

No:- 2931062

THE COMPANIES ACT 1985
PRIVATE COMPANY LIMITED BY SHARES

MEMORANDUM AND ARTICLES OF ASSOCIATION

OF

SURGICAL VISION LIMITED

(As altered and in force on 26th July 1996)

Incorporated on 19th May 1994

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THE COMPANIES ACT 1985

PRIVATE COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

OF

SURGICAL VISION LIMITED

(as altered and in force on 26th July 1994)

1. The Company's name is "SURGICAL VISION LIMITED"*
2. The Company's registered office is to be situated in England and Wales
3. (i) The object of the Company is to carry on business as a general commercial company.
(ii) Without prejudice to the generality of the object and the powers of the Company derived from Section 3A of the Act the Company has power to do all or any of the following things:-
 - (a) To purchase or by any other means acquire and take options over any property whatever, and any rights or privileges of any kind over in respect of any property.
 - (b) To apply for, register, purchase, or by other means acquire and protect, prolong and renew, whether in the United Kingdom or elsewhere any patents, patent rights, brevets d'invention, licences, secret processes, trade marks, designs, protections and concessions and to disclaim, alter, modify, use and turn to account and to manufacture under or grant licences or privileges in respect of the same, and to expend money experimenting upon, testing and

* The name of the Company was originally "Nowhome Company Limited" and was changed to the present name on 29th July 1994.

improving any patents, inventions or rights which the Company may acquire or propose to acquire.

- (c) To acquire or undertake the whole or any part of the business, goodwill, and assets of any person, firm, or company carrying on or proposing to carry on any business which the Company is authorised to carry on and as part of the consideration for such acquisition to undertake all or any of the liabilities of such person, firm or company, or to acquire an interest in, amalgamate with, or enter into partnership or into any arrangement for sharing profits, or for co-operation, or for mutual assistance with any such person, firm or company, or for subsidising or otherwise assisting any such person, firm or company, and to give or accept by way of consideration for any of the acts or things aforesaid or property acquired, any shares, debentures, debenture stock or securities that may be agreed upon, and to hold and retain, or sell, mortgage and deal with any shares, debentures, debenture stock or securities so received.
- (d) To improve, manage, construct, repair, develop, exchange, let on lease or otherwise, mortgage, charge, sell, dispose of, turn to account, grant licences, options, rights and privileges in respect of, or otherwise deal with all or any part of the property and rights of the Company.
- (e) To invest and deal with the moneys of the Company not immediately required in such manner as may from time to time be determined and to hold or otherwise deal with any investments made.
- (f) To lend and advance money or to give credit on any terms and with or without security to any person, firm or company (including without prejudice to the generality of the foregoing any holding company, subsidiary or fellow subsidiary of, or any other company associated in any way with, the Company), to enter into guarantees, contracts of indemnity and suretyships of all kinds, to receive money on deposit or loan upon any terms, and to secure or guarantee in any manner and upon any terms the payment of any sum of

money or the performance of any obligation by any person, firm or company (including without prejudice to the generality of the foregoing any such holding company, subsidiary, fellow subsidiary or associated company as aforesaid).

- (g) To borrow and raise money in any manner and to secure the repayment of any money borrowed, raised or owing by mortgage, charge, standard security, lien or other security upon the whole or any part of the Company's property or assets (whether present or future), including its uncalled capital, and also by similar mortgage, charge, standard security, lien or security to secure the guarantee the performance by the Company any obligation or liability it may undertake or which may become binding on it.
- (h) To draw, make, accept, endorse, discount, negotiate, execute and issue cheques, bills of exchange, promissory notes, bills of lading, warrants, debentures, and other negotiable or transferable instruments.
- (i) To apply for, promote, and obtain any Act of Parliament, order, or licence and obtain any Act of Parliament, order, or licence of the Department of Trade or other authority for enabling the Company to carry any of its objects into effect, or for effecting any modification of the Company's constitution, or for any other purpose which may seem calculated directly or indirectly to promote the Company's interests, and to oppose any proceedings or applications which may seem calculated directly or indirectly to prejudice the Company's interests.
- (j) To enter into any arrangements with any local government or authority (supreme, municipal, local or otherwise) that may seem conducive to the attainment of the Company's objects or any of them, and to obtain from any such government or authority any charters, decrees, rights, privileges or concessions which the Company may think desirable and to carry out, exercise, and comply with any such charters, decrees, rights, privileges, and

concessions.

