

ARTICLES of ASSOCIATION

TOUCH BIONICS LIMITED

(Registered Number SC232512)

(ADOPTED 27 MARCH 2015)

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COMPANIES HOUSE

ARTICLES OF ASSOCIATION

of

TOUCH BIONICS LIMITED

(Registered Number SC232512)

A PRIVATE LIMITED COMPANY

Incorporated under

THE COMPANIES ACTS

(ADOPTED 27 MARCH 2015)

1. DEFINITIONS AND INTERPRETATION

1.1 In these Articles, the words and expressions below shall have the following meanings unless the context requires otherwise:

"the Act"	means the Companies Act 2006;
"Acting in Concert"	shall have the meaning given to it in the City Code on Takeovers and Mergers from time to time;
"A Ordinary Shares"	means A ordinary shares of £0.006 each in the share capital of the Company;
"A Ordinary Subscription Price"	means the relevant subscription price (or the amount credited as paid) per A Ordinary Share, adjusted as referred to in Article 5.2.5 to reflect any Reorganisation;
"Approved Issue"	means the issue of (i) up to 3,338,663 Ordinary Shares to any employees, Directors and/or consultants pursuant to any share option scheme or agreement established or entered into by the Company pursuant to the Round 8 Investment Agreement; and (ii) Ordinary Shares representing up to 1% of the fully diluted equity share capital of the Company to Archangel pursuant to the Warrant Instrument;
"Archangel"	means Archangel Investors Limited, incorporated under the Companies Acts in Scotland with registered number SC209206 and having its registered office at 5th Floor, 125 Princes Street, Edinburgh, EH2 4AD;
"Archangel Member"	means any member of Archangel from time to time (and for these purposes, a member means a member of Archangel as a company limited by guarantee and/or a person who is

	recognised by Archangel as being a member of its investment syndicate);
"Articles"	means these articles of association constituted by the following regulations together with any duly authorised amendments or alterations from time to time, and the term "Article" shall be a reference to a regulation contained in these Articles;
"Associated Company"	shall have the meaning given to it in the Act;
"Auditors"	means the auditors of the Company from time to time; unless auditors are not required pursuant to the Act and have not been appointed, in which case such reference shall instead mean the accountants of the Company from time to time;
"Board"	means the board of Directors of the Company from time to time (including the Investors' Directors (if any));
"B Ordinary Shares"	means B ordinary shares of £0.006 each in the share capital of the Company;
"Business Day"	means any day from Monday to Friday inclusive which is not a local, public or statutory holiday in Scotland;
"Circulation Date"	means the earliest date on which a proposed written resolution is communicated in hard copy or electronic form (including without limitation by electronic mail or by publication on a website) to every eligible member who is entitled to receive such communication;
"Company"	means Touch Bionics Limited, a private limited company incorporated under the Act, registered in Scotland under number SC232512 and having its registered office at 3 Ashwood Court, Oakbank Park Way, Livingston, West Lothian, EH53 0TH;
"Companies Acts"	means the Companies Acts (as defined in section 2 of the Act), in so far as they apply to the relevant company;
"Compulsory Transferor"	means a member (including any joint holder) required to transfer his shares in accordance with Article 9.1 and "Compulsory Transfer" shall be construed accordingly;
"Control Percentage"	means 50% or more of the issued share capital;
"Controlling Interest"	means an interest in the Control Percentage or more of the total voting rights conferred by all the shares in the capital of the Company for the time being in issue and conferring the right to attend and vote at all general meetings;
"Corporate Appointor"	shall have the meaning given in Article 20.1;
"Corporate Representative"	shall have the meaning given in Article 20.1;
"Deemed Transfer Notice"	shall have the meaning given to it in Article 9.1;

