

THE COMPANIES ACT 2006

COMPANY NO: 08631065

PRIVATE COMPANY LIMITED BY SHARES  
ARTICLES OF ASSOCIATION  
OF  
CLEARSKY MEDICAL DIAGNOSTICS LIMITED

(Adopted by special resolution passed on *4 July* 2017)

**INTRODUCTION**

**1 Interpretation**

**1.1** In these articles:

"**Act**" means the Companies Act 2006;

"**Acting in Concert**" has the meaning given to it in the City Code on Takeovers and Mergers published by the Panel on Takeovers and Mergers (as amended from time to time);

"**Appointor**" has the meaning given in article 12.1;

"**Bad Leaver**" means a person who is not a Good Leaver;

"**Business Day**" means any day (other than a Saturday, Sunday or public holiday in the United Kingdom) on which clearing banks in the City of London are generally open for business;

"**Buyer**" means a bona fide arm's length purchaser to whom the Sellers wish to transfer their Shares under article 18.8;

"**Called Shareholders**" means the holders of shares other than the Sellers;

"**Called Shares**" means the shares held by the Called Shareholders;

"**Compulsory Transfer**" means a transfer of shares pursuant to a Deemed Transfer Notice given under article 16.2;

"**Compulsory Transfer Date**" means:

- (a) where a member dies, that member's date of death;

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- (b) where a member becomes bankrupt, the date of the bankruptcy order made against him;
- (c) where a member makes a composition or arrangement with his creditors, the date on which that composition or arrangement becomes effective;
- (d) where a member becomes permanently mentally incapacitated the date of such diagnosis by a registered medical practitioner;
- (e) in the case of the events set out in paragraphs (b) or (c) above, the date when any analogous step in another jurisdiction first takes place or becomes first known to the Directors, whoever is the first to occur;

**"Compulsory Transfer Event"** means in relation to a member, being an individual:

- (a) that member's death;
- (b) that member's bankruptcy or making of any arrangement or composition with his creditors;
- (c) that member's permanent mental incapacity;
- (d) in the case of the events set out in paragraph (b) above, any competent person taking any analogous step in any jurisdiction in which that member carried on a business.

**"Compulsory Transfer Shares"** means in relation to a Departing Member, all shares held by that member immediately before the drag Transfer Date.

**"Conflict"** has the meaning given in article 9.1;

**"Controlling Interest"** means in relation to a company an interest in shares giving to the holder or holders control of that company (which shall mean for these purposes in relation to voting rights attaching to shares control over 50% or more of the total voting rights available to all the holders of the issue in the company but otherwise within the meaning of section 1124 of the Corporation Tax Act 2010) and **"Control"** and **"Controlled"** shall be construed accordingly;

**"Deemed Transfer Notice"** means a Transfer Notice which is deemed to have been served by any of the provisions of these articles;

**"Departing Member"** means a member in relation to whom a Compulsory Transfer Event has occurred;

**"Drag Along Notice"** means a notice of exercise of the Drag Along Option given under article 18.9;

**"Drag Along Option"** means the option referred to in article 18.8;

**"Eligible Director"** means a director who would be entitled to vote on the matter at a meeting of directors;

**"Employee"** means a director or officer (whether or not employed by the Company) or employee of the Company;

**"Good Leaver"** means a person who becomes a Departing Member for one of the following reasons:

- (a) that person's death; or
- (b) that person's permanent mental incapacity.

**"Independent Expert"** means an umpire (acting as an expert and not as an arbitrator) nominated by the parties concerned or, in the event of disagreement as to nomination, appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales;

**"Interested Director"** has the meaning given in article 9.1;

**"Model Articles"** means the model articles for private companies limited by shares contained in Schedule 1 of the Companies (Model Articles) Regulations 2008 (*SI 2008/3229*) as amended prior to the date of adoption of these articles;

**"Original Shareholder"** means a member at the date of adoption of these articles;

**"Relevant Agreement"** means any agreement relating (in whole or in part) to the management and/or affairs of the Company entered into by the Shareholders and any amendment or supplement thereto and which is binding from time to time on the

Shareholders and which (expressly or by implication) supplements or prevails over any provision of these articles;

**"Sale Price"** means the sale price of the Sale Shares, determined in accordance with article 17.4;

**"Sale Shares"** means Shares specified in the Transfer Notice, or in respect of which the Transfer Notice was deemed to have been given;

**"Sellers"** means the holders of at least 70% of the total Shares in issue;

**"Sellers' Shares"** means all Shares held by the Sellers;

**"Shareholder"** means the holder of any Shares from time to time;

**"Shares"** means the ordinary shares of £0.001 each in the capital of the Company;

**"Total Transfer Condition"** means a condition that unless all the shares specified in the Transfer Notice are sold under article 17, none shall be sold;

**"Transfer"** means in relation to a transfer of Shares, shall be deemed to include a transfer of any interest in shares (whether legal, beneficial or otherwise);

**"Transfer Notice"** means a notice given by a member who desires to transfer any shares under article 17.1;

**"Vendor"** means the transferor under a Transfer Notice or a Deemed Transfer Notice;

**"Writing or written"** means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise, save that, for the purposes of articles 17 and 18 "writing" or "written" shall not include the sending or supply of notices, documents or information in electronic form (other than by fax).

