

THE COMPANIES ACT 2006
PRIVATE COMPANY LIMITED BY SHARES
ARTICLES OF ASSOCIATION
OF

NEXABIOME LIMITED

11 March 2024

(Adopted by written resolution passed on _____)

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these Articles unless the context otherwise requires each of the following words and expressions shall have the following meanings:

A Ordinary Shares	the A ordinary shares of £0.01 each in the capital of the Company having the rights set out in these Articles;
A Shareholders	the holders of the A Ordinary Shares from time to time;
Act	the Companies Act 2006;
acting in concert	the meaning set out in the City Code on Takeovers and Mergers for the time being;
Adoption Date	the date of adoption of these Articles;
Allocation Notice	has the meaning given to that term in Article 7.15;
Applicant	has the meaning given to that term in Article 7.15;
Auditors	the auditors of the Company for the time being unless auditors are not required pursuant to the Act and have not been appointed, in which case such reference shall mean the accountants of the Company;
Bad Leaver	any Leaver who is not a Good Leaver;
Barwell	Barwell PLC (registered number SC142927), having its registered office at 97 West Regent Street, Glasgow, Scotland, G2 2BA;
Barwell Group	means Barwell, any subsidiary or holding company or member for the time being of Barwell, or any entity or body of persons which shall have acquired the whole or substantially the whole of the undertaking of Barwell and the expression " member of the Barwell Group " shall be construed accordingly;
Bonus Issue or Reorganisation	means any return of capital, bonus issue of shares or other securities of the Company by way of capitalisation of profits or

	reserves (other than a capitalisation issue in substitution for or as an alternative to a cash dividend which is made available to Phagelux) or any consolidation or sub-division or any repurchase or redemption of shares or any variation in the subscription price or conversion rate applicable to any other outstanding shares of the Company in each case other than shares issued as a result of the events set out in Article 4.7;
Business Day	any day (other than a Saturday or Sunday) on which banks are open in Edinburgh for normal banking business;
Change of Control	the obtaining of Control of a company by any person or persons (whether acting individually or in concert) excluding, in the case of the Company, shareholders in the Company at the Adoption Date and, in the case of any other company, shareholders in that company at the Adoption Date;
Controlling Interest	an interest (as defined in section 820 to 825 of the Act) in Shares in the Company conferring in aggregate more than 50% of the total voting rights normally exercisable at a general meeting of the Company;
Control	the meaning given to that expression in section 1124 Corporation Tax Act 2010;
Deemed Transfer Notice	has the meaning given at Article 9.2;
Deferred Shares	means the deferred shares of £0.01 each in the capital of the Company having the rights set out in these Articles;
Employee Share Option Plan	the employee share option plan of the Company, the terms of which are approved by the Investor Majority;
Equity Shares	means shares in the Equity Share Capital (as such term is defined in the Act) of the Company always excluding, for the avoidance of doubt, the Deferred Shares;
Fair Value	the value determined by the Auditors in accordance with Article 10;
Family Trust	means as regards any particular individual member or deceased or former individual member, trusts (whether arising under a settlement, declaration of trust or other instrument by whomsoever or wheresoever made or under a testamentary disposition or on an intestacy) under which no immediate beneficial interest in any of the shares in question is for the time being vested in any person other than the individual and/or

Privileged Relations of that individual; and so that for this purpose a person shall be considered to be beneficially interested in a share if such share or the income from such share is liable to be transferred or paid or applied or appointed to or for the benefit of such person or any voting or other rights attaching thereto are exercisable by or as directed by such person pursuant to the terms of the relevant trusts or in consequence of an exercise of a power or discretion conferred thereby on any person or persons;

Financial Year	an accounting period in respect of which the Company prepares its accounts in accordance with the relevant provisions of the Statutes;
First Offer Period	has the meaning given to that term in Article 7.6;
Founders	Dr Michael Matthey and Dr Trevor Langley;
Good Leaver	<p>a person who is a Leaver as a result of:</p> <ul style="list-style-type: none">a. death;b. retirement at 65 years of age or more;c. Serious Ill Health;d. wrongful or unfair dismissal or dismissal by reason of redundancy (in the case of an employee) or unlawful contractual termination (in the case of a Director or consultant); <p>or where the Board (with Investor Consent) determines such person is a Good Leaver;</p>
GOS	means James Gerard O'Shea;
Group	the Company, its subsidiary undertakings and any holding company (as both are defined in the Act) from time to time and references to " member of the Group " and " Group Company " shall be construed accordingly;
Initial Surplus Shares	has the meaning given to that term in Article 7.10
Investor Consent	the consent in writing of the Investor Majority;
Investor Directors	such person or persons as the Investors may appoint as directors of the Company pursuant to Article 12;
Investor Majority	the Investors holding more than 85% of the nominal value of A Ordinary Shares in the Company;

Investors	Barwell, Scottish Enterprise, Phagelux, GOS, LSIP and any person acquiring A Ordinary Shares from any such persons in accordance with the Articles and any additional or replacement Investor who is named as an investor in a deed of adherence or otherwise;
Issue Price	in respect of a Share, the aggregate of the amount paid up (or credited as paid up) in respect of the nominal value;
Leaver	a shareholder who is an individual (excluding the Founders and their Permitted Transferees) and who is or was previously a Director (other than any Investors' Director) or employee of a member of the Group and who ceases to hold such office or employment unless the Investor Majority notify the Company that such person is not a Leaver;
LSIP	London and Scottish Investment Partners care of 8 Walker Street, Edinburgh, EH3 7LH;
Model Articles	the model articles for companies limited by shares contained in Schedule 1 of the Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended prior to the Adoption Date;
Ordinary Shares	the ordinary shares of £0.01 each in the capital of the Company having the rights set out in these Articles;
Ordinary Shareholders	the holders of the Ordinary Shares from time to time;
Permitted Transferee	any transferee of Shares pursuant to Article 6;
Phagelux	Phagelux, Inc., an exempted company incorporated in the Cayman Islands with number 282348 with its registered office at P.O. Box 10008, Willow House, Cricket Square, Grand Cayman KY1-1001;
Phagelux Anti-Dilution Provisions	means the provisions set out at Article 4.2;
Privileged Relation	in relation to a shareholder who is an individual member means a spouse, civil partner, child or grandchild (including a step or adopted or illegitimate child and their issue);
Priority Rights	means the rights of Shareholders to purchase Shares contained in a Transfer Notice in the priority stipulated in Article 7 or Article 9 (as the case may be);

