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COMPANIES HOUSE

THE COMPANIES ACT 2006  
PRIVATE COMPANY LIMITED BY SHARES

FRONT DESK

**Ingenious Audio Limited**  
(Registered in Scotland No.SC371076)

30 DEC 2019  
EDINBURGH  
COMPANIES HOUSE

### WRITTEN RESOLUTIONS

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006, the following resolutions have been duly passed as to Resolutions 1 to 5 (inclusive) as ordinary resolutions and as to Resolutions 6 and 7 as special resolutions, in each case as written resolutions of the Company on 24 December 2019:

### ORDINARY RESOLUTIONS

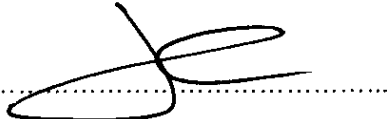
- (1) THAT in accordance with section 551 of the Companies Act 2006 (the "**2006 Act**"), the directors be generally and unconditionally authorised to allot shares in the Company up to an aggregate nominal value of £19.6708 through the allotment of up to 196,708 ordinary shares of £0.0001 each ("**Ordinary Shares**") provided that this authority shall, unless renewed, varied or revoked by the Company, expires on 31 January 2019.
- (2) THAT in accordance with section 551 of 2006 Act, the directors be generally and unconditionally authorised to allot shares in the Company up to an aggregate nominal value of £5.9765 through the allotment of up to 59,765 Ordinary Shares Company pursuant to any share option scheme (comprising any Enterprise Management Incentive share option scheme and/or any unapproved share option scheme) and/or share option agreements established or otherwise entered into by the Company from time to time, provided that this authority shall, unless renewed, varied or revoked by the Company, expire on the fifth anniversary of the date of passing of this resolution save that the Company may, before such expiry, make an offer or agreement which would or might require shares to be allotted and the Directors may allot shares in pursuance of such offer or agreement notwithstanding that the authority conferred by this resolution has expired.
- (3) THAT, in accordance with section 551 of the Companies Act 2006, the directors of the Company be and are hereby generally and unconditionally authorised to allot up to 12,575 Ordinary Shares at a price per share of not less than £1.10; declaring that this authority shall (unless renewed, varied or revoked by the Company) expire on 31 January 2021.
- (4) THAT, in accordance with section 551 of the Companies Act 2006, the directors of the Company be and are hereby generally and unconditionally authorised to issue and allot up to 6,676 Ordinary Shares to Kelvin Capital Limited (or its nominee) ("**Kelvin**") pursuant to a warrant instrument between the Company and Kelvin (as amended on or around the date hereof) (the "**Kelvin Warrant Instrument**"), subject always to the condition that this authority shall expire, unless sooner revoked or altered by the Company in general meeting, five years after the date hereof, and provided further that the Company may before the expiry of this authority make an offer or agreement in terms of the Kelvin Warrant Instrument which would or might require such shares to be allotted after such expiry and the directors may allot such shares in pursuance of any such offer or agreement as if the authority conferred hereby had not expired.
- (5) THAT, in accordance with section 551 of the Companies Act 2006, the directors of the Company be and are hereby generally and unconditionally authorised to issue and allot up to 6,676 Ordinary Shares to Scottish Enterprise (or its nominee) ("**SE**") pursuant to a warrant instrument between the Company and SE (as amended on or around the date hereof) (the "**SE Warrant Instrument**"), subject always to the condition that this authority shall expire, unless sooner revoked or altered by the Company in general meeting, five years after the date hereof, and provided further that the Company may before the expiry of this authority make an offer or agreement in terms of the SE Warrant Instrument which would or might require such shares to be allotted after such expiry and the directors may allot such shares in pursuance of any such offer or agreement as if the authority conferred hereby had not expired.

These authorities are in substitution for all previous authorities conferred on the Directors in accordance with section 551 of the 2006 Act.