- 1.2 Save as otherwise specifically provided in these articles, words and expressions which have particular meanings in the Model Articles shall have the same meanings in these articles, subject to which and unless the context otherwise requires, words and expressions which have particular meanings in the Act shall have the same meanings in these articles but

excluding any statutory modification of them not in force on the date when these articles become binding on the Company.

- 1.3 Headings in these articles are used for convenience only and shall not affect the construction or interpretation of these articles.
- 1.4 A reference in these articles to an "article" is a reference to the relevant article of these articles unless expressly provided otherwise.
- 1.5 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.6 Save as expressly provided otherwise in these articles, any reference to any statutory provision shall be deemed to include a reference to each and every statutory amendment, modification, re-enactment and extension thereof for the time being in force.

## **2 Adoption of the Model Articles**

- 2.1 The Model Articles shall apply to the Company, except in so far as they are modified or excluded by these articles or are inconsistent with these articles, and, subject to any such modifications, exclusions or inconsistencies, shall together with these articles constitute the articles of association of the Company to the exclusion of any other articles or regulations set out in any statute or in any statutory instrument or other subordinate legislation.
- 2.2 Articles 6(2), 7, 8, 9(1), 11 to 14 (inclusive), 16, 17, 22, 26(5), 27 to 29 (inclusive), 36, 38, 39, 43, 44(2), 49 and 50 to 53 (inclusive) of the Model Articles shall not apply to the Company.
- 2.3 Article 20 of the Model Articles shall be amended by the insertion of the words "(including alternate directors)" before the words "properly incur".
- 2.4 In article 25(2)(c) of the Model Articles, the words "evidence, indemnity and the payment of a reasonable fee" shall be deleted and replaced with the words "evidence and indemnity".
- 2.5 Articles 31(1)(a) to (c) (inclusive) of the Model Articles shall be amended by the deletion, in each case, of the words "either" and "or as the directors may otherwise decide". Article 31(d) of the Model Articles shall be amended by the deletion of the words "either" and "or by such other means as the directors decide".

## **DIRECTORS**

### **3 Directors' Meetings**

- 3.1 Any decision of the directors must be taken at a meeting of directors in accordance with these articles or must be a decision taken in accordance with article 4.
- 3.2 Subject as provided in these articles, the directors may participate in directors' meetings for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. The directors will try to meet at least monthly.
- 3.3 All decisions made at any meeting of the directors or of any committee of the directors shall be made only by resolution and resolutions at any meeting of the directors or committee of the directors shall be decided by a majority of votes.
- 3.4 If at any time at or before any meeting of the directors or of any committee of the directors a director participating should request that the meeting be adjourned or reconvened to another time or date (whether to enable further consideration to be given to any matter or for other directors to participate or for any other reason, which need not be stated) then such meeting shall be adjourned or reconvened accordingly, and no business shall be conducted at that meeting after such a request has been made. No meeting of directors may be adjourned pursuant to this article more than once.

### **4 Unanimous decisions of directors**

- 4.1 A decision of the directors is taken in accordance with this article when all Eligible Directors indicate to each other by any means that they share a common view on a matter.
- 4.2 Such a decision may take the form of a resolution in writing, where each Eligible Director has signed *one or more copies of it, or to which each Eligible Director has otherwise indicated agreement in writing.*
- 4.3 A decision may not be taken in accordance with this article if the Eligible Directors would not have formed a quorum at a directors' meeting to vote on the matter in accordance with article 7.

**5      Number of directors**

- 5.1      The number of directors shall not be less than one. No shareholding qualification for directors shall be required.

**6      Calling a directors' meeting**

- 6.1      Any director may call a meeting of directors by giving not less than seven Business Days' notice of the meeting to each director or by authorising the Company secretary (if any) to give such notice.

- 6.2      Notice of any directors' meeting must be accompanied by:

- (a)      an agenda specifying in reasonable detail the matters to be raised at the meeting;  
            and
- (b)      copies of any papers to be discussed at the meeting.

- 6.3      Matters not on the agenda, or business conducted in relation to those matters, may not be raised at a meeting of directors unless all the directors agree in writing.

**7      Quorum for directors' meetings**

- 7.1      The quorum at any meeting of the directors (including adjourned meetings) shall be three directors. No business shall be conducted at any meeting of the directors unless a quorum is participating at the beginning of the meeting and also when that business is voted on. If a quorum is not participating within 30 minutes of the time specified for the relevant meeting in the notice of the meeting then the meeting shall be adjourned for 10 Business Days at the same time and place. If a quorum is not present at any such adjourned meeting within 30 minutes of the time specified then those Eligible Directors present will constitute a quorum.

**8      Chairing of directors' meetings**

- 8.1      The chairman shall have not a casting vote.

**9      Directors' interests**

- 9.1      The directors may, in accordance with the requirements set out in this article, authorise any matter or situation proposed to them by any director which would, if not authorised, involve

a director (the "**Interested Director**") breaching his duty under section 175 of the Act to avoid conflicts of interest (a "**Conflict**").

9.2 Any authorisation under this article will be effective only if:

- (a) the matter in question shall have been proposed by any director for consideration in the same way that any other matter may be proposed to the directors under the provisions of these articles or in such other manner as the directors may determine;
- (b) any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director; and
- (c) the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's vote had not been counted.