"Default Circumstance"	means in relation to any person who is a former Director, employee, consultant or officer of the Company, any breach by that person of any restrictive covenant in his contract of employment, consultancy or appointment or other contract with the Company;
"Director"	means a Director of the Company or any alternate Director duly appointed in accordance with these Articles;
"Disposal"	means the sale or transfer of the whole or substantially the whole of the undertaking or assets of the Company and its subsidiaries (in one transaction or as a series of related transactions);
"Eligible Director"	means a Director who would be entitled to vote on the matter at a meeting of Directors (but excluding any Director whose vote is not to be counted in respect of the particular matter), as determined in particular in accordance with article 14 of the Model Articles;
"Equity Shares"	means the Ordinary Shares, A Ordinary Shares and B Ordinary Shares;
"Exit"	means any of (i) any liquidation, dissolution or winding up of the Company (other than for the purposes of reconstruction); (ii) any other return of capital by the Company to members (other than by way of capitalisation of reserves); (iii) any Sale; or (iv) any Disposal;
"Expert"	means an umpire (acting as an expert and not as an arbiter) nominated by the parties concerned (or, in the event of disagreement as to nomination, appointed by the President for the time being of the Institute of Chartered Accountants in Scotland) and the costs of which shall be paid by the Company;
"Fair Value"	means the fair value of shares as calculated in accordance with Article 8.5;
"Final Determination"	means the decision of a court or tribunal from which either no appeal lies or in respect of which no appeal is made within the prescribed time limit for appeals to be made, and "Finally Determined" shall be construed accordingly;
"Flotation"	means the admission to listing of any part of the Company's share capital on the London Stock Exchange Limited, or any other recognised investment exchange (including without limitation AIM and any recognised investment exchange as defined in section 285 of the Financial Services and Markets Act 2000) and their respective share dealing markets;
"Good Leaver Reason"	means one or more of the following reasons:- <ul style="list-style-type: none"> (a) an employee or Director leaving employment for reasons of ill health or disability as certified to the Board's reasonable satisfaction by an independent doctor or where the death or long term illness or disability of a spouse, long term partner or child of the employee or

Director makes it reasonably necessary for the employee or Director to provide care by himself or herself to that spouse, partner or child;

- (b) the dismissal of an employee or Director for reasons of redundancy;
- (c) subject to Article 9.6, the unfair dismissal of the employee or Director;
- (d) the retirement of an employee or Director at the normal statutory retirement age;
- (e) where the Board decides that an employee, consultant or Director has ceased to be an employee, consultant or Director (as applicable) for a Good Leaver Reason;

"Group Member"

means any holding company, subsidiary company, wholly-owned subsidiary company or a parent company, in each case as defined in the Act;

"Investor Majority"

means together (i) Scottish Enterprise and (ii) the Investors (other than Scottish Enterprise) holding for the time being more than 50% by nominal value of the shares in the Company for the time being held by the Investors (other than Scottish Enterprise);

"Investors"

shall have the same meaning as given to it in the Round 8 Investment Agreement;

"Investors' Directors"

means such person or persons as (i) an Investor Majority (excluding Scottish Enterprise) may appoint as Director of the Company pursuant to Article 25.1.1 and (ii) Scottish Enterprise may appoint as Director of the Company pursuant to Article 25.1.2, and "Investors' Director" shall be construed accordingly;

"Issued Amount"

means £75,222.84 divided into 8,453,580 Ordinary Shares, 750,220 A Ordinary Shares and 3,333,340 B Ordinary Shares;

"member"

means a person registered as a member in the register of members of the Company;

"Merger Agreement"

means merger and plan of agreement between the Company, Touch Life Centers LLC (formerly LivingSkin, LLC), Aesthetic Concerns Prosthetics, Inc and Mr Passero dated 29 May 2008;

"Model Articles"

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

"Mr Stevens' SIPP"

means Crescent Trustees Ltd, Pointer York House Ltd, Unit P, Welland Business Park, Valley Way, Market Harborough, Leicestershire, LE16 7BS;

"Mr Waddell"

means John MacLaren Ogilvie Waddell, residing at 16 Kinghorn Place, Edinburgh, EH6 4BN;

"Observers"	means such person(s) appointed in accordance with Article 19;
"Option Holder"	means a holder of options, warrants or any other right to acquire new shares in the share capital of the Company;
"Option Scheme"	shall have the same meaning as given to it in the Round 8 Investment Agreement;
"Ordinary Shares"	means ordinary shares of £0.006 each in the share capital of the Company;
"Privileged Relation"	<p>means in respect of an individual:-</p> <ul style="list-style-type: none"> (i) the spouse, civil partner, surviving civil partner or widow of the relevant person; (ii) the relevant person's issue (including step and adopted issue); (iii) the relevant person's parents and grandparents (including step and adoptive parents); (iv) the relevant person's siblings and their respective issue (including step and adoptive siblings) (the persons referred to in (i) to (iv) being the "family members"), (v) any trust established for the benefit of the relevant person or his family members, or (vi) any charitable trust established by the relevant person and/or by his family members; <p>and in respect of any such family trust referred to in paragraph (v), a beneficiary of such trust;</p>
"Proceeds"	<p>shall mean the gross consideration received or receivable by the Company and/or any of the members in respect of an Exit and shall without limitation include:-</p> <ul style="list-style-type: none"> (i) the amount of any deferred consideration; (ii) any consideration given otherwise than in cash; (iii) any consideration (in cash or otherwise) received by the Company and/or any of the members which having regard to the substance of the transaction can reasonably be regarded as an addition to the price paid; and (iv) any expenses of the Company or any of the members incurred in connection with the Exit which are met by any third party, and shall take account of any adjustment to the consideration by reference to completion accounts; <p>PROVIDED THAT:-</p> <ul style="list-style-type: none"> (i) if the consideration is satisfied wholly or partly by an issue of shares in a company which is listed or quoted on a Recognised Investment Exchange, the value attributable to such shares shall be the average of the closing mid prices during the ten days ending on the day immediately prior to the date on which the calculation is made; and (ii) if the consideration is satisfied wholly or partly by an issue