- (k) To subscribe for, take, purchase, or otherwise acquire, hold, sell, deal with and dispose of, place and underwrite shares, stocks, debentures, debenture stocks, bonds, obligations or securities issued or guaranteed by any other company constituted or carrying on business in any part of the world, and debentures, debenture stocks, bonds, obligations or securities issued or guaranteed by any government or authority, municipal, local or otherwise, in any part of the world.
- (l) To control, manage, finance, subsidise, co-ordinate or otherwise assist any company or companies in which the Company has a direct or indirect financial interest, to provide secretarial, administrative, technical, commercial and other services and facilities of all kinds for any such company or companies and to make payments by way of subvention or otherwise and any other arrangements which may seem desirable with respect to any business or operations of or generally with respect to any such company or companies.
- (m) To promote any other company for the purpose of acquiring the whole or any part of the business or property or undertaking or any of the liabilities of the Company, or of undertaking any business operations which may appear likely to assist or benefit the Company or to enhance the value of any property or business of the Company, and to place or guarantee the placing of, underwrite, subscribe for, or otherwise acquire all or any part of the shares or securities of any such company as aforesaid.
- (n) To sell or otherwise dispose of the whole or any part of the business or property of the Company, either together or in portions, for such consideration as the Company may think fit, and in particular, for shares, debentures, or securities of any company purchasing the same.

- (o) To act as agents or brokers and as trustees for any person, firm or company, and to undertake and perform sub-contracts.
- (p) To remunerate any person, firm or company rendering services to the Company either by cash payment or by the allotment to him or them of shares or other securities of the Company credited as paid up in full or in part or otherwise as may be thought expedient.
- (q) To distribute among the Members of the Company in kind any property of the Company of whatever nature.
- (r) To pay all or any expenses incurred in connection with the promotion, formation and incorporation of the Company, or to contract with any person, firm or company to pay the same, and to pay commissions to brokers and others for underwriting, placing, selling, or guaranteeing the subscription of any shares or other securities of the Company.
- (s) To support and subscribe to any charitable or public object and to support and subscribe to any institution, society, or club which may be for the benefit of the Company or its Directors or employees, or may be connected with any town or place where the Company carries on business; to give or award pensions, annuities, gratuities, and superannuation or other allowances or benefits or charitable aid and generally to provide advantages, facilities and services for any persons who are or have been Directors of, or who are or have been employed by, or who are serving or have served the Company, or any company which is a subsidiary of the Company or the holding company of the Company or a fellow subsidiary of the Company or the predecessors in business of the Company or of any such subsidiary, holding or fellow subsidiary company and to the wives, widows, children and other relatives and dependants of such persons; to make payments towards insurance including insurance for any Director, officer or Auditor against any liability as is referred to in Section 310(1) of the Act; and to set up, establish, support and maintain superannuation and other funds or schemes (whether contributory or non-

contributory) for the benefit of any of such persons, and of their wives, widows, children and other relatives and dependants; and to set up, establish, support and maintain profit sharing or share purchase schemes for the benefit of any of the employees of the Company or of any such subsidiary, holding or fellow subsidiary company and to lend money to any such employees or to trustees on their behalf to enable any such purchase schemes to be established or maintained.

- (t) Subject to and in accordance with a due compliance with the provisions of Section 155 to 158 (inclusive) of the Act (if and so far as such provisions shall be applicable), to give whether directly or indirectly, any kind of financial assistance (as defined in Section 152(1)(a) of the Act) for any such purpose as is specified in Section 151(10) and/or Section 151(2) of the Act.
- (u) To procure the Company to be registered or recognised in any part of the world.
- (v) To do all or any of the things or matters aforesaid in any part of the world and either as principals, agents, contractors or otherwise, and by or through agents, brokers, sub-contractors or otherwise and either alone or in conjunction with others.
- (w) To do all such other things as may be deemed incidental or conducive to the attainment of the Company's object or of any of the powers given to it by the Act or by this Clause.

AND so that:-

- (1) None of the provisions set forth in any subclause of this Clause shall be restrictively construed but the widest interpretation shall be given to each such provision, and none of such provisions shall, except where the context expressly so requires, be in any way limited or restricted by reference to or inference from any other provision set forth in such sub-clause, or by

reference to or inference from the terms of any other sub-clause of this Clause, or by reference or inference from the name of the Company.

- (2) The word "Company" in this Clause except where used in reference to the Company, shall be deemed to include any partnership or other body of persons, whether domiciled in the United Kingdom or elsewhere.
- (3) In this Clause the expression "the Act" means the Companies Act 1985, but so that any reference in this Clause to any provision of the Act shall be deemed to include reference to any statutory modification or re-enactment of that provision for the time being in force.
- (4) The liability of the Members is limited.
- (5) The Company's share capital is £1000 divided into 1000 shares of £1 each.

NOTE:- By resolutions passed on 24th August 1994 and 26th July 1996 the capital of the Company has been increased and reorganised and is now £770,000 divided into 120,000 "A" Convertible Preference Shares of £1 each 48,000 "B" Convertible Preference Shares of £1 each 600,000 "C" Convertible Preference Shares of £1 each and 2,000 Ordinary Shares of £1 each.

We, the subscribers to this Memorandum of Association, wish to be formed into a Company pursuant to this Memorandum; and we agree to take the number of shares shown opposite our respective names.