**SPECIAL RESOLUTIONS**

- (6) THAT all rights of pre-emption whether in terms of the articles of association of the Company, the Companies Act 2006 or otherwise be and are hereby waived in respect of any allotment of shares made pursuant to resolutions 1 to 5 (inclusive) above.
- (7) THAT the articles of association annexed to this resolution be adopted as the articles of association of the Company in substitution for, and to the exclusion of, its existing articles of association.

Signed



Full Name

JOHN SANFORD.

Director

**ARTICLES OF ASSOCIATION**  
**of**  
**INGENIOUS AUDIO LIMITED**

Adopted by written resolution passed on *24 December* 2019

**THE COMPANIES ACT 2006**  
**PRIVATE COMPANY LIMITED BY SHARES**  
**ARTICLES OF ASSOCIATION**  
**OF**  
**INGENIOUS AUDIO LIMITED (SC371076)**  
**(the "Company")**

(Adopted by written resolution passed on 2019)

**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:

<b>"2019 Investors"</b>	means Scottish Enterprise, David Andrew Gray, Ian Alexander Duncan, Donald Francis Irwin Houston, Charles Gray, David Alexander Anderson, Damian Francis Conway, Lynn Nathan, Dale Ward Robertson, John George Pyburn, Torraj Mombeini, Daniel John McNicol CW Cameron Limited and Richard Neville-Towle;
<b>"Act"</b>	the Companies Act 2006;
<b>"acting in concert"</b>	the meaning set out in the City Code on Takeovers and Mergers for the time being;
<b>"Auditors"</b>	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;
<b>"Bad Leaver"</b>	any Leaver who is not a Good Leaver;
<b>"Business Day"</b>	any day (other than a Saturday or Sunday) on which banks are open in Edinburgh for normal banking business;
<b>"Change of Control"</b>	the obtaining of control, as such term is defined in section 1124 of the Corporation Tax Act 2010, of any company by any person or persons, not being a Shareholder at the date of this Agreement (whether acting individually or in concert);
<b>"Controlling Interest"</b>	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;

<b>“connected person”</b>	the meaning given to that expression in section 993 of the Income Tax Act 2007 and “connected with” shall be construed accordingly;
<b>“Deemed Transfer Notice”</b>	has the meaning given at Article 9.2;
<b>“Director”</b>	a director of the Company;
<b>“Employee Share Option Scheme”</b>	any share option scheme in respect of the Option Shares established by the Company following the date of adoption of these articles of association with the consent of the Board and in accordance with any Relevant Agreement;
<b>“Executive”</b>	means John Crawford;
<b>“Existing Investors”</b>	means Scottish Enterprise, Jayesh Patel, Edward Sheeran, Ian Alexander Duncan, John Bennett, Donald Francis Irwin Houston, John Roderick Hector Cameron, Richard Donald Cameron, Charles Gray, Colin George Eric Rogers, David Alexander Anderson, John Crawford, Wideblue Limited, David Andrew Gray, David Stuart Mason, Marie Ann Leitch, Donald Grant Beck, Damien Francis Conway, Lynn Nathan, Dale Ward Robertson, John George Pyburn, Torraj Mombeini, Tom Kirk Craig, Paul Yacoubian, Richard Andrews, Phil Wagstaff, Gregory Jones, Daniel John McNicol and James Ferguson Hall;
<b>“Fair Value”</b>	the value determined by the Auditors in accordance with Article 10;
<b>“Family Member”</b>	the wife, husband or civil partner (or widow, widower or surviving civil partner), children and grandchildren (including step, adopted children and grandchildren and their issue) of the relevant Investor;
<b>“Financial Year”</b>	an accounting period in respect of which the Company prepares its accounts in accordance with the relevant provisions of the Statutes;
<b>“Good Leaver”</b>	a person who is a Leaver as a result of: <ul style="list-style-type: none"> <li>(a) death;</li> <li>(b) retirement at 65 years of age or more;</li> <li>(c) Serious Ill Health;</li> <li>(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);</li> </ul>

