available to the Member from time to time. Special preferences of Members will be noted but cannot be guaranteed.
- (e) The reservation and use of Occupancy Rights in respect of Home Priority Points shall be subject to the following additional reservation rights and restrictions:

***Applications for Home Priority earlier than 12 months before period starts***

- (i) In each year the Members owning Home Priority Points may apply for allocation to them of the Occupancy Rights of the Home Priority periods specified in the relevant Membership Certificate. Such applications shall be in the format and manner prescribed by the Regulations. Any application received earlier than the day which is 12 calendar months before the date of commencement of the actual period to which the application relates **may at the unfettered discretion of the Management Company either be deemed to be received on the said day or be disregarded.**

***Applications for Home Priority between 12 and 11 months before period starts***

- (ii) No allocations will be made in respect of any Occupancy Rights of the Home Priority periods until 12 calendar months before the date of commencement of the respective Home Priority period. Applications for the allocation of Occupancy Rights of the Home Priority periods made by Members of the respective Membership Certificates received between 12 and 11 calendar months before the date of commencement of the respective period **shall be**

**confirmed in respect of the specified Accommodation Type and period.**

***Applications for Home Priority between 11 and 10 months before period starts***

- (iii) For applications for the allocation of Occupancy Rights of the Home Priority periods made by Members of the respective Membership Certificates received between 11 and 10 calendar months prior to the commencement of the respective period, the **specified Resort shall be confirmed but the specified Accommodation Type and period shall be subject to availability.**

***Applications for Home Priority after 10 months before start of period***

- (iv) Applications for allocation of Occupancy Rights of the Home Priority periods received subsequent to 10 months prior to the commencement of the actual periods in question may be made by Members but such applications shall be **subject to availability** and the Management Company may allocate to Members a period of occupancy less than the maximum to which their Membership Certificate entitles them or may reject the application altogether on the ground of non-availability of the periods.
- (v) Occupancy Rights of Home Priority periods may be allocated to all Members after 12 calendar months before the commencement of the respective periods providing that there remain at the time of allocation sufficient unallocated Occupancy Rights in each Resort to provide occupancy to all Members of Home Priority Points who still hold priority reservation rights as set out in Rule 10 (e) (iii) and who have not had their Occupancy Rights confirmed.
- (vi) Members may, in the manner set out in the Regulations from time to time, use their Points in conjunction with other similar schemes administered by any Exchange Organisation to which the Club is affiliated.
- (f) Notwithstanding anything contained in the Regulations the Founder Member shall be entitled, when exercising any rights available to them to use or occupy Accommodation Units, to use such Accommodation Units for such commercial purposes as are consistent with the operation of the Points System.

## **11. CLUB RECORDS**

- (a) The Founder Member shall procure that adequate records for the proper management and administration of the Points System and in particular the following records shall be maintained: -
  - (i) a register of Members showing each Member's Points Rights and Points Holding from time to time and in the case of Home Priority Points, the period, Accommodation Type and Resort to which those Points relate ;



- (ii) a record of Issuable Points Rights and Issuable Points;
- (iii) a record of all monies due by each Member to the Founder Member from time to time;
- (iv) a register of Accommodation Assets and the annual Points relative thereto so that: -

The Trustee shall receive any and all relevant information to maintain proper records relating to Accommodation Assets, all Points (regardless of their individual character) and all relevant details of Ordinary Members and such records shall be prima facie evidence of the matters specified and contained therein.

- (b) Every Member shall be entitled to request in writing addressed to the Founder Member and, upon payment of the appropriate fee, obtain an extract of the records showing his Points Rights and the amount of his indebtedness to the Founder Member at the date of the extract. The Founder Member shall, as soon as practicable after receipt of such a request and fee, provide the required extract to the Member.

## **12. BROCHURES**

The Founder Member shall from time to time prepare and issue to each Member a brochure and brochure updates as required which shall include the details of Accommodation Units Accommodation Types and current Points Tables and such other information as the Founder Member shall consider to be appropriate.

## **13. SUSPENSION AND CANCELLATION OF MEMBERSHIP**

In the event that any Member shall have committed a substantial breach of the obligations imposed on him herein, then his Membership may be cancelled or suspended by order of the Founder Member after giving to the Member 30 (thirty) days written notice of its intention to do so and the provisions of Rule 4(f) and Rule 4(g) shall apply. Without prejudice to the generality of the foregoing, if any Member has not paid his Membership Fees (or instalment thereof) within 180 (one hundred and eighty) days of the due date for payment as specified in Rule 14(d), his Membership shall be cancelled by written notice to the Member from the Founder Member informing him of the permanent cancellation of his Membership after the expiry of 30 (thirty) days notice.