9.3 Any authorisation of a Conflict under this article may (whether at the time of giving the authorisation or subsequently):

- (a) extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter or situation so authorised;
- (b) provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the directors or otherwise) related to the Conflict;
- (c) provide that the Interested Director will or will not be an Eligible Director in respect of any future decision of the directors in relation to any resolution related to the Conflict;
- (d) impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the directors think fit;
- (e) provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a director of the Company) information that is confidential to a third party, he will not be obliged to disclose that information to the Company, or to use it in relation to the Company's affairs where to do so would amount to a breach of that confidence; and



- (f) permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the directors and be excused from reviewing papers prepared by, or for, the directors to the extent they relate to such matters.
- 9.4 Where the directors authorise a Conflict, the Interested Director will be obliged to conduct himself in accordance with any terms and conditions imposed by the directors in relation to the Conflict.
- 9.5 The directors may revoke or vary such authorisation at any time but this will not affect anything done by the Interested Director prior to such revocation or variation in accordance with the terms of such authorisation.
- 9.6 A director is not required, by reason of being a director (or because of the fiduciary relationship established by reason of being a director), to account to the Company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the directors in accordance with these articles or by the Company in general meeting (subject in each case to any terms and conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.
- 9.7 Subject to sections 177(5) and 177(6) of the Act, a director who is in any way, whether directly or indirectly, interested in a proposed transaction or arrangement with the Company shall declare the nature and extent of his interest to the other directors before the Company enters into the transaction or arrangement in accordance with the Act.
- 9.8 Subject to sections 182(5) and 182(6) of the Act, a director who is in any way, whether directly or indirectly, interested in a transaction or arrangement that has been entered into by the Company shall declare the nature and extent of his interest to the other directors as soon as is reasonably practicable in accordance with the Act, unless the interest has already been declared under article 9.7.
- 9.9 Subject, where applicable, to any terms and conditions imposed by the directors of the Company in general meeting in accordance with articles 9.3 and 9.6 and provided a director has declared the nature and extent of his interest in accordance with the requirements of the Act, a director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction or arrangement with the Company:

- (a) may be a party to, or otherwise interested in, any such transaction or arrangement with the Company, or in which the Company is otherwise (directly or indirectly) interested;
- (b) shall be an Eligible Director for the purposes of any proposed decision of the directors (or committee of directors) in respect of such transaction or arrangement or proposed transaction or arrangement in which he is interested;
- (c) shall be entitled to vote at a meeting of directors (or of a committee of directors) or participate in any unanimous decision, in respect of such transaction or arrangement or proposed transaction or arrangement in which he is interested;
- (d) may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a director;
- (e) may be a director or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate in which the Company is otherwise (directly or indirectly) interested; and
- (f) shall not, save as he may otherwise agree, be accountable to the Company for any benefit which he (or a person connected with him (as defined in section 252 of the Act)) derives from any such contract, transaction or arrangement or from any such office or employment or from any interest in any such body corporate and no such contract, transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit nor shall the receipt of any such remuneration or other benefit constitute a breach of his duty under section 176 of the Act.

## **10 Records of decisions to be kept**

- 10.1 Where decisions of the directors are taken by electronic means, such decisions shall be recorded by the directors in permanent form, so that they may be read with the naked eye.

## **11 Appointment and removal of directors**

- 11.1 The Company may by ordinary resolution appoint a person who is willing to act to be a director either to fill a vacancy or as an additional director.

11.2 The holders of more than 50% of the votes attaching to the Shares may by notice to the Company remove any or all of the directors of the Company.

11.3 On receipt of a notice given under article 11.2, the Company shall serve a copy of it on the director to whom the notice relates, either in person or at the address of the director as shown in the statutory books of the Company at the time. If no address is shown, the notice may be sent to any address which the Company reasonably considers to be the director's then current address. Any failure by the Company to comply with this article 11.3 shall not affect the validity of the director's removal under article 11.2.

## **12 Alternate directors**

12.1 Any director (other than an alternate director) (in this article, the "**Appointor**") may appoint any person (whether or not a director) to be an alternate director to exercise that director's powers, and carry out that director's responsibilities, in relation to the taking of decisions by the directors, in the absence of the alternate's Appointor.

12.2 Any appointment or removal of an alternate director must be effected by notice in writing to the Company signed by the Appointor, or in any other manner approved by the directors.

12.3 The notice must:

- (a) identify the proposed alternate; and
- (b) in the case of a notice of appointment, contain a statement signed by the proposed alternate that he is willing to act as the alternate of the director giving the notice.

12.4 An alternate director has the same rights, in relation to any decision of the directors, as the alternate's Appointor.

12.5 Except as the Articles specify otherwise, alternate directors:

- (a) are deemed for all purposes to be directors;
- (b) are liable for their own acts and omissions;
- (c) are subject to the same restrictions as their Appointors; and
- (d) are not deemed to be agents of or for their Appointors,

and, in particular (without limitation), each alternate director shall be entitled to receive notice of all meetings of directors and of all meetings of committees of directors of which his Appointor is a member.

12.6 A person who is an alternate director but not a director:

- (a) may be counted as participating for the purposes of determining whether a quorum is present (but only if that person's Appointor is not participating); and
- (b) may participate in a unanimous decision of the directors (but only if his Appointor is an Eligible Director in relation to that decision, and does not himself participate).