Names and addresses of Subscribers	Number of shares taken by each Subscriber
1. Instant Companies Limited 1 Mitchell Lane Bristol BS1 6BU	One
2. Swift Incorporations Limited 1 Mitchell Lane Bristol BS1 6BU	One
Total shares taken	Two

Witness to the above Signatures:-

Mark Anderson
1 Mitchell Lane
Bristol BS1 6BU

THE COMPANIES ACT 1985
PRIVATE COMPANY LIMITED BY SHARES

NEW
ARTICLES OF ASSOCIATION

of

SURGICAL VISION LIMITED

(Adopted by Special Resolution passed on 24th August 1994)
(Amended by Resolution in Writing passed on 26th July 1996)

PRELIMINARY

1. (A) The Regulations contained in Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 as amended by the Companies (Tables A to F) (Amendment) Regulations 1985 (such Table being hereinafter called "Table A") shall apply to the Company save in so far as they are excluded or varied hereby and such regulations (save as so excluded or varied) and the Articles hereinafter contained shall be the regulations of the Company.
- (B) In these Articles the expression "the Act" means Companies Act 1985, but so that any reference in these Articles to any provision of the Act shall be deemed to include a reference to any statutory modification or re-enactment of that provision for the time being in force.
- (C) Reference in these Articles to "the Agreement" means the agreement made on the date of the adoption of these Articles between the Company (1) Solid Vision Limited (2) Dr Graham Street (3) and Alta-Berkeley III C.V. (4) as amended by an Agreement dated 26th July 1996 made between the Company (1) Solid Vision Limited (2) Dr Graham Street (3) Alta-Berkeley III C.V. (4) and European Medical Ventures Fund S.C.A. (5) as the same is

from time to time amended but upon the Agreement ceasing to have effect these Articles shall be read as if all references to the Agreement were omitted therefrom. The Agreement shall be deemed to be incorporated in these Articles to the intent that for so long as the same remains in force all members shall have the benefit of and be bound by the terms thereof. In any event of any conflict between these Articles and the Agreement the latter shall prevail.

2. The authorised share capital of the Company at the date of the adoption of this substituted Article 2 is £770,000 divided into 120,000 "A" Convertible Preference Shares of £1 each ("A Convertible Shares") 48,000 "B" Convertible Shares of £1 each ("B Convertible Shares") and 600,000 "C" Convertible Preference Shares of £1 each ("C Convertible Shares") and 2,000 Ordinary Shares of £1 each ("Ordinary Shares"). The "A" Convertible Shares, the "B" Convertible Shares and the "C" Convertible Shares are together referred to as "the Convertible Shares". The Convertible Shares shall be convertible into Ordinary Shares as hereinafter provided and the rights and restrictions attaching to the said classes of shares are as follows:-

(A) As regards income

The holders of the Convertible Shares shall not be entitled to share in any distribution of profits of the Company.

All profits which the Company shall determine to distribute to its members shall belong to the holders of the Ordinary Shares and shall be distributed to the holders thereof *pari passu* and rateably according to the respective amounts paid up on such shares.

(B) As regards capital

On a return of capital on a liquidation or otherwise (other than on conversion redemption or purchase of shares under the terms of these

Articles or on a reduction of capital approved by the Court) the assets of the Company available for distribution amongst the members shall be applied as follows:-

Firstly in paying to the holders of the "C" Convertible Shares a sum equal to the capital paid up on those shares and in the case of deficiency the amount available shall be divided *pari passu* and rateably in accordance with the amounts paid up on such shares

Secondly in paying to the holders of the "B" Convertible Shares a sum equal to the capital paid up on those shares and in the case of deficiency the amount available shall be divided *pari passu* and rateably in accordance with the amounts paid up on such shares

Thirdly in paying to the holders of the "A" Convertible Shares a sum equal to the sum paid up on such shares and in the case of deficiency the amount available shall be divided *pari passu* and rateably in accordance with the amounts paid up on such shares

Fourthly any balance of such assets shall belong to the holders of the Ordinary Shares and such balance shall be divided between them *pari passu* and rateably according to the amount of capital which is paid up on the Ordinary Shares held by them respectively.

(C) As regards voting and attendance at General Meetings

The holders of all classes of shares shall be entitled at all times to receive notice of all General Meetings of the Company.

At such general meetings each Member present in person shall on a show of hands have one vote and on a poll each Member present in person or by proxy or representative shall be entitled to one vote per Ordinary Share of which he is the holder and each of the holders of the Convertible Shares

shall be entitled to exercise the number of votes which he would have been entitled to exercise if all the Convertible Shares held by him had been converted into Ordinary Shares in accordance with these Articles