- (e) becoming a Leaver (i) in the case of the Executive, after a period of 3 years following the date of adoption of these Articles, or (ii) in the case of any other Leaver, after a period of 3 years following the date of adoption of these Articles or the date of commencement or employment or engagement with the Company or any other member of the Group (whichever is the later) except (in either case) where such cessation occurs in circumstances justifying summary dismissal (in the case of an employee) or termination of contract (in the case of a Director);

or where the Board (with Investor Consent) determines such person is a Good Leaver;

**“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;

**“Investor Consent”** the consent in writing of the Investor Majority;

**“Investors’ Director”** such person(s) as Scottish Enterprise and Kelvin Capital may each appoint as a director of the Company pursuant to the terms of these Articles (and any alternate);

**“Investor Majority”** Investors holding more than 80% by nominal value of the shares in the Company held by the Investors (whether through nominees or otherwise) (which Investor Majority must always include Scottish Enterprise for as long as it holds Shares);

**“Investors”** the 2019 Investors and the Existing Investors;

**“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 and any share premium;

**“Kelvin Capital”** a company incorporated under the Companies Acts (registered in Scotland No. SC354243) and having its Registered Office at 163 Bath Street, Glasgow, G2 4QS;

**“Kelvin Instrument”** **Warrant** means the warrant instrument entered into by the Company in favour of Kelvin Capital on or around 30 April 2013, as amended or varied from time to time (including on or around the Adoption Date);

**“Leaver”** a shareholder who is an individual and who is or was previously a Director (other than any Investors’ Directors) 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;

<b>"Member of Kelvin Capital"</b>	any member of Kelvin Capital whether as an individual or body corporate who is recognised by Kelvin Capital as such in accordance with their rules and procedures;
<b>"Model Articles"</b>	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 date of adoption of these Articles;
<b>"Option Shares"</b>	the aggregate number of 63,580 (being 5% of the issued share capital immediately after completion) Shares to be made available to employees pursuant to the Employee Share Option Scheme;
<b>"Ordinary Shares"</b>	the ordinary shares of £0.0001 each in the capital of the Company having the rights set out in these Articles;
<b>"Permitted Transferee"</b>	any Family Member, Related Company (as that term is defined in Article 6.1.1) any member of the Scottish Enterprise Group or Member of Kelvin Capital as more fully described in Article 6;
<b>"Relevant Agreement"</b>	any agreement to which the Investors (in their capacity as shareholders in the Company) are party relating to the business and affairs of the Company;
<b>"Scottish Enterprise"</b>	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;
<b>"Scottish Enterprise Group"</b>	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;
<b>"Scottish Enterprise Successor"</b>	any party succeeding in whole or in part to the interests of Scottish Enterprise;
<b>"SE Warrant Instrument"</b>	means the warrant instrument entered into by the Company in favour of Scottish Enterprise on or around 30 April 2013, as amended or varied from time to time (including on or around the Adoption Date);

<b>“Seller”</b>	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;
<b>“Serious Ill Health”</b>	an illness or disability certified by a general medical practitioner (nominated or approved by the Investors) as rendering the person concerned incapable of carrying out his role as an employee or Director for a period of six months save where such incapacity has arisen as a result of the abuse of drugs (including alcohol);
<b>“Shares”</b>	any share forming part of the share capital of the Company;
<b>“the Statutes”</b>	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;
<b>“Tag Along Offer”</b>	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 8.1 (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);
<b>“Transfer Event”</b>	has the meaning given to that term in Article 9;
<b>“Transfer Price”</b>	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 10, or in the case of a Deemed Transfer Notice as determined in accordance with Article 9.5; and
<b>“Warrant Instruments”</b>	means together the SE Warrant Instrument and the Kelvin Capital Warrant Instrument.

- 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 The issued share capital of the Company at the date of adoption of these Articles is £119.5296 divided into 1,195,296 Ordinary Shares of £0.0001 each.
- 2.2 The Ordinary Shares shall be treated *pari passu* in all respects.