12.7 A director who is also an alternate director is entitled, in the absence of his Appointor, to a separate vote on behalf of his Appointor, in addition to his own vote on any decision of the directors (provided that his Appointor is an Eligible Director in relation to that decision).

12.8 An alternate director may be paid expenses and may be indemnified by the Company to the same extent as if he were a director but shall not be entitled to receive from the Company any remuneration in his capacity as an alternate director except such part (if any) of the remuneration otherwise payable to the alternate's Appointor as the Appointor may by notice in writing to the Company from time to time direct.

12.9 An alternate director's appointment as an alternate terminates:

- (a) when the alternate's Appointor revokes the appointment by notice to the Company in writing specifying when it is to terminate;
- (b) on the occurrence, in relation to the alternate, of any event which, if it occurred in relation to the alternate's Appointor, would result in the termination of the Appointor's appointment as a director; or
- (c) when the alternate director's Appointor ceases to be a director for whatever reason.

## SHARES

### 13 Unissued shares

13.1 Subject to these articles and before allotting and issuing any new securities the Company shall offer these securities for subscription to the Shareholders in accordance with articles

13.1(a) to 13.1(h) below:

- (a) the new securities shall be offered for subscription to each Shareholder in proportion (as nearly as may be) to the number of issued Shares held by such Shareholder as at the close of business on the date prior to such offer on the basis that a Shareholder may take up all or part or none of the securities offered to it;
- (b) each offer pursuant to article 13.1(a) shall be made by notice in writing (the "**Notice**") specifying the number of Shares which the Shareholder is offered and a time limit (being not less than 21 days from the date of the Notice) within which if the offer is not accepted in writing it will be deemed to be declined;
- (c) any Shareholder who accepts the offer in whole may also confirm in its acceptance if it wishes to apply on the same terms, for securities (specifying a maximum number) that have not been accepted by other Shareholders ("**Excess Shares**");
- (d) if a Shareholder who accepts the offer fails to make a confirmation in the terms of article 13.1(c) it shall be deemed to have made a confirmation that it will not accept any Excess Shares;
- (e) Excess Shares shall be allotted to each relevant Shareholder who has indicated that it wishes to apply for Excess Shares but in the event of competition each applicant shall be allotted such Excess Shares in the same proportion which the number of issued Shares it holds bears to the aggregate number of issued Shares held by all those Shareholders who have indicated that they wish to apply for Excess Shares provided that no such Shareholder shall be allotted more Excess Shares than the maximum number of Excess Shares such Shareholder has indicated it wishes to apply for;
- (f) Excess Shares shall continue to be allotted on this basis until either all Excess Shares are allotted or all requests for Excess Shares have been satisfied;
- (g) upon expiry of the time limit for acceptance of an offer made pursuant to article 13.1(a) or upon receipt by the Company of an acceptance or refusal of any offer made by the Company, the directors shall be entitled to allot to any person any shares offered to Shareholders and which are not required to be allotted in accordance with the foregoing provisions on terms no more favourable than those

offered to the Shareholders and in such manner as the directors may think most beneficial to the Company;

- (h) where any allotment referred to in this article 13.1 would result in a fractional allotment, the directors may in their absolute discretion round up or down such fractional allotments or otherwise deal with such entitlements as they deem fit.

13.2 The pre-emption provisions of this article 13 shall not apply:

- (a) where so agreed in writing all the holders of the Shares in issue at that time; or
- (b) to a Shareholders where a Shareholder has notified the Company that it has waived its rights under this article 13.

#### **14 Further issues of shares: authority**

14.1 Subject to article 13 and the remaining provisions of this article 14, the directors are generally and unconditionally authorised, for the purpose of section 551 of the Act, to exercise any power of the Company to:

- (a) offer or allot;
- (b) grant rights to subscribe for or to convert any security into; or
- (c) otherwise deal in, or dispose of,

any shares in the Company to any person, at any time and subject to any terms and conditions as the directors think proper.

14.2 The authority referred to in article 14.1:

- (a) shall be limited to such other amount as may from time to time be authorised by the Company by ordinary resolution;
- (b) shall only apply insofar as the Company has not, subject to these articles, renewed, waived or revoked it by ordinary resolution; and
- (c) may only be exercised for a period of five years from the date of adoption of these articles, save that the directors may make an offer or agreement which would, or might, require shares to be allotted after the expiry of such authority (and the

directors may allot shares in pursuance of an offer or agreement as if such authority had not expired).

**15      Transfer of Shares – General**

15.1      The directors shall refuse to register any transfer of shares which contravenes these articles but may not otherwise refuse to register any transfer of shares.

15.2      To ensure that a particular transfer of shares is permitted under these articles, the directors may ask the transferor, or the person named as transferee in any transfer lodged for registration, to give the Company any information and evidence that the directors reasonably think is necessary or relevant. If that information or evidence is not furnished to the satisfaction of the directors within 28 days after the request, the directors may refuse to register the transfer in question.