PROVIDED THAT should the Company take any action which is a remediable breach of any of the undertakings in favour of the Investors (as defined in the Agreement) contained in the Agreement or the rights of such shareholders contained in these Articles or any of them shall receive notice of or otherwise become aware of any proposal which if implemented would constitute such a breach then until such time as such breach shall be remedied or such proposal shall be defeated the holders of such shares shall as if the same constituted one class of share be entitled (in lieu of the votes otherwise exercisable by them) to exercise upon a poll taken at any general meeting of the Company such number of votes as exceeds by one vote three times the aggregate number of votes which are then exercisable by the holders of all other shares in the capital of the Company and such votes shall be divided between the holders entitled to exercise the same in the same proportions as the total number of such shares held by each of them respectively bear to the total number of such shares then in issue and so that any fraction of a vote thereby arising shall count as one vote and for so long as such special voting rights are exercisable the holders entitled to exercise the same or any of them shall be entitled (at the expense of the Company) to convene (as nearly as practicable in the manner that general meetings are convened by the directors) general meetings of the Company and meetings of any class of members of the Company but such special rights of voting and convening general meetings shall only be exercisable in relation to the opposing of resolutions which would if passed constitute a breach as aforesaid or in relation to resolutions whose genuine purpose is to remedy a breach already committed (where the same is capable of remedy) but where the breach relates to a matter under the control of the directors this may include the removal of any directors of the Company and the appointment of any additional or replacement directors with a view to the reconstituted board of directors reversing a decision to commit such a

breach as aforesaid or taking action to remedy such a breach already committed.

(D) As regards conversion

- (1) The holders of the "A" Convertible Shares shall be entitled by notice to the Company signed by a majority in nominal value of the "A" Convertible Shares and given at any time to convert all but not part of the "A" Convertible Shares into fully paid Ordinary Shares at the rate of one Ordinary Share for every 300 "A" Convertible Shares held. Upon the service of such a notice the Company shall inform all holders of "A" Convertible Shares who were not signatories to the notice of the service thereof and each holder of the "A" Convertible Shares shall within 14 days thereafter deliver to the Company at its Registered Office the certificates relating to his "A" Convertible Shares and together also with such other evidence (if any) as the Directors may reasonably require to prove the title of any holder of "A" Convertible Shares whereupon conversion of each holding shall be effected.
- (2) The holders of the "B" Convertible Shares shall be entitled by notice to the Company signed by a majority in nominal value of the "B" Preference Shares and given at any time to convert all but not part of the "B" Convertible Shares into fully paid Ordinary Shares at the rate of one Ordinary Share for every 872.73 "B" Convertible Shares held. Upon the service of such a notice the Company shall inform all holders of "B" Convertible Shares who were not signatories to the notice of the service thereof and each holder of "B" Convertible Shares shall within 14 days thereafter deliver to the Company at its Registered Office the certificates relating to his "B" Convertible Shares together also with such evidence (if any) as the Directors may reasonably require to prove the title of any holder of

"B" Convertible Shares whereupon conversion of each holding shall be effected.

- (3) Any holder of "C" Convertible Shares shall be entitled by notice to the Company signed by such holder and given at any time to convert all but not part of his "C" Convertible Shares into fully paid Ordinary Shares at the rate of one Ordinary Share for every 1030.93 "C" Convertible Shares held. Such notice shall be accompanied by the delivery to the Registered Office of the Company of the certificates for the holding of "C" Convertible Shares to be converted and such holder shall also deliver such evidence (if any) as the Directors may reasonably required to prove the title of the holder of "C" Convertible Shares whereupon conversion shall be effected.
- (4) Conversion of each class of Convertible Shares shall be effected by the redemption of the Convertible Shares concerned at par and the issue of the appropriate number of Ordinary Shares at the appropriate premium the moneys payable upon such redemption being funded out of and set off against the subscription moneys payable in respect of the Ordinary Shares arising on conversion. Any fractional entitlements to Ordinary Shares arising on any such conversion shall be rounded up or down to the nearest whole number of Ordinary Shares.
- (3) The Ordinary Shares arising on such conversion shall rank pari passu in all respects with the Ordinary Shares then in issue.
- (4) Within 28 days after each such conversion the Company shall forward to the holder free of charge fully paid definitive certificates for the appropriate number of Ordinary Shares

- (5) A Notice of conversion once given may not be withdrawn without the consent in writing of the Company. Such notice of conversion may be in any form provided that it is in writing and delivered to the Company's Registered Office.

(E) As regards the alteration of class rights

The special rights or privileges attached to each class of Shares may only be varied or abrogated and whether or not the Company is or is about to be wound up either with the consent in writing of the holders of not less than a majority in nominal value of the class concerned or with the sanction of an Ordinary Resolution passed at a separate meeting of the class concerned. To every such separate meeting the provisions of these Articles with respect to notices of and proceedings at general meetings shall mutatis mutandis apply but so that the requisite quorum shall be one person holding or representing one-third in nominal value of the relevant class of share and that any holder thereof may demand a poll and that on a poll each holder of such class of share shall have one vote for each share held by him.