## 3 DIVIDENDS AND RETURN OF CAPITAL

### 3.1 Dividends

Any profits which the Company determines to distribute in respect of any Financial Year shall, subject to the approval of a general meeting and Investor Consent be applied in distributing such profits amongst the holders of the Ordinary Shares then in issue *pari passu* according to the number of such Shares held by them. Model Articles 30 and 34 shall be construed accordingly.

### 3.2 Return of Capital

On a return of capital (on liquidation or capital reduction or otherwise) the surplus assets of the Company remaining after the payment of its liabilities shall be applied:

- 3.2.1 first, in paying to each holder of Ordinary Shares any dividends thereon which have been declared but are unpaid; and
- 3.2.2 thereafter, in distributing the balance of such assets amongst the holders of the Ordinary Shares (*pari passu*) in proportion to the numbers of the Ordinary Shares held by them respectively.

## 4 ALLOTMENT OF SHARES

- 4.1 Save pursuant to the Warrant Instruments and the Employee Share Option Scheme, the Directors shall not allot any Shares unless notice in writing is given to each shareholder specifying the number and classes of Shares which are proposed to be issued, the consideration payable on the Shares, and any other material terms or conditions of the proposed issue. Each shareholder shall be entitled to subscribe for shares in proportion (as nearly as may be) to their existing holdings of Shares ("Proportionate Entitlement"). It shall be open to each such shareholder to specify if he/it is willing to subscribe for Shares in excess of his/its Proportionate Entitlement ("Additional Shares") and, if the shareholder does so specify, he/it shall state the number of Additional Shares.

- 4.2 The notice specified in Article 4.1 shall invite each shareholder to state, in writing within 10 Business Days from the date of such notice whether he/it will subscribe for any Shares, and if so, how many Shares.
- 4.3 Within 3 Business Days of the expiry of the invitation made pursuant to the notice given under Article 4.1 the Board shall allocate the Shares in the following manner:
- 4.3.1 if the total number of Shares applied for is equal to or less than the available number of Shares to be issued the Company shall allocate the number applied for in accordance with the applications and may dispose of any Shares not accepted by the shareholders in such manner as they think most beneficial to the Company provided that such Shares shall not be disposed of on terms that are more favourable to the allottee than the terms on which they were offered under this Article 4; or
- 4.3.2 if the total number of Shares applied for is more than the available number of Shares to be issued, each shareholder shall be allocated his/its Proportionate Entitlement (or such lesser number of Shares to be issued for which he/it may have applied) and applications for Additional Shares shall be allocated in accordance with such applications or, in the event of competition, to each shareholder willing to subscribe for Additional Shares in proportion (as nearly as may be) to the proportion which the Shares held by a shareholder bear to the total number of Shares held by all shareholders applying for Additional Shares provided that any shareholder shall not be allocated more Additional Shares than he/it shall have stated himself willing to take.
- 4.4 Pursuant to the Act, all statutory rights of pre-emption shall be excluded from applying to the Company.
- 4.5 Article 4.1 may be disapplied in relation to any proposed allotment of shares by way of a special resolution together with Investor Consent.

## **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;
- 5.1.2 complies with any Relevant Agreement;
- 5.1.3 has been approved by the Directors (such approval to include the consent of any Investors' Directors appointed); and
- 5.1.4 the transferee has first entered into a deed of adherence in pursuant to any Relevant Agreement.
- 5.2 Any shares offered to any member of the Scottish Enterprise Group or Member of Kelvin Capital (whether as a result of a proposed transfer of Shares or allotment of Shares) shall, at the request of Scottish Enterprise Group or Kelvin Capital (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 of the Members of Kelvin Capital (in the case of Kelvin Capital).

## **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 9.

### **6.2 Permitted Transfers by individuals**

6.2.1 Any Investor who is an individual and the Executive may transfer any Shares (without restriction) as to:

6.2.1.1 price or otherwise) to a Family Member of that Investor or Executive (as appropriate) provided that if the Family Member ceases to be a Family Member they shall, within 15 Business Days of so ceasing, transfer the shares held by them to the original shareholder and failing such transfer the Family Member shall be deemed to have given a Transfer Notice pursuant to Article 9.