of shares in a company which is not listed or quoted on a Recognised Investment Exchange, the value attributable to such shares shall be determined by agreement between the Company and the Investor Majority; and

PROVIDED FURTHER THAT:-

- (i) any loyalty or similar payments or bonuses to be paid to the management team or the Directors of the Company in connection with the Exit which have been approved by the Remuneration Committee shall be excluded from such calculation; and
- (ii) in the event of any dispute generally as to the consideration received or receivable or to the value attributable to any non cash consideration the matter shall be referred to an Expert whose decision shall be final and binding;

"Qualifying Majority"

means 75%;

"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 the holders of A Ordinary Shares) or any consolidation or subdivision or any repurchase or redemption of shares (other than A Ordinary 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 any Approved Issue;

"Remuneration Committee"

means the committee established by the Board for the purpose of determining the remuneration to be paid to Directors and employees of the Company and its subsidiaries and such committee shall include one of the Investors' Directors who shall act as chairman;

"Restricted Share Agreement"

means the restricted share agreement between the Company and Thomas Passero dated 30 May 2008;

"Round 8 Investment Agreement"

means the Round 8 Investment Agreement amongst the Company, the Subsidiaries, the Executives, the New Investors and others (all as defined therein) dated 5 June 2014;

"Sale"

means the sale of (or grant of a right to acquire or to dispose of) any of the shares in the capital of the Company (in one transaction or as a series of transactions) which would result in the purchaser of such shares (or grantee of such right) and persons connected with him together having an interest directly or indirectly in shares in the Company conferring in the aggregate 50% or more of the total voting rights conferred by all the issued shares in the Company;

"Scottish Enterprise"

means 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"	means 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 and the expression "member of the Scottish Enterprise Group" shall be construed accordingly;
"Scottish Enterprise Successor"	means any party succeeding in whole or in part to the interest of Scottish Enterprise;
"share"	means any share forming part of the share capital of the Company;
"SHEL"	means Scottish Health Equities Limited a company incorporated under the Act, registered in Scotland under number SC244452, of Suite 405, Baltic Chambers, 50 Wellington Street, Glasgow, G2 6HJ;
"Total Transfer Condition"	shall have the meaning given to it in Article 8.2;
"TC Member"	means any member of TRI Cap from time to time (and for these purposes, a member means a member of TRI Cap as a company limited by guarantee and/or a person who is recognised by TRI Cap as being a member of its investment syndicate);
"Tri Cap"	means TRI Capital Limited, incorporated under the Companies Acts in Scotland with registered number SC275932 and having its registered office at St. Dunstons House, High Street, Melrose, Roxburghshire, TD6 9RU;
"Valuer"	means the Auditors unless they decline to act and in such an instance the valuer shall instead be appointed by the President for the time being of the Institute of Chartered Accountants of Scotland; and
"Warrant Instrument"	means the warrant instrument between the Company and Archangel dated 1 February 2007 and amended by letter of agreement on 29 May 2008, by letter of agreement on 7 July 2010, by letter of agreement dated on or around 29 September 2011 and by letter of agreement dated on or around 25 September 2014.

- 1.2 Words importing the singular include the plural and vice versa.
- 1.3 Words importing a particular gender include any gender.
- 1.4 References to a "person" include any natural person, or any legal person, body or organisation, incorporated or unincorporated.
- 1.5 The headings in these Articles are for convenience only and shall not affect the construction of these Articles.
- 1.6 Words and expressions defined in the Act shall bear the same meanings in these Articles.
- 1.7 Unless provision is made to the contrary, references to any statute or statutory provision includes a reference to:

- 1.7.1 that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated whether before or after the date of adoption of these Articles; and
- 1.7.2 all statutory instruments or orders made pursuant to it.
- 1.8 References to the phrase "Privileged Relations" shall save for the references in Article 1.1 and Article 7.2 respectively, be deemed to include the phrase "and/or Group Member".