15.3      The directors may, as a condition to the registration of any transfer of shares in the Company (whether to a Permitted Transferee or otherwise) require the transferee to execute and deliver to the Company a deed under which the transferee agrees to be bound by the terms of any Relevant Agreement (or similar document) in force in such form as the directors may reasonably require (but not so as to oblige the transferee to have any obligations or liabilities greater than those of the proposed transferor under any such agreement or other document). If any such condition is imposed in accordance with this article 15.3, the transfer may not be registered unless that deed has been executed and delivered to the Company's registered office by the transferee.

**16      Compulsory Transfers**

16.1      If a Compulsory Transfer Event occurs in relation to a member a Transfer Notice shall be deemed to have been served on the Company at the time prescribed in article 16.2 in respect of all Compulsory Transfer Shares unless and to the extent that all the members have agreed in writing that the shares of a member should not be subject to a Compulsory Transfer.

16.2      A Transfer Notice shall be deemed to have been served under article 16.1 at 5.30pm on the first anniversary of the Compulsory Transfer Date in respect of all the Compulsory Transfer Shares, unless:

- (a) before that time the holders of more than 50% of the Shares (excluding the Compulsory Transfer Shares) serve a written notice on the Company to the effect that the Transfer Notice should be deemed given immediately, in which case it will be deemed to have been served on:
    - (i) the date the Company received that written notice in respect of any Compulsory Transfer Shares then held by the Departing Member; and
    - (ii) if any Compulsory Transfer Shares are acquired by the Departing Member after the date the Company received the written notice, the date on which the Compulsory Transfer Shares were acquired; or
  - (b) any Compulsory Transfer Shares were not acquired by the Departing Member until after 5.30 pm on the first anniversary of the Compulsory Transfer Date (and no notice is given under article 16.2(a)), in which case the Transfer Notice shall be deemed to have been served in respect of those shares on the date they were acquired.
- 16.3 The Compulsory Transfer Shares shall remain Departing Member's Shares until they have been validly transferred under articles 16.1 and 17. No transfer of any Compulsory Transfer Share may be made other than under article 16.1.
- 16.4 In circumstances where the Compulsory Transfer Event arises from a Material Breach by a member the rights attaching to each Compulsory Transfer Share shall be restricted immediately on the Compulsory Transfer Date so that the right to attend and vote at general meetings attaching to each Compulsory Transfer Share shall be suspended.

## **17 Pre-emption Rights**

### **Transfer notices**

- 17.1 Save as otherwise provided in these articles, every member who desires to transfer any Shares shall give the Company notice in writing of that desire. The Transfer Notice must state the identity of the person to whom the member wants to transfer the Shares.
- 17.2 Transfer Notices and Deemed Transfer Notices both constitute the Company as the Vendor's agent for the sale of the Sale Shares in one or more lots at the discretion of the directors at the Sale Price.



17.3 If:

- (a) a member gives a Transfer Notice (not being a Deemed Transfer Notice); and
- (b) a Deemed Transfer Notice is subsequently given by the same member before his Shares are transferred

the original Transfer Notice will immediately be cancelled. Any offers made by the Company on behalf of the Vendor under that original Transfer Notice will automatically be withdrawn and will have no effect, even if accepted.

**Calculation of the Sale Price**

17.4 Subject to article 17.6, the Sale Price shall be the price agreed by the Vendor and the directors. If the Vendor and the directors are unable to agree a price within 21 days of the Transfer Notice being given (or being deemed to have been given) the Sale Price will instead be the price which the Independent Expert shall certify to be in his opinion a fair value of the Sale Shares ("**Fair Value**"). In arriving at his opinion, the Independent Expert will value the Sale Shares:

- (a) as at the date the Transfer Notice is given or is deemed to have been given;
- (b) on a going concern basis as between a willing seller and a willing buyer;
- (c) on the assumption that the Sale Shares are capable of transfer without restriction; and
- (d) take into account the terms and value of any offer made or about to be made by a third party to obtain a Controlling Interest.

17.5 If an Independent Expert is appointed under these articles, each member will sign an engagement letter from the Independent Expert in the form agreed between that expert, the Company and the holders of more than 50% of the Shares (excluding the Sale Shares). Each member acknowledges that the engagement letter will include a waiver of claims against the Independent Expert and similar "hold harmless" provisions arising out of the expert's performance of its role. If a member fails to sign the letter, the directors may authorise some person to sign it as attorney for the member.

17.6 In the case of a Compulsory Transfer Event which has arisen as a result of a member ceasing to be an Employee, the Sale Price shall be as follows:

- (a) in the case of a Good Leaver, the Fair Value; or
- (b) in the case of a Bad Leaver, the lower of the Fair Value and the original subscription price of the Sale Shares.

**Right of Vendor to reject partial sales**

17.7 A Transfer Notice (but not a Deemed Transfer Notice) may contain a Total Transfer Condition. A Total Transfer Condition shall be binding on the Company.

**Certification of the Sale Price and right of Vendor to cancel**

17.8 If the Independent Expert is asked to certify the Sale Price, his certificate shall be delivered to the Company. As soon as the Company receives the certificate it shall deliver a copy of it to the Vendor. Unless the Shares are to be sold under a Deemed Transfer Notice, the Vendor may, by notice in writing to the Company within seven days of the service on him of the copy certificate, cancel the Company's authority to sell the Sale Shares.