6.2.1.2 be held upon a Family Trust related to the transferring Investor or Executive (as appropriate) but if any shares come to be held otherwise than upon a Family Trust related to the relevant Investor or Executive (as appropriate), the trustee of the Family Trust shall, within 15 Business Days of the occurrence of such event, transfer the shares to the original shareholder and failing such transfer the transferees of the Family Trust shall be deemed to have given a Transfer Notice pursuant to Article 9.

6.2.2 Where shares are held by trustees of a Family Trust, the trustee and their successors in office may (subject to the provisions of Article 6.2.1) transfer all or any of the shares held by the Family Trust, without the giving of a notice under Article 9 as follows:-

6.2.2.1 to the trustees for the time being of the Family Trust concerned on any change of trustees;

6.2.2.2 to the trustees for the time being of any other trust being a Family Trust in relation to the same individual member or deceased or former member; and

6.2.2.3 to the relevant member or former member who made the original transfer permitted pursuant to Article 6.2.1 or any Family Member of such relevant member or deceased or former member.

### **6.3 Permitted Transfers by Scottish Enterprise**

- 6.3.1 Notwithstanding any other provision contained in these Articles, 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).
- 6.3.2 Provided that if any such transferee ceases to be a member of the Scottish Enterprise Group it shall forthwith transfer the relevant shares to a member of the Scottish Enterprise Group and failing such transfer a Transfer Notice shall be deemed to have been given pursuant to Article 9.
- 6.3.3 The provisions of Article 6.3.2 shall not apply to any transferee that ceases to be a member of the Scottish Enterprise Group, provided that such transferee continues to provide the investment function previously carried on by Scottish Enterprise (or analogous activities).

#### **6.4 Permitted Transfers by Member of Kelvin Capital**

Any Member of Kelvin Capital may transfer any Shares (without restriction as to price or otherwise) to any other Member of Kelvin Capital.

#### **6.5 Permitted Transfers by all Shareholders**

- 6.5.1 Subject to Article 6.5.2 any shareholder may at any time transfer any Shares to the Company in accordance with the provisions of the Statutes;
- 6.5.2 Any shareholder may at any time transfer all or any of his Shares to any other person with the prior written consent (which may be by email) of those other shareholders as represent not less than 90% of the entire issued share capital of the Company; and
- 6.5.3 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 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 8.1 to 8.6 and is unable to procure the making of such an offer, it is permitted under Article 7.6 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 as 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 Directors shall give notice to all shareholders of the Company (other than the Sellers) inviting them to notify the Company in writing within 15 Business Days from the date of such offer (the "First Offer Period") confirming: (i) if he/it requires the Sale Shares to be valued; and (ii) if he/it does not, the maximum number of Sale Shares they wish to purchase at the Transfer Price.
- 7.5 If before the expiry of the First Offer Period any shareholder confirms in writing that he/it requires the Sale Shares to be valued in accordance with Article 7.4, the Directors shall instruct the Auditors to undertake a valuation in accordance with Article 10.
- 7.6 Within 7 Business Days of receipt of the Fair Value Certificate (as defined in Article 10) the Directors shall send a copy of such Certificate to the Seller and (other than in the case of a Deemed Transfer Notice) the Seller shall be entitled to revoke the Transfer Notice by notice in writing to the Directors within 7 days of receipt.
- 7.7 If the Transfer Notice is not revoked by the Seller or, in the case of a Deemed Transfer Notice, once the Fair Value has been determined in accordance with Article 10, the Directors shall give notice to all of the shareholders (other than the Seller) confirming the value of the Sale Shares as determined in accordance with Article 10 (which shall be the Transfer Price) inviting them to notify the Company in writing within 15 Business Days from the date of such notice (the "Second Offer Period") confirming the maximum number of Sale Shares they wish to purchase.
- 7.8 It shall be open to each shareholder to specify if he is willing to purchase Sale Shares in excess of his Proportionate Entitlement (as defined in Article 4.1) ("Excess Sale Shares") and, if the shareholder does so specify, he shall state the number of Excess Sale Shares.
- 7.9 Within 3 Business Days of the expiry of the First Offer Period or Second Offer Period (as appropriate) the Board shall allocate the Sale Shares in the following manner:
  - 7.9.1 if the total number of Sale Shares applied for is equal to or less than the available number of Sale Shares the Company shall, subject to Article 7.1.4, allocate the number applied for in accordance with the applications; or
  - 7.9.2 if the total number of Sale Shares applied for is more than the available number of Sale Shares, each shareholder shall be allocated his Proportionate Entitlement (or such lesser number of Sale Shares for which he may have applied) and applications for Excess Sale Shares shall be allocated in accordance with such applications or, in the event of competition, as nearly as may be to the proportion which Shares held by a shareholder bear to the total number of Shares held by all shareholders applying for Excess Sale Shares provided that any shareholder shall not be allocated more Excess Sale Shares than he/it shall have stated himself willing to take;