ALLOTMENT OF SHARES

3. (A) Shares which are comprised in the authorised but unissued share capital of the Company from time to time shall be under the control of the Directors who may (subject to Section 80 of the Act and to paragraph (B) and (D) of this Article 3 below) allot, grant options over or otherwise dispose of the same, to such persons, on such terms and in such manner as they think fit.
- (B) After the issue of 710 Ordinary Shares and 120,000 "A" Convertible Shares and 48,000 "B" Convertible Shares and 600,000 "C" Convertible Shares and the issue of up to 194 Ordinary Shares to employees pursuant to an Employee Share Option Scheme and save for any Ordinary Shares arising on conversion of any Convertible Shares all shares which are for the time being unissued and which the Directors propose to issue shall be first offered to the Members in proportion as nearly as may be to the number of the existing Ordinary Shares held by them respectively (adjusted as set out

below) unless the Company shall by Special Resolution otherwise direct. The offer shall be made by notice specifying the number of shares offered, and limiting a period (not being less than fourteen days) within which the offer, if not accepted, will be deemed to be declined. After the expiration of that period, those shares so deemed to be declined shall be offered in the proportion aforesaid to the persons who have, within the said period, accepted all the shares offered to them; such further offer shall be made in like terms in the same manner and limited by a like period as the original offer. Any shares not accepted pursuant to such offer or further offer as aforesaid or not capable of being offered as aforesaid except by way of fractions and any shares released from the provisions of this Article by any such Special Resolution as aforesaid shall be under the control of the Directors, who may allot, grant options over or otherwise dispose of the same to such persons, on such terms, and in such manner as they think fit, provided that, in the case of shares not accepted as aforesaid, such shares shall not be disposed of on terms which are more favourable to the subscribers therefor than the terms on which they were offered to the Members. The foregoing provision of this paragraph (B) shall have effect subject to Section 80 of the Act. Each holder of Convertible Shares which have not been converted as hereinbefore provided and each holder of an option to subscribe for Ordinary Shares shall for the purposes of this Article 3(B) be deemed to be a Member holding in addition to any Ordinary Shares he already holds the number of Ordinary Shares which he would hold if he had exercised in full his entitlement to have such Convertible Shares converted into Ordinary Shares in accordance with these Articles whether such right of conversion has arisen or not and as if he had exercised such option (whether he is then entitled to do so or not).

- (C) In accordance with Section 91(1) of the Act Sections 89(1) and 90(1) to (6) inclusive) of the Act shall not apply to the Company.
- (D) [Directors authority to issue shares revoked on 26th July 1996 and replaced by new authority].

PURCHASE AND REDEMPTION OF SHARES

- 4 (A) Subject to the Act the Company may purchase its own shares (including redeemable shares) whether out of distributable profits or the proceeds of a fresh issue of shares or otherwise.
- (B) Subject to the Act and these Articles any shares may with the sanction of a Special Resolution be issued on the terms that they are or may at the option of the Company or the shareholder be liable to be redeemed on such terms and in such manner as the Company before the issue of the shares may by Special Resolution determine and whether out of distributable profits or the proceeds of a fresh issue of shares or otherwise.

LIEN

5. The lien conferred by Regulation 88 in Table A shall attach also to fully paid-up shares, and the Company shall also have a first and paramount lien on all shares, whether fully paid or not, standing registered in the name of any person indebted or under liability to the Company, whether he shall be the sole registered holder thereof or shall be one or two or more joint holders, for all moneys presently payable by him or his estate to the Company. Regulation 8 in Table A shall be modified accordingly.

GENERAL MEETINGS AND RESOLUTIONS

6. (A) A notice convening a General Meeting shall be required to specify the general nature of the business to be transacted only in the case of special business and Regulation 38 in Table A shall be modified accordingly. All business shall be deemed special that is transacted at an Extraordinary General Meeting, and also all that is transacted at an Annual General Meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the Directors and Auditors, and the appointment of, and the fixing of the remuneration of, the Auditors.
- (B) Every notice convening a General Meeting shall comply with the provisions of Section 372(3) of the Act as to giving information to Members in regard to their right to appoint proxies; and notices of and other communications relating to any General Meeting which any Member is entitled to receive shall be sent to the Directors and to the Auditors for the time being of the Company.

- (C) Proxies may be deposited at the Registered Office of the Company at any time before the time of the Meeting for which they are to be used or may be brought to the meeting itself and Regulation 62 of Table A shall be amended accordingly.
- 7.
- (A) Regulation 40 in Table A shall be read and construed as if the words "at the time when the Meeting proceeds to business" were added at the end of the first sentence.
 - (B) If a quorum is not present within one hour from the time appointed for a General Meeting the General Meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Directors may determine; and if at the adjourned General Meeting a quorum is not present within one hour from the time appointed therefor such adjourned General Meeting shall be dissolved.
 - (C) Regulation 41 in Table A shall not apply to the Company.

APPOINTMENT OF DIRECTORS

- 8.
- (A) Regulation 64 in Table A shall not apply to the Company.
 - (B) There shall be a maximum of five directors but the minimum number of directors shall be one. The quorum for the transaction of business of the Directors shall be two directors or their alternates and Regulation 89 in Table A shall be modified accordingly.
 - (C) Any director may participate in a meeting of the Board or of a committee of the Board by means of conference telephone or similar communications equipment whereby all the Directors participating in the meeting can hear each other and the Directors participating in this manner shall be deemed to be present in person at such meeting.
 - (D) The Directors shall not be required to retire by rotation and Regulations 73 to 80 (inclusive) in Table A shall not apply to the Company.
 - (E) The Company may by Ordinary Resolution in General Meeting appoint any person who is willing to act to be a Director, either to fill a vacancy or as an additional Director.
 - (F) The Directors may appoint a person who is willing to act to be a Director, either to fill a vacancy or as an additional Director.