2. MODEL ARTICLES

- 2.1 The Model Articles shall apply to the Company except in so far as they are excluded or varied by or are inconsistent with these Articles.
- 2.2 Articles 11(2), 23, 24(2)(d), 24(5)(a), 48(2), 48(3), 49, 52 and 53 of the Model Articles shall not apply to the Company.
- 2.3 The following amendments shall be made to the articles of the Model Articles in so far as they apply to the Company:-
 - 2.3.1 in article 9(1) of the Model Articles, by the insertion of the phrase "not less than five Business Days" in the first sentence between the words "giving" and "notice";
 - 2.3.2 in article 20 of the Model Articles, by the insertion of the phrase "(including alternate Directors) and the secretary" in the first sentence between the words "Directors" and "properly incur";
 - 2.3.3 in article 22(1) of the Model Articles, by the amendment to the reference to "ordinary resolution" to read "special resolution"; and
 - 2.3.4 in article 31(1) of the Model Articles, by the deletion of all occurrences of the phrase "either in writing or as the Directors may otherwise decide" and by the substitution, in its place, of the phrase "in writing".

3. SHARE CAPITAL

- 3.1 Notwithstanding any other provision of these Articles, the issued share capital of the Company on the date of adoption of these Articles consists of the Issued Amount. Save in respect of any Approved Issue or save to the extent authorised from time to time by an ordinary resolution of the members and permitted by the terms of the Round 8 Investment Agreement, the Directors shall not exercise any power to allot shares or to grant rights to subscribe for, or to convert any security into, any shares in the Company. Section 550 of the Act shall not apply to the Company.
- 3.2 The Company may at its sole discretion recognise and record the holding of a share by a person on trust, or in the names of trustees, but unless specifically recognised by the Company as such a holding, the Company shall not be bound by, or obliged to recognise, any interest in any share except for the absolute rights of the holder named in the register of members.
- 3.3 Subject to the Round 8 Investment Agreement and Articles 3.4 and 3.5, any shares of the Company for the time being unissued and any new shares from time to time to be created shall be offered to existing members in strict proportion to the number of shares held by them at that time. The offer shall be made by notice to each member specifying the number of shares offered and stating a period (not being less than 21 days) within which the offer if not accepted by notice to the Company shall be deemed to be declined. Following expiry of such period or receipt of notice of the acceptance or refusal of every offer made hereunder, the Directors may dispose of any shares not accepted by the members in such manner as they think most beneficial to the Company provided that such shares shall not be disposed of on terms which are more favourable to the allottee than the terms on which they were offered to the members hereunder. The provisions of this Article 3.3 shall not apply to any Approved Issue.
- 3.4 Notwithstanding any other provisions of these Articles (but declaring that this Article 3.4 shall not apply to any Approved Issue):-
 - 3.4.1 unless otherwise waived by a majority of the Archangel Members who are members of the Company, the Directors shall be bound to offer to any Archangel Member for the time being

holding shares in the capital of the Company, such a proportion of any shares forming part of the share capital of the Company which the Directors determine to issue as the aggregate nominal value of shares in the share capital of the Company for the time being held by such Archangel Member bears to the total issued share capital of the Company immediately prior to the issue of the shares. Any shares issued to an Archangel Member pursuant to such offer shall be issued upon terms and conditions that are identical regarding payment and otherwise to those made available to other members. Such shares shall at the request of the Archangel Member be registered in the name or names of any one or more Archangel Members.