## **14. MEMBERSHIP FEES**

- (a) The Founder Member shall procure that, prior to 1st January each year, it shall prepare a budget showing the projected Aggregate Management Costs of the succeeding Year and the proposed Membership Fees to be paid by the Members for that succeeding Year.
- (b) Once prepared, Members shall be invoiced for the annual Membership Fees for the succeeding Year by 1st January in each current Year which amount shall be divided into 12 equal monthly amounts for payment by monthly instalments.

- (c) The Founder Member shall procure that as soon as practicable after 1st January each Year the amount of the Aggregate Management Costs for the preceding Year shall be ascertained.
- (d) The Membership Fees shall be payable by the Members and shall be a debt due to the Founder Member payable (except in the case of the Founder Member) by way of a monthly direct debit at the direction of the Founder Member commencing within 30 (thirty) days of the date of his invoice and in any event before 1<sup>st</sup> January of the Year preceding the Year to which it relates.
- (e) In addition to the Membership Fees, each Member shall pay to the Founder Member such additional charges as may be levied on him by the Founder Member (including any late payment penalty fee) pursuant to and in accordance with these Rules and the Regulations.
- (f) The Founder Member shall apply any monies received pursuant to this Rule 14 to the management of the Club's affairs and administration of the Points System and the management, maintenance and administration of the Accommodation Assets and a relevant proportion of costs related to the running of the Resort in which the Accommodation Assets are situated and to which the Members have access.
- (g) A certificate at any time executed for and on behalf of the Founder Member certifying any amount payable by a Member in terms of the Rules and the Regulations shall constitute prima facie proof of any amount so due by the Member.
- (h) Any surplus of unused Membership Fees paid by the Members calculated after the end of the Year to which such Membership Fees relate shall be held and maintained by the Founder Member for the benefit of Members in such manner as the Founder Member elects.

***Effect of late payment of Membership Fees***

- (e) In the event that any payment of Membership Fees in accordance with this Rule 14 is not made on the due date for payment the following shall apply:
  - (i) in respect of any payment not made within 1 month of the due date, the remaining Points held by the Member in default shall be frozen and incapable of use for reservations until such payment (and any late payment fee) is so made, subject as follows
  - (ii) in respect of any payment not made within 3 months of the due date, the Points held by the Member in default shall continue to be frozen as provided in Rule 14(e)(i), and any reservations made by that Member for unexpired Use Periods shall be immediately cancelled, subject as follows
  - (iii) in respect of any payment not made within 6 months of the due date, all Points held by the Member in default shall be repossessed by the Founder Member and the Member shall be obliged to deliver all documentation relating to such Points to the Founder Member. All repossessed Points shall not be used in any way by the Member in default.

**15. FOUNDER MEMBER'S POWERS OF MANAGEMENT**

- (a) The Founder Member shall throughout the existence of the Club be entitled to exercise all the powers contained or referred to in the Rules or the Regulations relating to the management and running of the Club and the administration of the Points System and the powers of the Founder Member relating to the maintenance, management and administration of the Accommodation Assets including without prejudice to the foregoing generalities the power to raise and defend court and other proceedings on behalf of the Club, the power to collect from each Member any sum or sums owed to the Club determined pursuant to Rule 14 including the Membership Fees referred to in Rule 14 and any additional charges levied pursuant to Rule 14(e) or Rule 18 and the power to enforce the Regulations and (but without prejudice to the generality of the foregoing):-
- (i) to maintain proper records in terms of Rule 11;
  - (ii) to admit persons to be Members and procure the execution and issue of Membership Certificates by the Trustee in accordance with the Rules;
  - (iii) to administer the Points System and fulfil or procure fulfilment of all the obligations of the Founder Member contained in the Rules to ensure the Founder Member's ability to transfer Accommodation Assets to the Trustee and to issue Points Rights, the allocation of Points to the Members pursuant to their Points Rights, the Members' ability to transfer Points Rights, the Members' ability to use Points to reserve and exercise Occupancy Rights and the Members' enjoyment of such Occupancy Rights.
  - (iv) to ensure that throughout the existence of the Club (and for a period of 90 (ninety) days thereafter) appropriate controls and sufficient information for the operation of a reservation system for the Club to enable Members to use Points and to reserve and exercise Occupancy Rights is available;
  - (v) to prepare and issue all brochures in accordance with the terms of Rule 12;
  - (vi) each Year in accordance with the terms of Rule 14 of the Rules to provide for the Club a budget estimating the proposed Membership Fees for each Member for the next following period of twelve months and once the budget has been prepared to prepare for Members a report specifying, inter alia, the Membership Fees payable for that Year. Each Member shall forthwith pay his Membership Fees in equal monthly instalments in accordance with the direct debit under Rule 14. The Founder Member shall procure that the amount of the total Aggregate Management Costs for each Year shall be ascertained as soon as reasonably practicable after the end of the Year in question.
  - (vii) to arrange for the prompt collection of the Membership Fees payable by each Member in accordance with Rule 14 and properly to pay and discharge out of all such monies collected by it from Members all expenses in relation to which such amounts have been collected and ensure that proper records and books of account relating to the management of the Club's property and affairs and the administration of the Points System are maintained at all times.
  - (viii) to levy any additional charges on the Members as and when necessary in accordance with Rule 14(e) of the Rules.