Qualifying Company	means, as regards any individual, a company the entire issued share capital of which is held (legally and beneficially) by such individual (together with their Privileged Relations and Family Trusts) and over which that individual exercises control (within the meaning of section 1124 of the CTA 2010);
Relevant Securities	any Shares or other securities convertible into, or carrying the right to subscribe for Shares, issued by the Company after the date on which these Articles are adopted, but excluding: <ul style="list-style-type: none"> a. the grant of options to subscribe for Ordinary Shares under an Employee Share Option Plan (and the issue of the shares on exercise of those options); b. any Shares which the Company is required to issue by reason of a right specifically attached to Shares under these Articles.
Sale Shares	has the meaning given to that term in Article 7.1.1;
Scottish Enterprise	Scottish Enterprise, established by the Enterprise and New Towns (Scotland) Act 1990 and having its principal place of business at Atrium Court, 50 Waterloo Street, Glasgow, G2 6HQ;
Scottish Enterprise Group	Scottish Enterprise, any subsidiary for the time being of Scottish Enterprise and any company, corporation or other body of persons which shall have acquired the whole or substantially the whole of the undertaking of Scottish Enterprise or any subsidiary of such company, corporation or body and any other body to which the statutory functions of Scottish Enterprise have been delegated or a Scottish Enterprise Successor;
Scottish Enterprise Successor	any party succeeding in whole or in part to the interests of Scottish Enterprise;
Second Offer Period	has the meaning given to that term in Article 7.11;
Second Surplus Shares	has the meaning given to that term in Article 7.13;
Seller	a shareholder who wishes, or is required, to transfer Shares or any beneficial interest therein to a person to whom Article 6 (Permitted Transfers) does not apply;
Serious Ill Health	an illness or disability certified by a general medical practitioner (nominated or approved by the Investors) as rendering the person concerned permanently incapable of carrying out his role

	as an employee or Director save where such incapacity has arisen as a result of the abuse of drugs (including alcohol);
Shares	any share forming part of the share capital of the Company;
Starting Price	means £14.55 per share;
the Statutes	the Companies Act as defined in section 2 of the Act and every other statute, order, regulation, instrument or other subordinate legislation for the time being in force relating to companies and affecting the Company;
Tag Along Offer	an unconditional offer, open for acceptance for not less than 15 Business Days, to purchase Shares at a price per Share equal to the highest price per share (exclusive of stamp duty) paid or to be paid by any transferee referred to in Article 8.2 (or any person with whom such transferee is connected with or with whom such transferee is acting in concert) for Shares (inclusive of the Shares giving rise to the obligation to make the Tag Along Offer);
Transfer Event	has the meaning given to that term in Article 9;
Transfer Notice	has the meaning given to that term in Article 7.1; and
Transfer Price	in relation to a Transfer Notice given under a voluntary transfer pursuant to Article 7, the price stated in the Transfer Notice or as otherwise determined in accordance with Article 7.10, or in the case of a Deemed Transfer Notice as determined in accordance with Article 9.4.
1.2	references to any statute or statutory provision include, unless inconsistent with the context, a reference to that statute or statutory provision as modified, re-enacted or consolidated and in force from time to time, whether before or after the date of these Articles;
1.3	where the word " address " appears in these Articles it is deemed to include postal address and, where applicable, electronic address (being any address or number used for the purposes of sending or receiving documents or information by electronic means);
1.4	references to a person include any individual, firm, body corporate, unincorporated association or partnership;
1.5	references to the plural will include the singular and vice-versa;
1.6	headings are for convenience only and do not affect the construction or interpretation of these Articles;
1.7	the Model Articles shall apply to the Company, except insofar as they are modified or excluded by these Articles;

- 1.8 save as otherwise specifically provided in these Articles, words and expressions which have particular meanings in the Model Articles shall have the same meaning in these Articles subject to which and unless the context otherwise requires, words and expressions which have a particular meaning in the Act shall have the same meaning in the Articles; and
- 1.9 all references herein to consents, approval or permission by the Investors will mean the Investors acting by Investor Majority, unless otherwise stated.

2. SHARE CAPITAL

- 2.1 Unless the context requires otherwise, references in these Articles to shares of a particular class shall include shares created and/or issued after the Adoption Date and ranking pari passu in all respects (or in all respects except only as to the date from which those shares rank for dividend) with the shares of the relevant class then in issue.
- 2.2 Except as provided in these Articles the A Ordinary Shares and the Ordinary Shares shall rank pari passu in all respects but shall constitute separate classes of shares.

VOTING

- 2.3 Subject to any other provisions in these Articles concerning voting rights, Shares in the Company shall carry votes as follows:
- 2.3.1 the Ordinary Shares shall confer on each holder of Ordinary Shares the right to receive notice of and to attend, speak and vote at all general meetings of the Company, and each Ordinary Share shall carry one vote per share;
 - 2.3.2 the A Ordinary Shares shall confer on each holder of A Ordinary Shares the right to receive notice of and to attend, speak and vote at all general meetings of the Company, and each Ordinary A Share shall carry one vote per share; and
 - 2.3.3 the Deferred Shares shall not carry the right to receive notice of, or to attend and vote at, general meetings of the Company.
- 2.4 Where Shares confer a right to vote, votes may be exercised:
- 2.4.1 on a show of hands by every shareholder who (being an individual) is present in person or by proxy or (being a corporation) is present by a representative or by a proxy (in which case, each shareholder holding Shares with votes shall have one vote); or
 - 2.4.2 on a poll by every shareholder who (being an individual) is present in person or by proxy or (being a corporation) is present by a representative or by a proxy (in which case, each shareholder holding Shares with votes shall have one vote per Share held).
- 2.5 Whenever the share capital of the Company is divided into different classes of shares, the special rights attached to any such class may only be varied or abrogated (either whilst the Company is a going concern or during or in contemplation of a winding-up) with the consent in writing of the holders of more than 75% of the issued shares of that class.
- 2.6 Without prejudice to the generality of Article 2.5, the special rights attaching to the A Ordinary Shares shall be deemed to be varied by the occurrence of the following events:

- 2.6.1 the alteration of the issued share capital of the Company or creation of any securities; or
- 2.6.2 the amendment or repeal of any provision of, or addition of any provision of these Articles; or
- 2.6.3 the reduction of the amount standing to the credit of the share premium account or capital redemption reserve, other than as expressly provided for in these Articles; or
- 2.6.4 the approval of any merger, liquidation, dissolution or acquisition of the Company or sale of all or a substantial part of the business, undertaking or assets of the Company; or
- 2.6.5 the entering into of a voluntary winding-up.

INCOME

- 2.7 The A Ordinary Shares and Ordinary Shares shall rank pari passu for dividends.
- 2.8 The Deferred Shares shall not carry the right to receive any dividends or any other distributions of income whether pursuant to these Articles or otherwise.

3. DIVIDENDS AND RETURN OF CAPITAL

3.1 RETURN OF CAPITAL

On a return of assets on liquidation, capital reduction or otherwise (other than a conversion, redemption or purchase of shares), the assets of the Company remaining after the payment of its liabilities shall (to the extent that the Company is lawfully able to do so) be applied in the following order of priority:

- 3.1.1 first, in paying to the holders of the Deferred Shares, an aggregate of £1 for all the Deferred Shares held by them;
- 3.1.2 second, in paying to each holder of Ordinary Shares and A Ordinary Shares a sum equal to the subscription price (including any premium) in respect of all the Ordinary Shares and A Ordinary Share held by him and if there is a shortfall of assets remaining to satisfy the entitlements of holders of the Ordinary Shares and A Ordinary Shares in full, the proceeds shall be distributed to the holders of the Ordinary Shares and A Ordinary Shares in proportion to the amounts due to each such share held; and
- 3.1.3 thereafter, in distributing the balance of such assets amongst the holders of the A Ordinary Shares and Ordinary Shares (pari passu) as nearly as practicable, in proportion to the aggregate nominal amount of such shares held by them, respectively.