- 3.4.2 unless otherwise waived by a majority of the TC Members who are members of the Company, the Directors shall be bound to offer to any TC Member for the time being holding shares in the capital of the Company, such a proportion of any shares forming part of the share capital of the Company which the Directors determine to issue as the aggregate nominal value of shares in the share capital of the Company for the time being held by such TC Member bears to the total issued share capital of the Company immediately prior to the issue of the shares. Any shares issued to a TC Member pursuant to such offer shall be issued upon terms and conditions that are identical regarding payment and otherwise to those made available to other members. Such shares shall at the request of the TC Member be registered in the name or names of any one or more TC Members.
- 3.4.3 unless otherwise waived by Scottish Enterprise, the Directors shall be bound to offer to any members of the Scottish Enterprise Group for the time being holding shares in the capital of the Company, such a proportion of any shares forming part of the share capital of the Company which the Directors determine to issue as the aggregate nominal value of shares in the share capital of the Company for the time being held by such members of the Scottish Enterprise Group bears to the total issued share capital of the Company immediately prior to the issue of the shares. Any shares issued to a member of the Scottish Enterprise Group pursuant to such offer shall be issued upon terms and conditions that are identical regarding payment and otherwise to those made available to other members. Such shares shall at the request of Scottish Enterprise be registered in the name or names of any one or more members of the Scottish Enterprise Group.
- 3.5 Article 3.3 shall not apply to any shares which the Company may, having had the consent of an Investor Majority, at any time by special resolution declare shall not be subject to the provisions of Article 3.3. In the event of the application of this Article 3.5 and the proposed issue of shares pursuant thereto then Article 3.4 shall always remain applicable in respect of any member of the Scottish Enterprise Group holding shares in the Company.
- 3.6 Pursuant to the Act, all statutory rights of pre-emption shall be excluded from applying to the Company. In accordance with section 567(1) of the Act, sections 561 and 562 of the Act shall not apply to an allotment of equity securities (as defined in section 560(1) of the Act) made by the Company.

4. CLASS RIGHTS

- 4.1 Whenever the capital of the Company is divided into different classes of shares the special rights attached to any class may be varied or abrogated either whilst the Company is a going concern or during or in contemplation of a winding up, only with the consent in writing of the holders of 75% of the issued shares of that class.
- 4.2 A variation or abrogation of any rights attached to the Ordinary Shares shall be considered a variation or abrogation of the rights attached to the A Ordinary Shares and to the B Ordinary Shares, and Article 4.1 shall apply accordingly.

5. RIGHTS ATTACHING TO SHARES

- 5.1 *Income*

- 5.1.1 Any profits which the Company may determine to distribute shall be distributed to the holders of the Equity Shares in issue (*pari passu* as if the same constituted one class of share) in proportion to the number of shares held by them respectively.

5.2 Capital

- 5.2.1 Subject to the provisions of the Act, the Proceeds of any Exit remaining after the payment of the Company's liabilities shall be applied as follows:-
- 5.2.1.1 first, in paying to the holders of the A Ordinary Shares in issue the A Ordinary Subscription Price per share;
 - 5.2.1.2 second, in paying to the holders of Equity Shares in issue (*pari passu* as if the same constituted one class of share) in proportion to the number of shares held by them respectively, a sum equal to any arrears or accruals of dividends calculated down to the date of the Exit; and
 - 5.2.1.3 thirdly, in distributing the remaining balance of the Proceeds amongst the holders of the Equity Shares (*pari passu* as if the same constituted one class of share) in proportion to the number of shares held by them respectively.
- 5.2.2 For the avoidance of doubt on an Exit triggered by a Sale, the Proceeds shall be payable in accordance with this Article 5.2 in which case the following provisions shall apply:-
- 5.2.2.1 where the expression "the holder" of any share is used in Article 5.2, this shall be construed as the holder of such shares immediately before the transfer giving rise to the Sale;
 - 5.2.2.2 the members agree that the provisions of Article 5.2 shall remain binding upon them following their cessation as shareholders in the Company; and
 - 5.2.2.3 where any Equity Shares are not acquired by an acquirer pursuant to Article 10 (Tag Along) because such shares are previously held by the acquirer or persons acting in concert (which expression shall have the meaning ascribed to it the most recent edition of the City Code on Takeovers and Mergers) with the acquirer, the holders of such shares shall not participate in the distribution of the Proceeds under the foregoing in respect of such Equity Shares so held.
- 5.2.3 In the event that the Proceeds are payable to any party other than the Company they shall be paid into the Company's solicitor's bank account (or such other account as 75% of holders of the issued equity share capital may agree) and distributed in accordance with the provisions of Article 5.2.
- 5.2.4 If a Flotation is proposed, then immediately prior to and conditional on the Flotation taking place the Company shall allot and issue to each holder of A Ordinary Shares and each holder of B Ordinary Shares such number of Ordinary Shares (disregarding any fraction of a share) such that the proportion of the Equity Shares held by each holder of A Ordinary Shares and each holder of B Ordinary Shares following completion of such issue equals the percentage of the Proceeds that each holder of A Ordinary Shares and each holder of B Ordinary Shares would have received in accordance with Article 5.2.1 were the Flotation to be an Exit (and assuming the Valuation of the Company immediately prior to the Flotation constitutes the Proceeds). "Valuation" shall be calculated by multiplying the total number of Ordinary Shares of the Company in issue immediately prior to the Flotation (which shall, for the avoidance of doubt, include any shares issued to (i) any Option Holder pursuant to the Company's Option Scheme and (ii) Archangel pursuant to the Warrant Instrument but excluding the shares issued pursuant to this Article) by the subscription/placing price per share in respect of the new Ordinary Shares issued by the Company at the time of the Flotation. The additional Ordinary Shares shall be issued at par fully paid by the automatic capitalisation of any amount standing to the credit of the share premium account or other available reserve of the Company and shall not require any subscription monies to be paid by such holders of the A Ordinary Shares or such holders of the B Ordinary Shares. Immediately after the issue of such additional Ordinary Shares, the holders of the A Ordinary Shares and the holders of the B Ordinary Shares shall be deemed to