and in either case the Company shall forthwith give notice of each such allocation (an "Allocation Notice") to the Seller and each of the persons to whom Sale Shares have been allocated (a "Member Applicant") and shall specify in the Allocation Notice the place and time (being not later than 10 Business Days after the date of the Allocation Notice) at which the sale of the Sale Shares shall be completed.

- 7.10 Subject to Article 7.11, the Seller shall be bound, on payment of the Transfer Price, to transfer the Sale Shares comprised in the Allocation Notice to the Member Applicants free from any lien, charge or encumbrance. If the Seller makes default in so doing any Director shall forthwith be deemed to be the duly appointed attorney of the Seller with full power to execute, complete and deliver a transfer of the relevant Sale Shares and any Director may receive and give a good discharge for the purchase money on behalf of the Seller and (subject to the transfer being duly stamped) enter the name of the Member Applicant in the register of members. The Board shall forthwith pay the Transfer Price into a separate bank account in the Company's name and shall hold such money on trust (but without interest) for the Seller until he shall deliver up his certificate(s) for the relevant Shares (or an indemnity in respect of any lost certificate) to the Company when he shall thereupon be paid the Transfer Price.
- 7.11 If the provisions of Article 7.1.4 apply or where any Transfer Notice is deemed to have been given in accordance with these Articles and if the total number of Shares applied for by Member Applicants is less than the number of Sale Shares the Directors may within 7 days of the date of the Allocation Notice determine (with the approval of any Investors' Director) that the Company shall (if it is permitted to do so under the Act) purchase some or all of the Sale Shares. The Directors shall have a period of 60 days from the date of any such determination by the Directors to obtain any necessary consents and authorities for any such purchase by the Company and to complete the purchase by the Company of the Sale Shares.
- 7.12 In the event of all of the Sale Shares not being sold under the preceding paragraphs of this Article 7 the Seller may, at any time within 3 months after receiving confirmation from the Company that the provisions herein contained have been exhausted, transfer all the Sale Shares (if Article 7.1.4 does apply) or any Sale Shares which have not been sold (if Article 7.1.4 does not apply) to any person or persons at any price not less than the Transfer Price.
- 7.13 The holders of any Shares which are subject of a Transfer Notice or Deemed Transfer Notice shall be entitled to receive notice of and attend general meetings of the Company but shall have no right to:
- 7.13.1 vote in respect of the Sale Shares; or
- 7.13.2 participate in any offer of Shares from any other member in accordance with these Articles; and
- 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 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 and Investor Consent has been secured for such proposed transfer.
- 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 Notwithstanding any other Article, if the holders of at least 70% of the Shares and which must include an Investor Majority (in this Article 8 the "Dragging Shareholders") wish to transfer their Shares in the Company to a bona fide arms length purchaser (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 30 Business Days prior to the proposed completion of the transfer of Shares to the Buyer.
- 8.8 The Drag Along Notice shall specify:
  - 8.8.1 that the Called Shareholders are required to transfer all their Shares free from all liens, charges and encumbrances;
  - 8.8.2 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 a price per Share equal to that offered by the Buyer to the Dragging Shareholders;
  - 8.8.3 the identity of the Buyer; and
  - 8.8.4 the proposed date of the transfer.
- 8.9 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 60 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.