17.9 The cost of obtaining the certificate shall be paid by the Company unless:

- (a) the Vendor cancels the Company's authority to sell; or
- (b) the sale is pursuant to a Deemed Transfer Notice, and the Sale Price certified by the Independent Expert is less than the price (if any) offered by the directors to the Vendor for the Sale Shares before the Independent Expert was instructed,

in which case the Vendor shall bear the cost.

**Preliminary offer to the Company**

17.10 Within 14 days of the Sale Price being determined, any Sale Shares being sold under a Compulsory Transfer will be offered to the Company which may accept the offer itself, subject to article 17.11.

17.11 The Company may not accept the offer itself unless the purchase of the Shares is permitted by the Act.

17.12 If:

- (a) the Company indicates that it does not wish to accept the offer under article 17.9; or
  - (b) the Company does not accept the offer within 20 Business Days of it being made,
- the Sale Shares concerned will immediately be offered to the holders of Shares (other than the Vendor) pursuant to articles 17.13 to 17.17.

**Offer to members**

17.13 The Sale Shares (excluding any that have been taken up by the Company) will be offered to all holders of Shares (other than the Vendor):

- (a) in the case of a Compulsory Transfer as soon as they become available (that is the Company has either declined an offer of Sale Shares, any period for accepting it has elapsed or it has accepted it in part); and
- (b) in the case of Shares not being sold pursuant to a Compulsory Transfer, within 14 days of the Sale Price being determined.

17.14 The offer under article 17.13 shall be in writing, specifying:

- (a) the number of Sale Shares on offer and the Sale Price;
- (b) whether the Sale Shares are subject to a Total Transfer Condition;
- (c) either:
  - (i) the person to whom the Vendor wants to transfer the Sale Shares; or
  - (ii) the fact that the sale is pursuant to a Deemed Transfer Notice(as the case may be); and
- (d) the date by which the application to purchase the Sale Shares has to be received by the Company (being a date not less than 14 days and no more than 21 days after the date of the notice).

The notice shall set out the method of allocation of the Sale Shares and shall invite each member to apply in writing to the Company for as many of the Sale Shares (if any) as that member would like to purchase.

17.15 If the total number of Sale Shares applied for by the members is equal to or less than the number of Sale Shares available, the Sale Shares shall be allocated in satisfaction of the applications received.

17.16 If the total number of Sale Shares applied for is more than the number of Sale Shares available, the directors shall allocate Sale Shares in satisfaction of each member's application for Sale Shares in accordance with the following formula (rounded down to the nearest whole number of shares). This formula shall be applied repeatedly until there are no Sale Shares left to be allocated. Each application of the formula is an "iteration".

$$A = \frac{B}{C} \times D$$

A is the number of Sale Shares to be allocated to the relevant member in the iteration.

B is the number of Shares held by the member.

C is the number of Shares held by all members to whom the iteration is being applied.

D is the number of Sale Shares or, after the first iteration, the number of Sale Shares remaining unallocated by previous iterations.

If, in any iteration, a member would be allocated all or more than all of the Sale Shares for which he applied (including allocations from previous iterations) then any excess will not be allocated to that member. That member will cease to take part in any further iterations and the excess Sale Shares will be available for allocation in the next iteration.

17.17 The Company shall notify the Vendor and each member who applied for Sale Shares of the number of Sale Shares that have been allocated and the persons to whom they have been allocated. The notification shall include the place and time (being not later than 14 days after the date by which applications had to be received) at which the sale of the Sale Shares shall be completed.

#### **Transfer procedure for pre-emptive offers**

17.18 If the Company finds purchasers for all or any of the Sale Shares under this article 17, the Vendor shall, on receipt of the Sale Price, transfer the Sale Shares (or those Sale Shares for which the Company has found purchasers) to those purchasers. If the purchase is by the Company, the Vendor will also sign any purchase contract required under the Act (that contract containing no obligations on the Vendor other than those consistent with transferring good title to the Sale Shares). If the Vendor does not perform his obligations under this article 17.18, the Company shall:

- (a) (if so required by the persons willing to purchase the Sale Shares) receive and give a good discharge for the purchase money on behalf of the Vendor;
- (b) authorise some person to execute transfers of the Sale Shares in favour of the purchaser and the purchase contract; and
- (c) enter the name(s) of the purchaser(s) in the Company's register of members as the holder of the Sale Shares that were transferred to them.

**Transfers free of pre-emption**

17.19 If the Company does not find purchasers for all of the Sale Shares under this article 17, the Vendor may, within six months after the date of the offer by the Company to its members, sell and transfer the Sale Shares that have not been sold under this article 17 to the persons specified in the Transfer Notice (provided that any such person is not in the reasonable opinion of the directors a competitor of the Company) at a price which is no less than the Sale Price. However, if the Sale Shares were:

- (a) subject to a Total Transfer Condition, a sale may only be made of all the Sale Shares and not some of them; or
- (b) offered under a Deemed Transfer Notice, they may not be sold or transferred to any third party unless the member serves a new Transfer Notice under article 17.1.