have served a Conversion Notice pursuant to Article 5.4 in respect of all such A Ordinary Shares and B Ordinary Shares held by them and the A Ordinary Shares and B Ordinary Shares shall convert to Ordinary Shares in accordance with the provisions of Article 5.4.

- 5.2.5 In the event of any Reorganisation following the date of adoption of these Articles, the relevant A Ordinary Subscription Price shall also be subject to adjustment on such basis as may be agreed by the Company with the Investor Majority. If the Company and the Investor Majority 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 its shareholders. The costs of the Auditors shall be borne by the Company.

5.3 *Voting*

- 5.3.1 The Equity Shares shall entitle the holders thereof to receive notice of and to attend all general meetings and to receive copies of all circulars sent to holders of shares in the Company and all resolutions of the Company in general meeting and shall entitle the holders thereof to vote at any general meeting and to execute any written resolutions. Every holder of Equity Shares shall have one vote for every Equity Share of which he is the holder, whether on show of hands or by poll.

5.4 *Conversion Rights*

- 5.4.1 The Investors may at any time convert any of the A Ordinary Shares and/or any of the B Ordinary Shares that they hold into Ordinary Shares provided an Investor Majority has agreed in writing and/or by email in advance to such conversion. The rate of conversion shall be one Ordinary Share for each A Ordinary Share held or one Ordinary Share for each B Ordinary share held.
- 5.4.2 The conversion shall be effected by notice in writing (the "**Conversion Notice**") given to the Company signed by the relevant holder(s) of the A Ordinary Shares and/or B Ordinary Shares together with a copy of the relevant consents confirming that an Investor Majority consent pursuant to Article 5.4.1 has been obtained. The conversion shall take effect immediately upon the date of delivery of the Conversion Notice to the Company (unless the Conversion Notice states that conversion is to be effective when any conditions specified in the notice have been fulfilled in which case conversion shall take effect when such conditions have been fulfilled) (the "**Conversion Date**").
- 5.4.3 Forthwith after the Conversion Date the holders of the resulting Ordinary Shares shall send to the Company the certificates in respect of their holding of A Ordinary Shares and/or B Ordinary Shares (as appropriate) and the Company shall issue to each such holder a certificate for the Ordinary Shares resulting from the conversion and shall cancel such certificates in respect of the relevant A Ordinary Shares and/or B Ordinary Shares.
- 5.4.4 The Ordinary Shares resulting from the conversion (the "**Converted Shares**") shall rank from the Conversion Date *pari passu* in all respects with the other Ordinary Shares in the capital of the Company save as regards any dividends payable in respect of the financial year during which such conversion occurs in which the Converted Shares shall be entitled to participate only in the proportion that the part of such period after the Conversion Date bears to the whole such financial year.

6. **LIEN**

- 6.1 The Company shall have a first and paramount lien on every share for all moneys, whether presently payable or not, called or payable at a fixed time in respect of that share, and the Company shall also have a first and paramount lien on all shares registered in the name of any person, whether solely or jointly with others, for all moneys owing to the Company from that person, or that person's estate, either alone or jointly with any other person, whether as a member, or not, and whether such moneys are presently payable or not. The Directors may at any time declare any share to be wholly or partly exempt from the provisions of this Article.