- (G) The person or persons for the time being entitled to exercise a majority of the votes exercisable at a general meeting of the Company shall be entitled by instrument in writing signed by or on their behalf and lodged at the registered office of the Company or produced to a meeting of the Directors to appoint any person to be a Director of the Company or to remove any Director

POWERS AND DUTIES OF THE DIRECTORS

9. A Director may vote as Director in regard to any contract or arrangement in which he is in any way interested and if he shall so vote his vote shall be counted and he shall be reckoned in estimating a quorum present at any meeting when any such contract or arrangement is under consideration. Regulations 94 to 97 (inclusive) in Table A shall not apply to the Company.

ALTERNATE DIRECTORS

10. (A) An alternate Director shall not be entitled as such to receive any remuneration from the Company, save that he may be paid by the Company such part (if any) of the remuneration otherwise payable to his appointor as such appointor may by notice in writing to the Company from time to time direct, and the first sentence of Regulation 66 in Table A shall be modified accordingly.
- (B) An alternate Director may be any person appointed by a Director without the necessity for that person to be approved by resolution of the Directors and Regulation 65 of Table A shall be modified accordingly
- (C) A Director, or any such other person as is mentioned in Regulation 65 in Table A, may act as an alternate Director to represent more than one Director, and an alternate Director shall be entitled at any meeting of the Directors or of any committee of the Directors to one vote for every Director whom he represents in addition to his own vote (if any) as a Director, but he shall count as only one for the purpose of determining whether a quorum is present.

TRANSFER OF SHARES

11. Insofar as the provisions of Article 12 do not apply and subject to the provisions of Articles 13 14 and 15 the right to transfer Shares or any interest therein shall

be subject to the following restrictions, and Regulations 29 to 31 of Table A inclusive shall take effect accordingly:-

- (a) Before transferring any Shares (or any beneficial interest therein) the person desiring to transfer such shares ("the Proposing Transferor") shall serve a notice of his desire to transfer the same ("a Transfer Notice") on the Company and the Transfer Notice shall constitute the Company his agent for the sale of the Shares therein mentioned at the price specified by the Proposing Transferor pursuant to sub-clause (b) or determined in accordance with sub-clause (1) of this Article 11 ("the Prescribed Price") to any Member or Members. Except as hereinafter provided, a Transfer Notice once given or deemed to be given shall not be revocable except with the consent of the Directors.
- (b) Except where the Transfer Notice is given or deemed to be given compulsorily under the terms of these Articles the Proposing Transferor shall be entitled to specify the Prescribed Price in the Transfer Notice.
- (c) All Shares included in any Transfer notice shall, within 14 days after service of the Transfer Notice, be offered by the Company to each Member (other than the Proposing Transferor) for purchase at the Prescribed Price on terms that in case of competition the Shares so offered shall be sold to the Members accepting the offer in proportion (as nearly as may be, and without increasing the number sold to any Member beyond the number applied for by him) to their existing holdings of Shares and on the assumption that all Convertible Shares have been converted into Ordinary Shares. All such offers of Shares shall be made by notice in writing and every such offer shall limit a time (not being less than thirty or more than forty five days) within which the offer must be accepted or, in default, will be deemed to have been declined. It is hereby declared for the avoidance of doubt that any Member to whom shares are offered in accordance with this Article shall be at liberty to accept some but not all of the Shares so offered.
- (d) If the Company shall within the period limited for acceptance find a Purchaser or Purchasers willing to purchase all (but not some only of) the Shares concerned and shall give notice in writing thereof to the Proposing Transferor, he shall be bound, upon payment of the Prescribed Price, to transfer such Shares to the respective Purchasers thereof. Every such notice shall state the name and address of each Purchaser and the number of Shares agreed to be purchased by him, and

the purchase shall be completed at a place and time to be appointed by the Directors.

- (e) If in any case a proposing Transferor, after having become bound to transfer any Shares to a Purchaser, shall make default in transferring the Shares, the Directors may authorise some person to execute on behalf of and as attorney for the proposing Transferor any necessary instruments of transfer and may receive the purchase money and shall thereupon cause the name of the Purchaser to be entered in the Register as the holder of the Shares and shall hold the purchase money in trust for the Proposing Transferor. The receipt of the Company for the purchase money shall be a good discharge to the Purchaser who shall not be bound to see the application thereof and, after the name of the Purchaser has been entered in the Register in purported exercise of the aforesaid powers, the validity of the proceedings shall not be questioned by any person.
- (f) If the Company shall not within the periods limited for acceptance find a Purchaser or Purchasers willing to purchase all the Shares comprised in the Transfer Notice the Proposing Transferor shall at any time within six months after the Directors have so confirmed their inability to him in writing be at liberty to transfer all or any of the Shares comprised in the Transfer Notice to any person not being a Member on a bona fide sale at any price not being less than the Prescribed Price. The Directors may require to be satisfied that such shares are being transferred in pursuance of a bona fide sale for the consideration stated in the instrument of transfer without any deduction rebate or allowance whatsoever to the Purchaser.
- (g) Where a member dies his personal representatives may in relation to the Shares to which the deceased was the holder either (i) give a transfer notice (ii) be registered themselves as members or (iii) obtain registration of the Shares in the name of any person entitled to the Shares under the will or intestacy of the deceased.
- (h) A person entitled to a Share or Shares in consequence of the bankruptcy, receivership or liquidation of a Member shall be bound at any time, if and when called upon in writing by the Directors to do so, to give a Transfer Notice in respect of all the Shares then registered in the name of the insolvent Member.