**Effect of non-compliance**

17.20 Any purported transfer of shares which is not in accordance with these articles is void.

## **18     Transfer of Control**

- 18.1     No sale or transfer of the legal or beneficial interest in any shares in the Company may be made or validly registered if, as a result of that sale or transfer and registration, a Controlling Interest would be obtained by a company in which one or more of the members of the Company (or persons acting in concert with them) has a Controlling Interest.
- 18.2     Save for transfers permitted under article 16, 17 or 18.8, the provisions of articles 18.3 to 18.7 shall apply if, in one or a series of related transactions, one or more Shareholders purpose to transfer any of the Shares (a "**Proposed Transfer**") which would, if carried out, result in a Buyer having a Controlling Interest.
- 18.3     Before making a Proposed Transfer, a Seller shall procure that the Buyer makes an offer ("**Offer**") to:
- (a)     the other Shareholders to purchase all of the Shares held by them;
  - (b)     the holders of any existing options to acquire Shares (granted by the Company or under any share option arrangements established by the Company) that are already capable of exercise or that are expected to become capable of exercise before the Proposed Transfer, to purchase any Shares acquired on the exercise of options at anytime before the Proposed Transfer; and
  - (c)     the holders of any warrants to subscribe for Shares that are capable of exercise or that are expected to become capable of exercise before the Proposed Transfer, to purchase any Shares acquired on the exercise of the subscription rights under such warrants at any time before the Proposed Transfer.
- 18.4     The Offer shall be made by written notice ("**Offer Notice**"), at least 20 Business Days before the proposed sale date ("**Sale Date**"). To the extent not described in any accompanying documents, the Offer Notice shall set out:
- (a)     the identity of the Buyer;
  - (b)     the Specified Price and other terms and conditions of payment;
  - (c)     the Sale Date; and
  - (d)     the number of Shares proposed to be purchased by the Buyer ("**Offer Shares**").

- 18.5 If the Buyer failed to make the Offer to all of the holders of Shares in the Company in accordance with article 18.3 and article 18.4, the Seller shall not be entitled to complete the Proposed Transfer and the Company shall not register any transfer of Shares effected in accordance with the Proposed Transfer.
- 18.6 If the Offer is accepted by any Shareholder ("**Accepting Shareholder**") in writing within 10 Business Days of receipt of the Offer Notice, the completion of the Proposed Transfer shall be conditional on completion of the purchase of all the Offer Shares held by Accepting Shareholders.
- 18.7 The "**Specified Price**" means the sum of:
- (a) the consideration (in cash or otherwise) per share equal to that offered or paid or payable by the proposed transferee or his or their nominees for the shares being acquired, plus
  - (b) the relevant proportion of any other consideration (in cash or otherwise) received or receivable by the holders of any shares 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, plus
  - (c) all arrears and accruals of the dividends on that share calculated down to the date of the sale or transfer.

If there is a disagreement, the calculation of the Specified Price shall be referred to an Independent Expert whose decision shall be final and binding.

- 18.8 If the Sellers wish to transfer the Sellers' Shares on an at arm's length price to a bona fide arm's length purchaser, the Sellers shall have the option to require all the Called Shareholders to sell and transfer all their shares to the Buyer (or as the Buyer shall direct) in accordance with articles 18.9 to 18.15 (inclusive) ("**Proposed Transfer**").
- 18.9 The Sellers may exercise the Drag Along Option by giving written notice to that effect at any time before the transfer of the Sellers' Shares to the Buyer. A Drag Along Notice shall specify:
- (a) that the Called Shareholders are required to transfer all their Called Shares under article 18.8;

- (b) the person to whom they are to be transferred;
  - (c) the consideration for which the Called Shares are to be transferred (calculated in accordance with article 18.11); and
  - (d) the proposed date of transfer.
- 18.10 Drag Along Notices shall be irrevocable but will lapse if the Sellers' Shares are not sold to the Buyer within 40 Business Days after the date the Drag Along Notice was served. The Sellers may serve further Drag Along Notices if any particular Drag Along Notice lapses.
- 18.11 The form (in cash or otherwise) and amount of the consideration payable for each Called Share shall be:
- (a) the consideration to be paid by the Buyer for each Share held by the Sellers (excluding any consideration attributable to accruals or arrears of dividends) (the "Offer Consideration"); or
  - (b) the consideration certified by the Company's auditors as not being less favourable than the Offer Consideration.
- 18.12 The sale of the Called Shares shall be completed on the date proposed for completion of the sale of the Seller's shares unless the holders of at least 50% of the Called Shares and the Sellers agree otherwise.
- 18.13 The restrictions on transfer set out in articles 15, 17, 18.1 and 18.2 shall not apply to any transfer of shares to a Buyer (or as he may direct) pursuant to the exercise of the Drag Along Option.
- 18.14 If any holder of Called Shares does not on completion of the sale of Called Shares execute transfers in respect of all his Called Shares, that holder shall be deemed to have irrevocably appointed any person nominated for the purpose by the Sellers to be his agent and attorney to:
- (a) execute all necessary transfers on his behalf; and
  - (b) against receipt by the Company (on trust for the holder) of the purchase monies or any other consideration payable for the Called Shares, deliver those transfers to the Buyer (or as he may direct).



18.15 On completion of the sale of the Called Shares, the directors shall (subject only to stamping any stock transfer forms, if required) immediately register the Buyer (or as he may direct) as the holder of the Called Shares and, after the Buyer (or his nominee) has been registered as the holder, the validity of those proceedings shall not be questioned by any person. A person may be registered as the holder of the Called Shares under this article 18.15 even if no certificate for those shares has been produced.