4. ALLOTMENT OF SHARES

- 4.1 Subject to the remaining provisions of this Article 4, the Directors are generally and unconditionally authorised, for the purpose of section 551 of the Act to exercise any power of the Company to:
 - 4.1.1 offer, allot or grant rights to subscribe for; or

- 4.1.2 convert securities into; or
- 4.1.3 otherwise deal in, or dispose of, any Shares (or any other Relevant Securities in the Company) to any person, at any time and subject to any terms and conditions as the Directors think proper.

4.2 PHAGELUX AND SCOTTISH ENTERPRISE ANTI-DILUTION PROTECTION

- 4.2.1 If Relevant Securities are issued by the Company at or which equate to a price per share which is less than the Starting Price (a "**Qualifying Issue**") (which in the event that the Relevant Security is not issued for cash shall be a price certified by the Auditors acting as experts and not as arbitrators as being in their opinion the current cash value of the new consideration for the allotment of the Relevant Securities) then the Company shall issue to Phagelux and Scottish Enterprise a number of new A Ordinary Shares determined by applying the following formula (and rounding the product, N, down to the nearest whole share), subject to adjustment as certified in accordance with Article 4.2.2 (the "**Anti-Dilution Shares**"):

$$N = \left(\frac{W}{X} \right) - Z;$$

Where:

N = the number of Anti-Dilution Shares;

W = the total amount subscribed by Phagelux or Scottish Enterprise as applicable for A Ordinary Shares prior to the Qualifying Issue;

X = the lowest price at which each Relevant Security is to be issued (which in the event that the Relevant Security is not issued for cash shall be the sum certified by the Auditors acting as experts and not arbitrators as being in their opinion the current cash value of the non cash consideration for the allotment of the Relevant Security);

Z = the number of A Ordinary Shares held by Phagelux or Scottish Enterprise as applicable prior to the Qualifying Issue.

- 4.2.2 The Anti-Dilution Shares shall:

4.2.2(a) be paid up by the automatic capitalisation of available reserves of the Company, unless and to the extent that the same shall be impossible or unlawful or Phagelux or Scottish Enterprise as applicable shall agree otherwise, in which event the Phagelux or Scottish Enterprise as applicable shall be entitled to subscribe for the Anti-Dilution Shares in cash at par and the entitlement of Phagelux to Anti-Dilution Shares shall be increased by adjustment to the formula set out in Article 4.2.1 so that Phagelux or Scottish Enterprise as applicable shall be in no worse position than if they had not so subscribed at par. In the event of any dispute between the Company and Phagelux or Scottish Enterprise as applicable as to the effect of Article 4.2.1 or this Article 4.2.2, the matter shall be referred (at the cost of the Company) to the Auditors for

certification of the number of Anti-Dilution Shares to be issued. The Auditor's certification of the matter shall in the absence of manifest error be final and binding on the Company and Phagelux or Scottish Enterprise as applicable; and

4.2.2(b) subject to the payment of any cash payable pursuant to Article 4.2.2(a) (if applicable), be issued, credited fully paid up in cash and shall rank *pari passu* in all respects with the existing A Ordinary Shares, within five Business Days of the expiry of the offer being made by the Company to Phagelux or Scottish Enterprise and pursuant to Article 4.2.2(a).

4.2.3 In the event of any Bonus Issue or Reorganisation, the Starting Price shall also be subject to adjustment on such basis as may be agreed by the Company with Phagelux or Scottish Enterprise as applicable within 10 Business Days after any Bonus Issue or Reorganisation in order that Phagelux or Scottish Enterprise as applicable is, as close as is possible, neither in any worse nor in any better position in relation to the operation of this Article 2 than prior to such Bonus Issue or Reorganisation. If the Company and Phagelux or Scottish Enterprise as applicable cannot agree such adjustment it shall be referred to the Auditors whose determination shall, in the absence of manifest error, be final and binding on the Company and each of the Shareholders. The costs of the Auditors shall be borne by the Company.

4.2.4 For the purposes of this Article 4.2 any Shares held as treasury shares by the Company shall be disregarded when calculating the number of Anti-Dilution Shares to be issued.

4.3 In accordance with section 568 of the Act, sections 561 and 562 of the Act shall not apply to an allotment of Equity Shares made by the Company.

4.4 Unless otherwise agreed by special resolution passed in accordance with section 283 of the Act, if the Company proposes to allot any Relevant Securities, those Relevant Securities shall not be allotted to any person unless the Company has first offered them to all existing holders of Shares (other than Deferred Shares) on the same terms, and at the same price, as those Relevant Securities are being offered to other persons on a *pari passu* and *pro rata* basis to the number of Shares held by those holders.

The offer:

4.4.1 shall be in writing, and give details of the number and subscription price of the Relevant Securities; and

4.4.2 may stipulate that any shareholder who wishes to subscribe for a number of Relevant Securities in excess of the proportion to which each is entitled shall, in its acceptance, state the number of excess Relevant Securities ("**Excess Securities**") for which they wish to subscribe.

4.5 Any Relevant Securities not accepted by shareholders pursuant to the offer made to them in accordance with Article 4.4 shall be used for satisfying any requests for Excess Securities made pursuant to Article 4.4. If there are insufficient Excess Securities to satisfy such requests, the

Excess Securities shall be allotted to the applicants pro rata to the number of Shares held by the applicants immediately before the offer was made to shareholders in accordance with Article 4.4 (as nearly as possible without involving fractions or increasing the number of Excess Securities allotted to any shareholder beyond that applied for by him) and thereafter, any Excess Securities remaining shall be offered, subject to Article 4.6, to any other person as the Directors may determine at the same price and on the same terms as the offer to the members.

- 4.6 Subject to Article 4.4 and Article 4.5 and to sections 549 to 551 (inclusive) of the Act, any Relevant Securities shall be at the disposal of the Board who may allot, grant options over or otherwise dispose of them to any persons at those times and generally on the terms and conditions they think proper. Any such allotment must be approved in writing by the Investor Majority.
- 4.7 The provisions of Article 4.4 to Article 4.6 shall not apply to Relevant Securities issued or granted in order for the Company to comply with its obligations under these Articles including:
 - 4.7.1 Relevant Securities which the Investor Majority (which shall include Scottish Enterprise) have agreed in writing should be issued without complying with the procedure set out in this Article 4;
 - 4.7.2 Relevant Securities issued pursuant to the Employee Share Option Plan; and
 - 4.7.3 Relevant Securities issued pursuant to the Phagelux Anti-Dilution Provisions.
- 4.8 No Shares shall be allotted to any employee, Director, prospective employee or director unless such person has entered into a joint election with the Company under section 431 of the Income Tax (Earnings and Pensions) Act 2003 (Section 431 Election).
- 4.9 Notwithstanding any other provision of these Articles, if any shareholder holding only one class of Share acquires any other class of Share pursuant to the terms of this Articles 4, such Shares shall automatically be reclassified as the class of Share already held by such shareholder.