- 8.10 Subject always to the Dragging Shareholders completing the transfer of their shares to the Buyer pursuant to Article 8.7, 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.
- 8.11 If the Called Shareholders (or any of them) shall make default in transferring their Shares pursuant to Article 8.10 the provisions of Article 7.9 (references therein to the Seller, Sale Shares, Allocation Notice and Member Applicant being read as references to the shareholder making such default, the Shares in respect of which such default is made, the Drag Along Notice and the Buyer respectively) shall apply to the transfer of such Shares.
- 8.12 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, going into 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, employee or Executive becoming a Leaver;
- 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; or
- 9.1.5 a shareholder (other than Scottish Enterprise) undergoing a Change of Control;

(i) 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 and (ii) notwithstanding the foregoing, references in this Article 9.1 shall be deemed not to include reference to any "Investor" and/or "Investor Director").

- 9.2 Subject to Article 9.3 upon the happening of any Transfer Event, the shareholder, employee or Executive in question (as applicable) and any Permitted Transferee of such shareholder, employee or Executive 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 Where a Deemed Transfer Notice is deemed to have been served by the Executive, such Deemed Transfer Notice shall only be in respect of the following shares:-



- 9.3.1 in the event the Executive becomes a Leaver (other than where he becomes a Leaver as a result of circumstances justifying summary dismissal (in the case of an employee of any Group Company) or termination of contract (in the case of a Director)) in the 24 months following 22 June 2011 ("the 24 Month Period"), 100% of the shares held by the Executive;
  - 9.3.2 in the event the Executive becomes a Leaver (other than where he becomes a Leaver as a result of circumstances justifying summary dismissal (in the case of an employee of any Group Company) or termination of contract (in the case of a Director)) following expiry of the 24 Month Period but before the expiry of the period ending 36 months following 22 June 2011 ("the 36 Month Period"), 90% of the Shares held by the Executive; and
  - 9.3.3 in the event the Executive becomes a Leaver (other than where he becomes a Leaver as a result of circumstances justifying summary dismissal (in the case of an employee of any Group Company) or termination of contract (in the case of a Director)) following expiry of the 36 Month Period, 90% the shares held by John Crawford less an additional 5% (of all shares held by him) for each complete 12 month period following expiry of the 36 Month Period, which has elapsed prior to the Executive becoming a Leaver.
- 9.4 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:
- 9.4.1 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;
  - 9.4.2 subject to Article 9.5, 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;
  - 9.4.3 the provisions of Article 7.1.4 shall not apply to a Deemed Transfer Notice; and
  - 9.4.4 the Sale Shares shall be sold together with all rights attaching thereto as at the date of the Transfer Event.
- 9.5 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 or the Permitted Transferee of a Leaver shall:
- 9.5.1 if the shareholder is a Good Leaver (or the Permitted Transferee of a Good Leaver) be their Fair Value; and
  - 9.5.2 if the shareholder is a Bad Leaver (or the Permitted Transferee of a Bad Leaver) be the lower of their Fair Value and their Issue Price.
- 9.6 Article 9.5 shall not apply to (i) the Investors (or any Permitted Transferee of the Investors) or (ii) to any Investors' Directors (or any Permitted Transferee of the Investors' Directors).
- 9.7 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.