18.16 If any person becomes a member of the Company (a "**New Member**") pursuant to the exercise of a pre-existing option or other right to acquire shares in the Company after a Drag Along Notice has been served, the New Member will be bound to sell and transfer all shares acquired by him to the Buyer or as the Buyer may direct. The provisions of articles 18.8 to 18.15 (inclusive) shall apply (with the necessary changes) to the New Member, save that if the shares are acquired after the sale of the Called Shares has been completed, completion of the sale of the New Member's shares shall take place immediately on the New Member acquiring the shares.

18.17 If the Buyer fails to make the offer to the holders of all shares in the Company in accordance with this article 18, the Selling Shareholders shall not be entitled to complete the Proposed Transfer and the Company shall not register any transfer of Shares effected in accordance with the Proposed Transfer.

18.18 In this article 18 only:

'**transfer**' and '**transferee**' shall include respectively the renunciation of a renounceable letter of allotment and the renounce under such a letter of allotment; and

'**shares**' includes bearer shares, warrants, depository receipts and any other security or instrument into which shares may be converted with a view to a sale.

**Primacy of article**

18.19 All other regulations of the Company relating to the transfer of shares and the rights to registration of transfers shall be read subject to this article 18.

**19 Quorum for General Meetings**

19.1 The quorum at any general meeting of the Company, or adjourned general meeting, shall be three persons present in person or by proxy, which must include the University of York.

- 19.2 No business shall be transacted by any general meeting unless a quorum is present at the commencement of the meeting and also when that business is voted on. If a quorum is not participating within 30 minutes of the time specified for the relevant meeting in the notice of the meeting then the meeting shall be adjourned for five Business Days at the same time and place. If a quorum is not present at any such adjourned meeting within 30 minutes of the time specified then those members present will constitute a quorum.

## **20 Chairing General Meetings**

- 20.1 The chairman of the board of directors shall chair general meetings. If the chairman is unable to attend any general meeting, the board of directors shall nominate a director to act as chairman at the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting.

## **21 Voting**

- 21.1 At a general meeting, on a show of hands every shareholder who is present in person or by proxy shall have one vote, unless the proxy is himself a shareholder entitled to vote; on a poll every shareholder present in person or by proxy shall have one vote for each share of which he is the holder; and on a vote on a written resolution every shareholder has one vote for each share of which he is the holder except that, in the case of a resolution proposed to remove a Member's Appointee the Member Appointor of that appointee voting against any such resolution (whether on a show of hands, a poll or on a written resolution) shall be entitled to cast such number of votes as is necessary to defeat such resolution.
- 21.2 Any resolution proposed as a written resolution in relation to any of the matters listed in article 21.1 shall be proposed in a form that provides shareholders with the ability to cast their votes against as well as in favour of such resolution.

## **22 Poll Votes**

- 22.1 A poll may be demanded at any general meeting by a qualifying person (as defined in section 318 of the Act) present and entitled to vote at the meeting.
- 22.2 Article 44(3) of the Model Articles shall be amended by the insertion of the words "A demand so withdrawn shall not invalidate the result of a show of hands declared before the demand was made" as a new paragraph at the end of that article.

## **23     Proxies**

- 23.1 Article 45(1)(d) of the Model Articles shall be deleted and replaced with the words "is delivered to the Company in accordance with the Articles not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in accordance with any instructions contained in the notice of general meeting (or adjourned meeting) to which they relate".
- 23.2 Article 45(1) of the Model Articles shall be amended by the insertion of the words "and a proxy notice which is not delivered in such manner shall be invalid" as a new paragraph at the end of that article.

## **ADMINISTRATIVE ARRANGEMENTS**

### **24     Means of communication to be used**

- 24.1 Subject article 24.2, any notice, document or other information shall be deemed served on, or delivered to, the intended recipient:
- (a) If properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted or five Business Days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five Business Days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider;
  - (b) if properly addressed and delivered by hand, when it was given or left at the appropriate address;
  - (c) if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied; and
  - (d) if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.

24.2 Any notice, document or other information served on, or delivered to, an intended recipient under article 16 or article 18 (as the case may be) may not be served or delivered in electronic form (other than by fax), or by means of a website.

24.3 In proving that any notice, document or information was properly addressed, it shall be sufficient to show that the notice, document or information was addressed to an address permitted for the purpose by the Act.

## **25 Indemnity and Insurance**

25.1 Subject to article 25.2 but without prejudice to any indemnity to which a relevant officer is otherwise entitled:

(a) each relevant officer of the Company shall be indemnified out of the Company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer;

(i) in the actual or purported execution and/or discharge of his duties, or in relation to them;

(ii) in relation to the Company's activities as a trustee of an occupational pension scheme (as defined in section 235(6) of the Act),

including (in each case) any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the Company's affairs; and

(b) the Company may provide any relevant officer with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings or application referred to in article 25.1(a) and otherwise may take action to enable any such relevant officer to avoid incurring such expenditure.

25.2 This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Act or by any other provision of law.

25.3 The directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant officer in respect of any relevant loss.

25.4 In this article:

- (a) a "**relevant officer**" means any director or other officer or former director or other officer of the Company but excluding in each case any person engaged by the Company as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor; and
- (b) a "**relevant loss**" means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer's duties or powers in relation to the Company or any pension fund or employees' share scheme of the Company.