5. TRANSFER OF SHARES: GENERAL

- 5.1 Subject to the provisions of Article 6, no transfer of any Share shall be made or registered unless such transfer:
 - 5.1.1 complies with the provisions of these Articles and any other agreements regulating the relationship of shareholders in the Company in place from time to time;
 - 5.1.2 has been approved by the Directors (such approval to include the consent of any Investors' Directors appointed).
- 5.2 Any shares offered to any member of the Scottish Enterprise Group or member of the Barwell Group (whether as a result of a proposed transfer of Shares or allotment of Shares) shall, at the request of Scottish Enterprise Group and/or Barwell (as appropriate) be registered in the name or names of any one or more members of the Scottish Enterprise Group (in the case of the Scottish Enterprise Group) or any one or more members of the Barwell Group (in the case of the Barwell Group).

- 5.3 Subject to the provisions of the Act, the Company shall be entitled at any time to purchase from each holder of Deferred Shares, and each such holder of Deferred Shares shall be required to sell, all the Deferred Shares held by such person for the aggregate sum of £1.

6. PERMITTED TRANSFERS

Notwithstanding the provisions of any other Article, the transfers set out in this Article 6 shall be permitted without restriction and the provisions of Articles 7 (Voluntary Transfers) and 8 (Drag Along and Tag Along) shall have no application.

6.1 PERMITTED TRANSFERS BY BODIES CORPORATE

Any Investor who is a body corporate may transfer any of its Shares (without restriction as to price or otherwise) to any other body corporate which is for the time being in its Group (each such body corporate being a "**Related Company**") but if a Related Company shall cease to be a Related Company it shall, within 15 Business Days of so ceasing, transfer the Shares held by it to such body first holding the relevant Shares or any Related Company of such body and failing such transfer the shareholder shall be deemed to have given a Transfer Notice pursuant to Article 7.

6.2 PERMITTED TRANSFERS BY SCOTTISH ENTERPRISE

Notwithstanding any other provision contained in these Articles or elsewhere, the Board shall register the transfer of any Shares made from any member of the Scottish Enterprise Group to any other member of the Scottish Enterprise Group (without restriction as to price or otherwise). For the avoidance of doubt, the re-transfer provisions set out in Article 6.1 shall not apply to the Scottish Enterprise Group.

6.3 PERMITTED TRANSFERS BY GOS

6.3.1 GOS may transfer all or any of his Shares (without restriction as to price or otherwise) to any Privileged Relation, Qualifying Company or Family Trust.

6.3.2 If a transferee of Shares under Article 6.3.1 ceases to be a Privileged Relation, Qualifying Company or Family Trust of GOS, such transferee shall within 15 Business Days of so ceasing, transfer the Shares held by it to GOS and failing such transfer the transferee shall be deemed to have given a Transfer Notice pursuant to Article 7.

6.4 PERMITTED TRANSFERS BY ALL SHAREHOLDERS

6.4.1 Subject to Article 6.4.2, any shareholder may at any time transfer any Shares in accordance with the provisions of the Statutes to the Company;

6.4.2 Any shareholder may at any time transfer all or any of his Shares to any other person with the prior written consent of the Investor Majority; and

6.4.3 Any Shares may be transferred pursuant to Article 8 (Drag Along and Tag Along).

7. VOLUNTARY TRANSFERS

- 7.1 Except as permitted under Article 6 or Article 8.7, any Seller who wishes to transfer shares shall give notice in writing (the "**Transfer Notice**") to the Company of his wish specifying:

7.1.1 the number of shares (the "**Sale Shares**") which he wishes to transfer;

- 7.1.2 if he wishes to transfer the Sale Shares to a third party, the name of the third party;
 - 7.1.3 the price at which he wishes to transfer the Sale Shares (the "**Transfer Price**"); and
 - 7.1.4 whether the Transfer Notice is conditional on all, or a specific number, of the Sale Shares being sold in which case no Sale Shares can be sold unless offers are received for all or the minimum number (as applicable) of the Sale Shares.
- 7.2 Where any Transfer Notice is deemed to have been given in accordance with Article 9 all the Shares registered in the name of the Seller shall be included for transfer, and the provisions of Article 7.1.4 shall not apply.
- 7.3 Once given, a Transfer Notice or Deemed Transfer Notice may not be withdrawn unless the Seller is obliged to procure the making of an offer under Articles 8.2 to 8.7 and is unable to procure the making of such an offer, it is permitted under Article 7.14 or the Investor Majority approves such withdrawal. In the event of a Transfer Notice being withdrawn the Seller shall bear all costs relating to such Transfer Notice or Deemed Transfer Notice.
- 7.4 The Transfer Notice shall constitute the Directors the agents of the Seller for the sale of the Sale Shares at the Transfer Price. As soon as reasonably practicable following receipt by the Company of a Transfer Notice the Board shall offer the Sale Shares for sale to the remaining shareholders of the Company in the manner set out in Articles 7.5 to 7.13. Each offer must be in writing and give details of the number and Transfer Price of the Sale Shares offered.
- 7.5 The Sale Shares shall be offered in the following priority:-
- 7.5.1 If the Sale Shares are A Ordinary Shares, the Company shall offer them in the following priority:
 - 7.5.2 first, to the A Shareholders (in accordance with Articles 7.6 to 7.10); and
 - 7.5.3 second to the Ordinary Shareholders (in accordance with Articles 7.11 to 7.13).
 - 7.5.4 If the Sale Shares are Ordinary Shares, the Company shall offer them in the following priority:
 - 7.5.4(a) first, to the Ordinary Shareholders (in accordance with Articles 7.6 to 7.10); and
 - 7.5.4(b) second, to the A Shareholders (in accordance with Articles 7.11 to 7.13.13).
- 7.6 The Board shall:
- 7.6.1 if the Sale Shares are A Ordinary Shares offer the Sale Shares pursuant to the Priority Rights to the A Shareholders (other than the Seller); or
 - 7.6.2 if the Sale Shares are Ordinary Shares offer the Sale Shares pursuant to the Priority Rights to the Ordinary Shareholders
 - 7.6.3 in each case inviting the A Shareholders or the Ordinary Shareholders (as the case may be) to apply in writing within the period from the date of the offer to the date 15 Business Days after the offer (inclusive) (the "**First Offer Period**") for the maximum number of Sale Shares they wish to buy.