- (i) Subject to any contrary provision contained in any employees Share Option Scheme hereafter adopted by the Company if any member of the Company (excluding Dr Graham Street or Mr Keith Raper) who is for the time being an employee of the Company or any subsidiary or renders services to the Company or any subsidiary either directly or indirectly through any other person connected with him within the meaning of Section 839 of the Income and Corporation Taxes Act 1988 ceases for any reason to be such employee or provider of services then he shall immediately be deemed to have given a Transfer Notice in respect of all shares held by him as shall every other member of the Company to whom such member so ceasing has previously transferred any shares and is a person connected with such member (as before defined)
- (j) Forthwith upon receipt of a Transfer Notice given compulsorily in accordance with paragraph (g) (h) or (i) hereof or in any other circumstances in which the giving of a Transfer Notice is compulsory the Company shall procure the Auditors to certify the Prescribed Price in accordance with paragraph (l) below.
- (k) For the purpose of ensuring that a transfer of Shares is duly authorised hereunder or that no circumstances have arisen whereby a Transfer notice is required to be given hereunder the Directors may from time to time require any Member or past Member or the legal personal representatives or trustee in bankruptcy, receiver or liquidator of any Member or any person named as transferee in any instrument of transfer lodged for registration to furnish to the Company such information and evidence as the Directors may reasonably think fit regarding any matter which they may deem relevant to such purpose. Failing such information or evidence being furnished to the reasonable satisfaction of the Directors within a reasonable time after request, the Directors shall be entitled to refuse to register the transfer in question or (in case no transfer is in question) to require by notice in writing that a Transfer Notice be given in respect of the Shares concerned. If such information or evidence discloses that a transfer Notice ought to have been given in respect of any Shares the Directors may by notice in writing require that a Transfer Notice be given in respect of the Share concerned.
- (l) The Auditors of the Company for the time being shall within 14 days of a request by the Company certify to the Company the Prescribed Price which shall be their opinion of the market value of the Share or Shares concerned as between a

willing buyer and a willing seller but so that there shall be no addition or subtraction of any premium or discount arising in relation to the size of the holding the subject of the Transfer Notice or in relation to any restrictions on the transferability of the Shares.

- (m) In any case where under the provisions of these Articles the Directors require a Transfer Notice to be given in respect of any Shares, if a Transfer Notice is not duly given within a period of two weeks of demand being made, a Transfer Notice shall be deemed to have been given at the expiration of the said period
 - (n) Any notice required to be given under this Article by the Company to a Member or by a Member to the Company or otherwise shall be given or served either personally or by sending it by first class post to the registered office of the Company or to the registered address of the Member (as the case may be) or, (if he has no registered address within the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the Company for the giving of notice to him.
 - (o) With the consent in writing of all Members for the time being the restrictions imposed by this Article may be waived or varied in relation to any proposed transfer of Shares.
 - (p) Each holder of Shares shall for the purposes of this Article 11 be deemed to be a member holding the same number of Ordinary Shares as he is deemed to hold for the purposes of Article 3(h).
12. Any Shares may at any time be transferred:-
- (a) (in the case of any Shares held by a venture capital partnership or fund or any nominee therefor) to any person who is for the time being a partner in such partnership or to any company wholly owned and controlled by such partnership but upon any such company ceasing to be so wholly owned or controlled the shares shall be re-transferred to the transferor or another company wholly owned or controlled by the transferor
 - (b) Any shares held in the name of a corporate member may be transferred to the holding company or any subsidiary of that corporate member but upon the transferee ceasing to be the holding company or subsidiary of the transferor the Shares shall be re-transferred to the transferor or to another company which is then the holding company or subsidiary of the transferor.