- (ix) to maintain, repair, redecorate (where appropriate), clean and where necessary renew the structure, exterior and interior of Accommodation Assets, the Common Facilities and Moveables (to the extent that the Owing Company or the Founder Member is responsible therefor), whether exclusive, common, mutual or otherwise;
- (x) to maintain, repair and when necessary replace all furniture and fixtures and fittings and Moveables within any Accommodation Assets;
- (xi) to insure the Accommodation Assets and contents thereof and any interest (if any) in Common Facilities and Moveables for the full reinstatement value thereof and any other insurances which the Founder Member shall consider necessary and appropriate;
- (xii) to meet the whole outgoings incurred in respect of the Accommodation Assets including rates, taxes, management charges, maintenance fees, community association dues, the costs of all services and other charges or impositions, whether of an annual or recurring nature or otherwise;
- (xiii) to maintain, clean and tidy routinely the interior and exterior of the Accommodation Units and the Common Facilities and Moveables (to the extent that the Owing Company or the Founder Member is responsible therefor);
- (xiv) to carry out all works and others which are required to be done to comply with any statutory provisions or the direction or notices of any Governmental, Local or Public Authority;
- (xv) to meet any factorial and management charges or any other charges whatsoever which may be incurred in respect of the Accommodation Assets and the running of the Club's affairs including all professional fees and all costs, fees, taxes and outgoings in connection with the Owing Company, and/or the Trustee under the Deed of Trust, and including the fees, expenses and liabilities of the Trustee;
- (xvi) to meet all the Club's obligations under and pay any monies payable by a Member pursuant to the Rules or Regulations or otherwise;
- (xvii) as soon as practicable after 1<sup>st</sup> January each Year prepare an annual statement of income and expenditure and a balance sheet relative to its activities on behalf of the Club and procure that such statement and balance sheet are submitted to the Club's auditors or such other persons nominated by the Members at a general meeting to receive such annual statement and balance sheet.
- (xviii) to take all reasonable steps to procure that each Member shall each Year pay by way of annual Membership Fees sums calculated in accordance with the following formulae: -

(I) **a = b + (c x d)**

Where: -

**a** = the annual Membership Fees payable by the Member

**b** = an equal fixed sum payable by each Member as determined by the Founder Member from time to time

**c** = the relevant Member's Points Rights (excluding Unissuable Points Rights) held during the relevant Year

**d** = an equal fixed sum payable in respect of each issuable Points Rights held by the Member as determined by the Founder Member from time to time