- 7.7 If the Sale Shares are subject to a Minimum Transfer Condition then any allocation made under Articles 7.6 to 7.13 will be conditional on the fulfilment of the Minimum Transfer Condition.
- 7.8 If at the end of the First Offer Period, the number of Sale Shares applied for is equal to or exceeds the number of Sale Shares, the Board shall allocate the Sale Shares to each A Shareholder or Ordinary Shareholder (as the case may be) in the proportion (fractional entitlements being rounded to the nearest whole number) which his existing holding of Shares bears to the total number of Shares held by those A Shareholders or Ordinary Shareholders (as the case may be) who have applied for Sale Shares but no allocation shall be made to a Shareholder of more than the maximum number of Sale Shares which he has stated he is willing to buy.
- 7.9 If not all Sale Shares are allocated in accordance with Article 7.8 but there are applications for Sale Shares that have not been satisfied those unallocated Sale Shares shall be allocated to the relevant applicant(s) in the proportion (fractional entitlements being rounded to the nearest whole number) which his existing holding of Shares bears to the total number of Shares held.
- 7.10 If, at the end of the First Offer Period, the number of Sale Shares applied for is less than the number of Sale Shares, the Board shall allocate the Sale Shares to the A Shareholders or Ordinary Shareholders (as the case may be) in accordance with their applications and the balance (the "**Initial Surplus Shares**") will be dealt with in accordance with Articles 7.11 to 7.13.
- 7.11 At the end of the First Offer Period, the Board shall offer the Initial Surplus Shares:
- 7.11.1 if the Sale Shares are A Ordinary Shares offer the Sale Shares pursuant to the Priority Rights to the Ordinary Shareholders; and
 - 7.11.2 if the Sale Shares are Ordinary Shares offer the Sale Shares pursuant to the Priority Rights to the A Shareholders;
- inviting them to apply in writing within the period from the date of the offer to the date 15 Business Days after the date of the offer (inclusive) (the "**Second Offer Period**") for the maximum number of the Initial Surplus Shares they wish to buy.
- 7.12 If, at the end of the Second Offer Period, the number of Initial Surplus Shares applied for exceeds the number of Initial Surplus Shares, the Board shall allocate the remaining Initial Surplus Shares to each A Shareholder or Ordinary Shareholder (as the case may be) in the proportion (fractional entitlements being rounded to the nearest whole number) which his existing holding of Shares bears to the total number of Shares (including Sale Shares) held by those A Shareholders or Ordinary Shareholders (as the case may be) who have applied during the Second Offer Period for Initial Surplus Shares but no allocation shall be made to a Shareholder of more than the maximum number of Initial Surplus Shares which he has stated he is willing to buy.
- 7.13 If, at the end of the Second Offer Period, the number of Initial Surplus Shares applied for is less than the number of Initial Surplus Shares, the Board shall allocate the Initial Surplus Shares to the A Shareholders or Ordinary Shareholders (as the case may be) in accordance with their

applications and the balance (the "**Second Surplus Shares**") will be will be offered to any other person in accordance with Article 7.18.

- 7.14 If the Transfer Notice includes a Minimum Transfer Condition and the total number of Shares applied for is less than the specified number of Sale Shares the Board shall notify the Seller and the Seller may either elect to proceed with the sale of the Sale Shares as have been applied for or, if he elects not to proceed, the Board shall notify all those to whom Sale Shares have been conditionally allocated under Articles 7.11 to 7.13 stating the condition has not been met and that the relevant Transfer Notice has lapsed with immediate effect.
- 7.15 If:
- 7.15.1 the Transfer Notice does not include a Minimum Transfer Condition; or
 - 7.15.2 allocations have been made in respect of all the Sale Shares, the Board shall, when no further offers are required to be made under Articles 7.11 to 7.13, give written notice of allocation (an "**Allocation Notice**") to the Seller and each Shareholder to whom Sale Shares have been allocated (an "**Applicant**") specifying the number of Sale Shares allocated to each Applicant and the place and time (being not less than 10 Business Days nor more than 20 Business Days after the date of the Allocation Notice) for completion of the transfer of the Sale Shares.
- 7.16 Upon service of an Allocation Notice, the Seller must, against payment of the Transfer Price, transfer the Sale Shares in accordance with the requirements specified in it.
- 7.17 If the Seller fails to comply with the provisions of Article 7.16:
- 7.17.1 the Chairman of the Company or, failing him, one of the directors, or some other person nominated by a resolution of the Board, may on behalf of the Seller complete, execute and deliver in the Seller's name all documents necessary to give effect to the transfer of the relevant Sale Shares to the Applicants;
 - 7.17.2 the Company may receive the Transfer Price on behalf of the Seller and give a good discharge for it;
 - 7.17.3 thereafter (subject to the transfer being duly stamped), the Company shall enter the Applicants in the register of Shareholders as the holders of the Shares purchased by them; and
 - 7.17.4 the Company shall keep the Transfer Price in a separate bank account in the Company's name on trust (but without interest) for the Seller until he has delivered to the Company his certificate or certificates for the relevant Shares (or an indemnity, in a form reasonably satisfactory to the Board, in respect of any lost certificate).
- 7.18 If an Allocation Notice does not relate to all the Sale Shares then, subject to Article 7.19, the Seller may subject to obtaining prior Investor Consent, within eight weeks after service of the Allocation Notice, transfer the Second Surplus Shares to any person at a price at least equal to the Transfer Price provided that the sale of the Second Surplus Shares shall continue to be subject to any Minimum Transfer Conditions.

- 7.19 The right of the Seller to transfer Shares under Article 7.18 does not apply if the Board is of the opinion on reasonable grounds that:
- 7.19.1 the transferee is a person (or a nominee for a person) who is a competitor with (or an Associate of a competitor with) the business of the Company or with a Subsidiary Undertaking of the Company;
 - 7.19.2 the sale of the Sale Shares is not bona fide or the price is subject to a deduction, rebate or allowance to the transferee; or
 - 7.19.3 the Seller has failed or refused to provide promptly information available to it or him and reasonably requested by the Board for the purpose of enabling it to form the opinion mentioned above.
- 7.20 The restrictions imposed by this Article may be waived in relation to any proposed transfer of Shares by the Investor Majority.
- 7.21 Model Article 37 shall be modified accordingly.

8. DRAG ALONG AND TAG ALONG

TAG ALONG

- 8.1 If in one or a series of related transactions, one or more Sellers propose (following adherence to the procedure set out in Article 7 (Voluntary Transfers)) to transfer any Shares to an arms' length purchaser (who is not an Investor) for value which would, if completed, result in the transferee together with persons acting in concert or connected with that transferee obtaining a Controlling Interest, the Seller or Sellers shall (unless such transfer is a transfer to a Permitted Transferee) before making such transfer procure that the proposed transferee of the Seller's Shares makes a Tag Along Offer to all of the shareholders.
- 8.2 The Tag Along Offer shall set out:
- 8.2.1 the identity of the purchaser of the Shares referred to in Article 8.1;
 - 8.2.2 the purchase price ("**Tag Along Price**") including the calculation of any element not payable in cash and other terms and conditions of payment;
 - 8.2.3 the proposed date of sale; and
 - 8.2.4 the number of Shares proposed to be purchased.
- 8.3 The Tag Along Offer shall be given by written notice at least 30 Business Days before the proposed sale date.
- 8.4 Every shareholder, on receipt of a Tag Along Offer, shall be bound within 15 Business Days of the date of such offer (which date shall be specified therein) (the "**Offer Period**") either to accept or reject such offer in writing (and in default of so doing shall be deemed to have rejected the offer). If a Tag Along Offer is not made the Seller or Sellers shall not be entitled to complete the proposed sale and the Board shall not register any transfer to effect the sale.
- 8.5 If the Tag Along Offer is accepted by any shareholder within the Offer Period, the completion of the proposed transfer shall be conditional upon the purchase of all the Shares held by such accepting shareholders.

- 8.6 In the event of disagreement as to the calculation of the Tag Along Price such shall be referred to the Auditors for determination applying the terms of Article 10 mutatis mutandis.