- (c) European Medical Ventures Fund S.C.A. may transfer up to five per cent of the shares issued or transferred to it to its executives consultants or FINOVELEC.
13. The Directors must refuse to register any transfer of Shares (including a transfer otherwise authorised by these Articles except one required to be registered under Article 15) where the Transferor is under an obligation to require the intended transferee of the shares in question to enter into an undertaking to observe and perform the terms of the Agreement binding on the Transferor in accordance with the terms thereof and such transferee has failed to execute such undertaking to the reasonable satisfaction of the Directors.
14. Notwithstanding the provisions of Article 12 for so long as any of the Convertible Shares have not been converted the directors shall not register any transfer of any Ordinary Shares in the Company (other than any transfers arising out of any obligation to give a Transfer Notice or deemed transfer Notice under that Article) without the prior consent in writing of the majority in nominal value of the holders of the Convertible Shares
- 15 (A) No Buyer (as hereinafter defined) shall be entitled or permitted to acquire a Controlling Interest (as hereinafter defined) and no Buyer who shall have a Controlling Interest shall acquire any additional shares in the Company and no transfer of shares conferring such a Controlling Interest or in respect of the acquisition of any additional shares as aforesaid shall be registered unless and until the Buyer shall have made an offer to all the holders of shares in the Company at the relevant time (other than the Buyer if he is already a holder) to purchase from them for cash their entire holdings of shares in the Company upon terms that the Total Price (as hereinafter defined) shall be apportioned between the holders of shares in the Company in the same way as it would fall to be apportioned between them if the Total Price was the amount available for distribution between the members on a winding upon the basis that any Convertible Shares then unconverted are prior to the completion of the sale converted into Ordinary Shares.
- (B) For the purposes of this Article 15:-
- (a) "Buyer" shall mean any one person or group of persons acting in concert and persons shall be deemed to be acting in concert if they would be

regarded as so doing under the City Code on Takeovers and Mergers in force from time to time

- (b) the expression "acquire" shall mean being or becoming the owner of, whether directly or indirectly and whether by issue transfer renunciation or conversion of shares
- (c) a "Controlling Interest" shall mean shares conferring in the aggregate more than half the votes exerciseable at any general meeting of the Company (but excluding the special voting rights which may become attached to the Preference Shares or to the shares held by the Investors)
- (d) the "Total Price" shall mean the total consideration offered or paid or payable by the Buyer or his nominees for the entire issued share capital of the Company plus any other consideration (in cash or otherwise) offered to or received or receivable by any holders of shares in the Company which having regard to the substance of the transaction as a whole can reasonably be regarded as an addition to the price paid or payable for such entire issued share capital
- (C) An offer made pursuant to this Article 15 shall be communicated in writing to the directors of the Company who shall as soon as practicable convene an Extraordinary General Meeting of the Company at which will be proposed a Special Resolution for the approval of the offer by the members of the Company but subject to sub paragraph (J) of this Article
- (D) If such a Special Resolution shall be passed every member shall become bound to transfer all his shares in the Company to the Buyer for the consideration stated in and upon the other terms of the offer. If any member shall fail to transfer all his shares as aforesaid the directors may authorise some person to execute any necessary transfers or other documents. The purchase money or other consideration due to such defaulting transferor shall be received by the Company or by such person appointed by the directors who shall hold the same in trust for the defaulting transferor. The receipt of the Company or such authorised person for such purchase money or other consideration shall be a good discharge to the Buyer and after the name of the Buyer shall have been

entered on the register in purported exercise of the aforesaid powers the validity of the proceedings shall not be questioned by any person.

- (E) If such a Special Resolution shall be passed the restrictions on transfers of shares contained in Article 11 shall not apply in relation to the transfers of shares pursuant to the offer and the directors shall be bound to register every such transfer. If such a Special Resolution shall not be passed then such restrictions shall continue to apply and no transfers of any shares pursuant to any acceptance of the offer shall be registered unless and until each member concerned shall have complied with Article 11 and the rights of pre-emption therein contained are exhausted.
- (F) For the avoidance of doubt an offer for the purposes of this Article 15 may include one which is to be accepted by the making of a private contract as well as one made by general offer and may include one which is subject to contract or in some way conditional (and if the offer does not become unconditional or the subject of a contract any Special Resolution passed as aforesaid shall be a nullity and no member shall be bound to sell as aforesaid)
- (G) No member shall be bound to accept such an offer unless there is circulated to all members with the notice convening the extraordinary general meeting as aforesaid a statement setting out the terms of the offer together with copies of all documents required to be executed by acceptors thereof and 21 days notice of the holding of such meeting shall be given
- (H) An offer for the purposes of this Article 15 shall provided it is made on the terms that the Total Price is apportioned as aforesaid need not provide for all members to sell on the same terms otherwise than as to the consideration but no offer shall be regarded as complying with this Article 15 if it contains such terms as regards the shares held by the Investors which are less favourable in the aggregate than those available to other members.
- (I) This Article 15 may to any extent be waived by the written agreement of all the members and if all the members shall enter into a contract for the sale of the entire issued share capital of the Company they shall be deemed to have waived the whole of such Article

INDEMNITY

16. Regulation 118 in Table A shall not apply to the Company. Every Director or other Officer of the Company shall be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in about the execution and 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 under Section 144 or Section 727 of the Act in which relief is granted to him by the Court, and no Director or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his office or in relation thereto. But this Article shall only have effect in so far as its provisions are not avoided by Section 310 of the Act.

CAPITALISATION OF PROFITS

17. For so long as any of the Convertible Shares remain in issue and are not converted as aforesaid the Company shall not be capable of exercising the powers to capitalise profits contained in Regulation 110 of Table A.