7. TRANSFER OF SHARES

- 7.1 The Directors shall refuse to register any transfer of shares made in contravention of the provisions of these Articles.
- 7.2 Subject only to Articles 10 and 11, the Directors shall register a transfer of shares complying with one or more of the following conditions (declaring for the avoidance of doubt that any transfers complying with the conditions set out in Articles 7.2.3 to 7.2.10 may be made without restriction as to price or otherwise):-
- 7.2.1 a transfer of a share made pursuant to Article 8;
 - 7.2.2 a transfer of a share made pursuant to Article 9;
 - 7.2.3 a transfer or transmission of a share pursuant to the Restricted Share Agreement;
 - 7.2.4 a transfer or transmission of a share pursuant to the Merger Agreement;
 - 7.2.5 a transfer of a share made with the prior written consent of the holders of 80% by nominal share value of the shares in the share capital of the Company for the time being (which must include an Investor Majority), other than the transferor;
 - 7.2.6 a transfer or transmission of a share by any holder of shares who is an individual or a family trust to a Privileged Relation and a retransfer of any such share from such Privileged Relation to such holder of shares;
 - 7.2.7 a transfer or transmission of a share by an Archangel Member made in favour of any other Archangel Member or to Archangel;
 - 7.2.8 a transfer or transmission of a share by a TC Member made in favour of any other TC Member;
 - 7.2.9 (other than a member of the Scottish Enterprise Group), a transfer or transmission of a share by any holder of shares, which is a company, to a Group Member of that company, subject to the obligation on any such corporate transferee to retransfer any such share to the original transferor in the event that the corporate transferee ceases to be a Group Member;
 - 7.2.10 a transfer or transmission of a share by any member of the Scottish Enterprise Group to any other member of the Scottish Enterprise Group.

8. PRE-EMPTION RIGHTS ON TRANSFER

- 8.1 Except in the case of a transfer expressly authorised by Article 7.2, no person shall be entitled to dispose of any interest in any shares without first offering such shares for transfer to the holders of other shares in the Company.
- 8.2 The offer shall be made by the proposing transferor(s) (the "**Transferor**") by notice in writing to the Company (a "**Transfer Notice**") and may be in respect of all or some only of the shares held by the Transferor (the "**Offer Shares**"). The Transfer Notice shall specify the number of Offer Shares and the price at which they are offered for sale (the "**Suggested Price**") and shall constitute the Directors as the agents of the Transferor for the sale of the Offer Shares in accordance with these Articles. A Transfer Notice may contain a provision that unless all the Offer Shares are sold under this Article, none shall be sold (a "**Total Transfer Condition**"). A Transfer Notice may not be revoked unless (i) it contains a Total Transfer Condition, or (ii) all the members of the Company (other than the Transferor) agree in writing that it may be revoked, or (iii) permitted in terms of Article 8.6. This Article 8.2, together with Articles 8.3 and 8.4, shall not apply to any Compulsory Transfer, and instead Article 9 shall apply.
- 8.3 Within 7 days after a Transfer Notice (other than a Deemed Transfer Notice) is received by the Company, the Directors shall give notice to all the holders of shares in the Company (other than the Transferor) of the number and description of the Offer Shares and the Suggested Price, inviting each such holder to notify the Company within 21 days (a) if he requires the Offer Shares to be valued (such notification being a "**Valuation Notice**") and (b) if he does not so require whether he is willing to purchase any and, if so, what maximum number, of Offer Shares at the Suggested Price.