DRAG ALONG

- 8.7 Where the Investor Majority and the holders of at least 60% of the Shares (excluding for these purposes the holders of the Deferred Shares) (in this Article 8 the "**Dragging Shareholders**") wish to transfer their Shares in the Company to a bona fide arms length purchaser or to Phagelux following the process set out in Article 8.8 (the "**Buyer**"), then the Dragging Shareholders can require all of the other shareholders (and any persons who would become shareholders upon exercise of any options or other rights to subscribe for shares which exist at the date of the Offer) (the "**Called Shareholders**") to sell and transfer all of their Shares in the Company to the Buyer (or as the Buyer directs) by giving notice to that effect (the "**Drag Along Notice**") to such Called Shareholders, such Drag Along Notice to be served not less than 15 Business Days prior to the proposed completion of the transfer of Shares to the Buyer.
- 8.8 The Dragging Shareholders shall not serve a Drag Along Notice in connection with a proposed sale of Shares to a bona fide arms length purchaser unless they have first offered to transfer their Shares to Phagelux on equivalent terms (including as to price) as those offered to the bona fide arms length purchaser and allowed Phagelux a period of 20 Business Days in which to accept such offer. In the event that Phagelux accept such offer, the Dragging Shareholders shall be obliged to serve a Drag Along Notice to that effect (listing Phagelux as the Buyer).
- 8.9 The Drag Along Notice shall specify:
- 8.9.1 that the Called Shareholders are required to transfer all their Shares free from all liens, charges and encumbrances;
 - 8.9.2 the price (the "**Drag Along Price**") including the calculation of any element not payable in cash at which such shares of the Company are proposed to be transferred which shall be:
 - 8.9.2(a) in the case of Shares other than Deferred Shares, a price per Share equal to that offered by the Buyer to the Dragging Shareholders; and
 - 8.9.2(b) in the case of the Deferred Shares, nil consideration;
 - 8.9.3 the identity of the Buyer; and
 - 8.9.4 the proposed date of the transfer.
- 8.10 Once issued, a Drag Along Notice shall be irrevocable. A Drag Along Notice shall lapse if, for any reason, the Dragging Shareholders have not sold their Shares to the Buyer within 20 Business Days of serving the Drag Along Notice. The Dragging Shareholders may serve further Drag Along Notices following the lapse of any particular Drag Along Notice.
- 8.11 The Called Shareholders shall be bound, on payment of the Drag Along Price to transfer the Called Shares in accordance with the Drag Along Notice at the time and place therein specified free from any lien, charge or encumbrance.
- 8.12 If the Called Shareholders (or any of them) shall make default in transferring their Shares pursuant to Article 8.11 the provisions of Article 7.14 shall apply to the transfer of such Shares.

- 8.13 In the event of disagreement as to the calculation of the Drag Along Price such shall be referred to the Auditors for determination applying the terms of Article 10 mutatis mutandis.

9. COMPULSORY TRANSFERS

- 9.1 A "**Transfer Event**" means:

- 9.1.1 where the shareholder is an individual in sequestration, entering into a trust deed for creditors or similar voluntary arrangement, or his death;
- 9.1.2 where the shareholder is a body corporate a receiver, manager or administrative receiver being appointed over all or any part of its undertaking or assets or entering into liquidation (other than a voluntary liquidation for the purposes of a bona fide scheme of solvent amalgamation or reconstruction) or administration (including any provisional or interim appointment of an administrator or liquidator);
- 9.1.3 a shareholder becoming a Leaver; or
- 9.1.4 a shareholder attempting to deal with or dispose of any Share or any interest in it or purporting to make a transfer otherwise than in accordance with these Articles;
- 9.1.5 a shareholder undergoing a Change of Control and the person or persons obtaining such Control being:
 - 9.1.5(a) a competitor with (or an Associate of a competitor with) the business of the Company or any member of the Group; and/or
 - 9.1.5(b) in the reasonable opinion of Scottish Enterprise and/or LSIP, a risk to the reputation of the Company and/or any shareholders of the Company;

unless in any of the above events the Investor Majority notify the Company that such event is not to be treated as a Transfer Event. For the avoidance of doubt, this Article 9 shall not apply to the Founders or their Permitted Transferees.

- 9.2 Upon the happening of any Transfer Event, the shareholder in question or any Permitted Transferee of such shareholder who has derived title to Shares from them shall be deemed to have immediately given a Transfer Notice in respect of all the Shares then held by him/it (a "**Deemed Transfer Notice**"). A Deemed Transfer Notice shall supersede and cancel any then current Transfer Notice insofar as it relates to the same Shares except for Shares which have then been validly transferred pursuant to that Transfer Notice.
- 9.3 The Shares the subject of any Deemed Transfer Notice shall be offered for sale in accordance with Article 7 as if they were Sale Shares in respect of which a Transfer Notice had been given save that:
- 9.3.1 a Deemed Transfer Notice shall be deemed to have been given on the date of the Transfer Event or, if later, the date upon which the Investor Majority becomes aware that the relevant event is a Transfer Event and has notified the Company that the relevant event is a Transfer Event;
 - 9.3.2 subject to Article 9.4, the Sale Price shall be a price per Sale Share agreed between the Seller (or their executors or representatives) the Board and the Investor Majority

or, in default of agreement, within 14 Business Days after the date of the Transfer Event, the Fair Value;

9.3.3 the provisions of Article 7.1.4 shall not apply to a Deemed Transfer Notice; and

9.3.4 the Sale Shares shall be sold together with all rights attaching thereto as at the date of the Transfer Event.

and in the event of any default in transfer of Shares that are the subject of any Deemed Transfer Notice, the provisions of Article 7.17 shall apply to the transfer of such Shares.

9.4 The Sale Price for any Sale Shares which are the subject of a Deemed Transfer Notice given as a consequence of a Transfer Event arising due to a shareholder being a Leaver shall:

9.4.1 if the shareholder is a Good Leaver be their Fair Value; and

9.4.2 if the shareholder is a Bad Leaver be the lower of their Fair Value and their Issue Price.

9.5 Article 9.4 shall not apply to the Investors (or any Permitted Transferee of the Investors) or to any Investors' Directors.

9.6 In the event that prior to the transfer of his Shares but after ceasing to be an employee or Director of the Company, a Good Leaver is in breach of his restrictive covenants or obligations of confidentiality contained in his employment contract and/or service agreement ("**Employment Breach**"), the Member shall automatically be deemed to be a Bad Leaver and accordingly the Sale Price for any of his Sale Shares shall be the lower of the Fair Value and their Issue Price.

9.7 If in respect of a former Member whose Shares were the subject of a Deemed Transfer Notice by virtue of him being a Good Leaver and who is found, after the transfer of Shares, to have committed an Employment Breach, such former Member shall be deemed instead to have been a Bad Leaver and accordingly the Sale Price for the Shares formerly held by such Members shall be retrospectively adjusted to the lower of the Fair Value and Issue Price in respect of his Sale Shares. In such circumstances, the former Member shall pay the Company on demand such sum as represents the difference between the amount paid to him in respect of his former Shares as a Good Leaver and the amount which would have been paid to him as a Bad Leaver. Where the Company has not been the transferee of the former Member's Shares, it shall act as agent for, and reimburse (upon receipt from the former Member) to, the transferee Member, the difference in the price paid by such transferee Member to the former Member in respect of the Sale Shares as appropriate.