- 9.8 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.
- 9.9 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:-

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

9.9.2 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.
- 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 7.6 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. Members holding over 50% of the shares in issue (from time to time), which must include (i) the Executive (for so long as the Executive holds Shares and remains an employee or director of the Company) and (ii) either (a) a representative of Kelvin Capital or a Member of Kelvin Capital holding Shares (in each case for as long as any Member of Kelvin Capital holds Shares), or (b) a representative of Scottish Enterprise (for as long as Scottish Enterprise holds 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 Any Director shall only be appointed in accordance with the terms of these Articles and Model Article 17.1 shall be modified accordingly.
- 12.2 Each of Scottish Enterprise and Kelvin Capital shall 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) who 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 Scottish Enterprise or Kelvin Capital (as applicable) to the Company.
- 12.3 In the absence of any Investor Director holding office at the relevant time, any provision in these Articles requiring the prior consent, approval or agreement of an Investor Director shall be deemed instead to refer to an Investor Majority.
- 12.4 A Director may only be removed in accordance with the terms of this Article 12.
- 12.5 The office of any Director shall be vacated if:

12.5.1 he shall, for whatever reason, cease to be employed by the Company or any Group Company (provided that this Article 12.5.1 shall not apply to any Investor' Directors);

12.5.2 (other than in the case of the Investors' Directors) 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;

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

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

### 13 ALTERNATE DIRECTORS

13.1 The appointment by any Investors' Directors 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 appointor as such appointor 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.

### 14 PROCEEDINGS OF DIRECTORS

14.1 Subject to the remaining provisions of this Article 14, the quorum for meetings of the Board shall be two Directors one of whom must be an Investors' Director (if appointed) unless such Investors' Director is unable to attend a Board meeting and has confirmed in writing (which may be by email) that he is satisfied that the Board meeting in question is quorate without him being present. Model Article 11.2 shall be modified accordingly. If such a quorum is not present within half an hour from the time appointed for the meeting or, if during a meeting such a quorum ceases to be present, the meeting shall be adjourned to the same day in the next week at the same time and place, or to such time and place as the Directors (by majority decision) may determine (the "Adjourned Meeting").

14.2 At any Adjourned Meeting, the quorum shall be any two Directors present one of whom must be an Investor Director (if appointed) unless such Investors' Director is unable to attend a Board meeting and has confirmed in writing (which may be by email) that he is satisfied that the Board meeting in question is quorate without him being present. If such a quorum is not present within half an hour from the time appointed for the meeting or, if during a meeting such a quorum ceases to be present, the meeting shall be adjourned to the same day in the next week at the same time and place, or to such time and place as the Directors (by majority decision) may determine (the "Second Adjourned Meeting").

14.3 At any Second Adjourned Meeting the quorum shall be any one director present in person.

- 14.4 The Investor Majority shall be entitled from time to time to appoint any Investors' Director as the chairman of the Board (and any committee of the Board) and remove from office as chairman of the Board any such person so appointed and to appoint another Investors' Director in his place. Model Articles 12.1 to 12.3 shall be modified accordingly. The chairman of the Board shall have a casting vote in the event of an equality of votes except in relation to: (i) any matter which, if approved, would result in the Company taking action that materially deviates from the business plan for the Company (as approved with Investor Consent); or (ii) any matter in respect of the Executive's employment or service contract; or (iii) any contract or arrangement entered into by the Company to which the Executive is a party (except in his capacity as director or shareholder of the Company).
- 14.5 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 Scottish Seed Fund" and copied to "The Head of the Portfolio Team" 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 The Investors (other than Scottish Enterprise) confirm that notices or other communications to be served upon them will be sent to them at the registered office of Kelvin Capital, marked for the attention of John McNicol.
- 16.4 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 SCOTTISH ENTERPRISE

- 17.1 *Subject to Article 17.3, 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 29.9% 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%.*
- 17.2 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.
- 17.3 The operation of Article 17.1 above 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 17.1. Immediately upon receipt of such notice, the provisions of Article 17.1 shall be suspended or cancelled accordingly. Votes taken by the Company during the period of operation of any suspension or cancellation under Article 17.1 shall not be affected by any such subsequent suspension or cancellation.
- 17.4 Notice given by Scottish Enterprise (and/or the Scottish Enterprise Group) in terms of Article 17.3 shall be given by the Company to all shareholders whose rights to vote are affected by the operation of such Article.