(II) Such that: -

$$\mathbf{e} = (\mathbf{b} \times \mathbf{f}) + (\mathbf{g} \times \mathbf{d})$$

Where: -

**e** = the Aggregate Management Costs

**f** = the total number of Members

**g** = the total number of Issuable Points Rights

- (b) The Founder Member shall be obliged to ensure that, subject to the funds made available to it, the management and administration aforesaid are carried out with all due diligence and in the best interests of the Founder Member and the Members.
- (c) The obligations and duties set out in Rule 18(a) and 18(b) hereof shall be subject to the necessary funds being made available to the Founder Member and shall be carried out in a proper and workmanlike manner with all due speed and diligence but not so as to interfere except insofar as reasonably necessary with the Members' enjoyment of their Occupancy Rights;
- (d) The Founder Member shall have a general discretion to vary the basis of the apportionment between Members of the total Membership Fees payable in line with existing or proposed practices of the Founder Member generally if acting reasonably in all the circumstances it considers the then current or applicable basis is unworkable or administratively inconvenient or unduly complex or is unfair or inequitable as between Members or as between the Management Company and the Members. In such event the Founder Member shall serve notice of the proposed change upon all Members.
- (e) The Founder Member reserves the right to delegate or assign all or any part of its rights and powers set out in this Rule 18 hereunder or to transfer any liability hereunder in any manner provided for in law to any person or persons, company or companies or other entities or organisations as the Founder Member shall think fit upon such terms as the Founder Member may decide.
- (f) The Founder Member's obligations of management and administration set out in this Rule 18 shall forthwith terminate: -

- (i) if the Club shall be wound up or for any reason cease to exist; or
  - (ii) if the Founder Member shall have committed a material breach of its obligations and shall neglect or otherwise fail to remedy such material breach (whether capable of remedy or not) within three months of being required in writing so to do by the Members at a general meeting.
- (g)** On the cessation of the Founder Member's obligations, and such obligations failing to be honoured by any party otherwise appointed by the Founder Member in the event of the Club continuing to require any part of the management and services provided by the Founder Member hereunder, the Trustee shall be provided by the Founder Member with all information on reservations made by Members from time to time from the reservation system to enable the continuation of the Points System and/or to download or otherwise extract information from it and/or the transfer of information to a new reservation system and/or for any other purpose and the Founder Member or other third party as aforesaid shall first indemnify the Trustee (to its reasonable satisfaction) against any costs resulting from such use or provision.
- (h)** Insofar as it is lawfully entitled to do the Founder Member undertakes to grant in favour of the Trustee any securities over the reservation systems owned or used from time to time by the Founder Member as the Trustee may from time to time reasonably require to adequately secure all necessary rights of use of the reservation system referred to in this Rule 18.

## **16. NOTICES**

- (a)** Any notice to be given to or by any person pursuant to the Rules shall be in writing except that a notice calling a meeting of any committee that may be appointed by the Founder Member from time to time need not be in writing.
- (b)** The Club may give any notice to a Member either personally or by sending it by post in a prepaid envelope addressed to the Member at his address contained in the Trustee's register or by leaving it at that address.
- (c)** A Member present, either in person or by proxy, at any meeting of the Club shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.
- (d)** Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted or left or given personally.
- (e)** In the case of joint Members:
- (i) notice shall be deemed to be given to all the joint Members by giving notice to the first named Member in the Agreement to Purchase; and
  - (ii) where there are conflicting notices from joint Members, the notice given by the first named member in the Agreement to Purchase shall be deemed the only notice given pursuant to these Rules, and the recipient shall be entitled to treat

the other notices as being invalid.

## **17. DISSOLUTION**

If upon the winding up or dissolution of the Club there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall be transferred to the Trustee to be added to the Accommodation Assets and paid to or distributed among the Members in accordance with the provisions of clause 16.3 of the Deed of Trust.

## **18. INDEMNITY**

Subject to the provisions of the Rules but without prejudice to any indemnity to which a Member may otherwise be entitled, every officer or auditor of the Club shall be entitled to be indemnified out of the assets of the Club against all losses or liabilities which he may sustain or incur in or about the execution or discharge of the duties of his office or otherwise in relation thereto including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Club and no officer or auditor of the Club shall be liable for any loss, damage or misfortune which may happen to be incurred by the Club in the proper execution or discharge of the duties of his office or in relation thereto.

## **19. SEVERABILITY**

In the event that any of the provisions of these Rules is found to be void or unenforceable, the remaining provisions of these Rules shall be severable and shall be valid and effective and shall be interpreted mutatis mutandis so as to give effect to those remaining provisions.

## **20. WAIVER**

No failure or delay on the part of any person to exercise any right, power or remedy arising hereunder or pursuant hereto shall operate as a waiver thereof, nor shall any single or partial exercise by a person of any such right, power or remedy preclude any other or future exercise thereof or the exercise of any other right, power or remedy.

## **21. PROPER LAW**

These Rules shall be governed by and construed in accordance with English law and the parties hereto hereby submit to the non-exclusive jurisdiction of the courts of England and Wales.