9.8 In the event of a dispute as to whether a Leaver is a Good Leaver or a Bad Leaver, such dispute shall not affect the validity of a Deemed Transfer Notice but any person who acquires Sale Shares (the "**Purchaser**") pursuant to a Deemed Transfer Notice while such a dispute is ongoing shall pay to the Seller (the "**Seller**") a sum equal to their Issue Price (or Fair Value, if lower) and, at the discretion of the Board, shall pay such amount representing the difference between the Fair Value of the Shares as determined pursuant to Article 10 and the Issue Price in respect of such Shares to the Company. The Company shall hold that amount in a separate bank deposit account as trustee to pay it, and all interest earned thereon, upon final

determination of the dispute as to whether or not the relevant Member is a Good Leaver or a Bad Leaver as follows:

9.8.1 to the Purchaser in the case of the relevant Member being a Bad Leaver; and

9.8.2 to the Seller in the case of the relevant Member being a Good Leaver.

Subject always to the Seller and the Purchaser agreeing otherwise prior to the determination of whether the Leaver is a Good Leaver or a Bad Leaver being finalised.

10. FAIR VALUE

- 10.1 If the Auditors are required to determine the price at which Shares are to be transferred pursuant to these Articles, such price shall be the amount the Auditors shall, on the application of the Board (which application shall be made as soon as practicable following the time it becomes apparent that a valuation is required), give their written opinion as to the price which represents a fair value for such Shares as between a willing seller and a willing buyer as at the date the Transfer Notice or Deemed Transfer Notice is given. The Directors shall instruct the Auditors to produce a certificate stating such value ("**Fair Value Certificate**") within 20 Business Days of being requested to do so.
- 10.2 In making such determination, the Auditors shall not take any account of whether the Sale Shares comprise a majority or a minority interest in the Company nor the fact that transferability is restricted by these Articles but account shall be taken of the effect of the relevant shareholder ceasing to be an employee, Director or consultant of the Company. Where any calculation or determination of the value of any other Share under these Articles is based on the number of Shares in issue, Deferred Shares shall be ignored for that purpose.
- 10.3 The Auditors shall act as experts and not as arbiters and their decision shall be conclusive and binding on the Company and all shareholders (in the absence of fraud or manifest error).
- 10.4 In the event that the Auditors decline to accept an instruction to provide a valuation, then the price will be determined by a firm of independent chartered accountants, such accountants to be appointed by the Company with Investor Consent.
- 10.5 The Auditors' costs in making any determination referred to them under this Article 10 shall (other than as specifically prescribed in these Articles) be borne by the Company unless the Auditors shall otherwise determine provided that if a Seller revokes a Transfer Notice in accordance with Article 7.14 such costs shall be borne by the Seller.

11. GENERAL MEETINGS

- 11.1 No business shall be transacted at any general meeting unless a quorum of shareholders is present. Three shareholders (including Barwell) holding Equity Shares present in person, by proxy or by duly authorised representative (if a corporation), shall be the quorum at any general meeting.
- 11.2 Unless waived in writing (which may be by email) by an Investor Majority, the Company shall hold an annual general meeting in each calendar year.
- 11.3 A notice convening a general meeting (other than an adjourned meeting) must be called by at least 14 days' notice but a general meeting can be called by shorter notice if it is so agreed by the shareholders in accordance with the Act. The notice must state the time, date and place

of the meeting and the general nature of the business to be dealt with at the meeting and shall be given in accordance with the Act.

- 11.4 The Company may send a notice of meeting by making it available on a website or by sending it in electronic form and if notice is sent in either way it will be valid provided it complies with the relevant provision of the Act.

12. APPOINTMENT AND REMOVAL OF DIRECTORS AND INVESTORS' DIRECTORS

- 12.1 Barwell, GOS and SE shall each be entitled at any time to appoint one person as a Director of the Company (and in their absolute discretion as Directors of any other member(s) of the Group and/or as members of each and any committee of the Company or any other member of the Group) and such directors shall be designated as the Investors' Directors for the purposes of these Articles. The removal of any Director so appointed shall be made by notice in writing from the appointing Investor to the Company.

- 12.2 In the absence of any Investors' Directors holding office at the relevant time, any provision in these Articles requiring the prior consent, approval or agreement of the Investors' Director(s) shall be deemed instead to refer to an Investor Majority.

- 12.3 The office of any Director shall be vacated if:

12.3.1 he shall, for whatever reason, cease to be employed by the Company or any Group Company (provided that this Article 12.3.1 shall not apply to any Investors' Directors);

12.3.2 (other than in the case of any Investors' Director) he shall on more than six consecutive months have been absent without permission of the Directors from meetings of the Directors held during that period and the remaining Directors resolve that his office be vacated;

12.3.3 other than in the case of any Investors' Director the other Directors acting by majority for this purpose, determine that such Director shall be removed from the Board; or

12.3.4 in any of the circumstances listed in Model Article 18.

13. ALTERNATE DIRECTORS AND OBSERVERS

- 13.1 The appointment by any Investors' Director of an alternate Director shall not be subject to approval by a resolution of the Board but the appointment of an alternate by any Director other than an Investors' Director shall require such approval.

- 13.2 An alternate Director shall not be entitled 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 appointer as such appointer may, by notice in writing to the Company from time to time, direct.

- 13.3 A Director, or alternate Director, may act as an alternate Director for and represent more than one Director, and an alternate Director shall be entitled at any meeting of the Board (or of any committee of the Board) to one vote for every Director whom he represents (in addition to his own vote (if any) as a Director), but he shall count as only one for the purpose of determining whether a quorum is present at any such meeting.

- 13.4 Each Investor holding Equity Shares in issue from time to time, shall be entitled to appoint one person to act as an observer to the Board. The observer shall be entitled to attend and speak at all meetings of the Board and committee meetings and receive copies of all board papers as if he were a Director but shall not be entitled to vote on any resolutions proposed at a board or committee meeting.

14. PROCEEDINGS OF DIRECTORS

- 14.1 For so long as any Investors' Director is appointed, no Board meeting shall be quorate unless the Barwell Director (if appointed), the Director appointed by GOS pursuant to Article 12.1 (if any) and the Director appointed by Scottish Enterprise pursuant to Article 12.1 (if any) are in attendance unless such Investors' Directors are unable to attend a Board meeting and have each confirmed in writing (which may be by email) that they are satisfied that the Board meeting in question is quorate without them being present.

Model Article 11.2 shall be modified accordingly.

- 14.2 The Investor Majority shall be entitled from time to time to appoint the chairman of the Board (and any committee of the Board) and remove from office any such person so appointed and to appoint another person in his place. Model Articles 12.1 to 12.3 shall be modified accordingly.
- 14.3 Model Articles 5.1 to 5.3 inclusive and 6.2 shall be modified by the insertion of the words "**acting with Investor Consent**" following each reference to "**the Directors**" in such Model Articles.

15. CONFLICTS OF INTEREST

- 15.1 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 breaching his duty under section 175 of the Act to avoid conflicts of interest which shall include, without limitation, conflicts of interest and duty and conflicts of duty ("**Conflict**").
- 15.2 Any authorisation under this article will be effective only if:
- 15.2.1 the matter in question shall have been proposed by any Director for consideration at a meeting of Directors 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;
 - 15.2.2 any requirement as to the quorum at the meeting of the Directors at which the matter is considered is met without counting the Director in question; and
 - 15.2.3 the matter was agreed to without his voting or would have been agreed to if his vote had not been counted.
- 15.3 Any authorisation of a Conflict under this article may (whether at the time of giving the authorisation or subsequently):
- 15.3.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised;

15.3.2 be subject to such terms and for such duration, or impose such limits or conditions as the Directors may determine; and

15.3.3 be terminated or varied by the Directors at any time.

This will not affect anything done by the Director prior to such termination or variation in accordance with the terms of the authorisation.

15.4 In authorising a Conflict the Directors may decide (whether at the time of giving the authorisation or subsequently) that if a Director has obtained any information through his involvement in the Conflict otherwise than as a Director of the Company and in respect of which he owes a duty of confidentiality to another person, the Director is under no obligation to:

15.4.1 disclose such information to the Directors or to any Director or other officer or employee of the Company; or

15.4.2 use or apply any such information in performing his duties as a Director;

where to do so would amount to a breach of that confidence.

15.5 Where the Directors authorise a Conflict they may (whether at the time of giving the authorisation or subsequently) provide, without limitation, that the Director:

15.5.1 is excluded from discussions (whether at meetings of Directors or otherwise) related to the Conflict;

15.5.2 is not given any documents or other information relating to the Conflict; and

15.5.3 may or may not vote (or may or may not be counted in the quorum) at any future meeting of Directors in relation to any resolution relating to the Conflict.

15.6 Where the Directors authorise a Conflict:

15.6.1 the Director will be obliged to conduct himself in accordance with any terms imposed by the Directors in relation to the Conflict; and

15.6.2 the Director will not, by virtue of the Conflict, infringe any duty he owes to the Company pursuant to sections 171 to 177 of the Act provided he acts in accordance with such terms, limits and conditions (if any) as the Directors impose in respect of its authorisation.

15.7 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 or by the Company in general meeting (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

16. NOTICES

16.1 Any notice or other communication in connection with these Articles shall be in writing and may be delivered by hand, pre-paid first class post (or airmail if overseas) or (subject to the provisions below) by fax (but not by e-mail which shall be invalid other than as specifically permitted in these Articles), to the address or fax number of such party which the recipient

has notified in writing to the sender, (to be received by the sender not less than 7 Business Days before the notice is despatched) in accordance with this Article 16 marked for the attention of the recipient provided that in the case of a notice or other communication being sent or delivered to Scottish Enterprise it must be marked for the attention of "**The Head of the Transactions**" and copied to "**The Head of Portfolio Management**" and must not be sent by fax and any such notice or other demand sent by fax shall be invalid.

- 16.2 The notice or communication will be deemed to have been duly served if delivered by hand, at the time of delivery and if delivered by first class post, 2 Business Days after being posted or, in the case of airmail, 6 Business Days after being posted; if delivered by fax, when confirmation on completion of its transmission has been recorded by the sender's fax machine provided that, where in the case of delivery by hand or transmission by fax, such delivery or transmission occurs either after 4.00 pm on a Business Day, or on a day other than a Business Day, service will be deemed to occur at 9.00 am on the next following Business Day.
- 16.3 For the avoidance of doubt and notwithstanding any other provision of these Articles, where the approval of the Investor Majority or any of the Investors or any of the Investors' Directors is required by the Company, then such approval may be validly sent and requested by email other than requests sent to Scottish Enterprise, which must be served in writing in accordance with the terms of this Article 16.

17. CONVERSION OF SHARES

- 17.1 Immediately prior to the completion of the events specified in Article 17.1.1 to 17.1.3 below all of the A Ordinary Shares then in issue shall (upon the written request of the holders thereof) be converted into Ordinary Shares:

- 17.1.1 the admittance of any shares in the capital of the Company to the official list maintained by the United Kingdom Listing Authority and the trading of those shares on the market for listed securities of London Stock Exchange Pie; or
- 17.1.2 the obtaining of permission for the dealing of the Company's share capital on the AIM market of London Stock Exchange Pie; or
- 17.1.3 the dealing of the share capital of the Company on any recognised investment exchange (within the meaning of Section 285(1)(a) of the Financial Services and Markets Act 2000) or the date upon which any of the Company's securities are admitted to trading on any other market for listed or unlisted securities;

and each member holding A Ordinary Shares shall deliver the certificates for those A Ordinary Shares (or an indemnity in a form reasonably satisfactory to the Company in respect of any missing share certificate) to the Company on or before the date upon which the conversion occurs (the "**Conversion Date**"). On the Conversion Date the Company shall issue to the persons entitled thereto certificates for the Ordinary Shares arising on conversion.

- 17.2 The Ordinary Shares arising on conversion shall rank *pari passu* in all respects with the issued Ordinary Shares and shall entitle the holders of them to all dividends and other distributions declared, made or paid by reference to a record date on or after the Conversion Date on the Ordinary Shares.

18. VOTING RIGHTS OF SCOTTISH ENTERPRISE

- 18.1 Subject to Article 18.3, in the event that as a result of the buyback, redemption, conversion, cancellation, forfeiture of any shares or the disenfranchisement of voting rights of any part of the share capital of the Company (or any other event having similar effect), the rights attributable to Scottish Enterprise (and/or the Scottish Enterprise Group) pursuant to these Articles would otherwise operate in such a manner as to give Scottish Enterprise (and/or the Scottish Enterprise Group) control of the exercise of 30% or more of the votes at a General Meeting of the Company (a "**Trigger Event**"), the voting rights of Scottish Enterprise (and/ or any member of the Scottish Enterprise Group) applicable to their shareholding on any resolution proposed at a General Meeting shall be deemed to be restricted to 29.99% of the votes cast on any poll and the votes cast by any other holder of voting shares shall be deemed to be proportionately increased such that the aggregate voting rights of all other holders of voting shares for the purpose of any vote shall equal 70.01%.
- 18.2 The Company shall give notice to Scottish Enterprise immediately upon becoming aware of the occurrence or anticipated occurrence of any event which could reasonably be expected to constitute a Trigger Event.
- 18.3 The operation of Article 18.1 may be cancelled or suspended at any time or times either prior to the occurrence of any Trigger Event or subsequent to such provisions taking effect by Scottish Enterprise (and/or the Scottish Enterprise Group) in its sole discretion providing written notice to the Company of its intention to cancel or suspend the operation of Article 18.1. Immediately upon receipt of such notice, the provisions of Article 18.1 shall be suspended or cancelled accordingly. Votes taken by the Company during the period of operation of any suspension or cancellation under Article 18.3 shall not be affected by any such suspension or cancellation.
- 18.4 Notice given by Scottish Enterprise (and/or the Scottish Enterprise Group) in terms of Article 18.3 shall be given by the Company to all shareholders whose rights to vote are affected by the operation of such Article.