- 8.4 If on or before the expiry of the 21 day period referred to in Article 8.3 the Directors shall receive a Valuation Notice requesting a valuation then the Directors shall instruct a Valuer to determine the fair value of the Offer Shares in accordance with Article 8.5, acting as an expert and not an arbiter, and to produce a certificate stating such value (a "**Certificate of Fair Value**") within 14 days of being instructed to do so. If the Directors do not receive a Valuation Notice within the relevant period, then the Suggested Price of the Offer Shares shall be the "**Purchase Price**", and Article 8.9 shall apply accordingly.
- 8.5 The fair value of the Offer Shares (the "**Fair Value**") shall be calculated on the basis of the value of the whole Company on a going concern basis as between a willing seller and a willing buyer, with no reduction or other account being taken of the proportion which the Offer Shares bear to the total number of shares in issue, or shares of the same class as the Offer Shares in issue or any restrictions on the ability to transfer the Offer Shares. The Fair Value of each Offer Share shall be calculated by dividing the Fair Value of all the Offer Shares by the total number of the Offer Shares.
- 8.6 Within 7 days of receipt by the Directors of the Certificate of Fair Value (whether pursuant to Article 8.4 or 9.3.3), the Directors shall send a copy thereof to the Transferor; declaring that the Transferor (other than a Compulsory Transferor) shall be entitled to revoke the Transfer Notice by notice in writing to the Directors within 7 days from the date of service upon the Transferor of such copy. Where the Transferor is a Compulsory Transferor, the Compulsory Transferor shall be entitled within 7 days from the date of service upon the Compulsory Transferor of such copy to notify the Company that the Compulsory Transferor objects to the calculation of the Fair Value whereupon the Company shall immediately refer the matter to the President, for the time being, of the Institute of Chartered Accountants of Scotland with a request to nominate forthwith an independent valuer to calculate the Fair Value within 30 days of being instructed to do so (in accordance with Article 8.5). The decision of such independently nominated valuer shall be final and binding on all parties concerned and the costs of the said valuer shall be borne by the Compulsory Transferor alone.
- 8.7 The cost of obtaining a Certificate of Fair Value shall be borne by the Company, unless (i) the Transferor revokes the Transfer Notice in accordance with Article 8.6 in which case the Transferor shall bear such cost or (ii) the Compulsory Transferor notifies the Company that the Compulsory Transferor objects to the calculation of the Fair Value in accordance with Article 8.6 in which case the Compulsory Transferor shall bear such cost.
- 8.8 In the case of a Transfer Notice other than a Deemed Transfer Notice, and unless the Transfer Notice is revoked by the Transferor in accordance with Article 8.6, the Directors shall give notice to all the holders of shares in the Company (other than the Transferor) of the lower of (i) the Suggested Price and (ii) the Fair Value as determined by the Valuer (such lower sum of (i) and (ii) being the "**Purchase Price**" unless Article 8.4 applies), and in each case the number and description of the Offer Shares, inviting each such holder to notify the Company within 14 days whether he is willing to purchase any and, if so, what maximum number, of Offer Shares at the Purchase Price. In the case of a Deemed Transfer Notice, as soon as reasonably practicable (if necessary, following any decision by an independently nominated valuer appointed in accordance with Article 8.6), the Directors shall give notice to all the holders of shares in the Company (other than the Compulsory Transferor) of the lower of (a) the Suggested Price and (b) the Fair Value as determined by the Valuer or instead by the independent valuer if nominated pursuant to Article 8.6 (such lower sum of (a) and (b) being the "**Compulsory Transfer Purchase Price**"), and in each case the number and description of the Offer Shares, inviting each such holder to notify the Company within 14 days whether he is willing to purchase any and, if so, what maximum number, of Offer Shares at the Compulsory Transfer Purchase Price.
- 8.9 On the expiry of the 21 day period referred to in Article 8.3 or, if a Certificate of Fair Value has been obtained, the expiry of the 14 day period referred to in Article 8.8, the Directors shall allocate the Offer Shares to those members who have applied to purchase the Offer Shares, and in the event of competition amongst members such allocation shall be in accordance with Article 8.10. If the Transfer Notice contains a Total Transfer Condition, no allocation of the Offer Shares shall be made under this Article 8.9 or Article 8.10 unless as a result of such allocation combined with the purchase of Offer Shares by the Company pursuant to Article 8.14 (if any), all the Offer Shares will be sold.
- 8.10 If the aggregate number of Offer Shares for which members have applied exceeds the number of Offer Shares available, priority shall be given to those members holding shares of the same class as the Offer

Shares, and the allocation shall be made so far as practicable in proportion to the nominal amount of the share capital of that class held by each of those members but shall not in the case of any member exceed the number of Offer Shares for which he has applied. Thereafter, any Offer Shares remaining unallocated shall be allocated amongst the holders of other classes of shares so far as practicable in proportion to the nominal amount of share capital of the Company held by each of those members but shall not in the case of any member exceed the number of Offer Shares for which he has applied.

- 8.11 On the allocation being made, the Directors shall give details of the allocation in writing to the Transferor and to each member who has stated his willingness to purchase and, on the seventh day after such details are given, the members to whom the allocation has been made shall be bound to pay the Purchase Price (or Compulsory Transfer Purchase Price as the case may be) for, and to accept a transfer of, the Offer Shares allocated to them respectively and the Transferor shall be bound, on payment of the Purchase Price (or Compulsory Transfer Purchase Price as the case may be), to transfer the Offer Shares to the respective purchasers.
- 8.12 If in any case a Transferor, after having become bound to transfer any shares to a purchaser, shall make default in transferring the Offer Shares, the Directors may authorise any Director to execute on behalf of and as attorney for the Transferor any necessary transfer documentation and may receive the Purchase Price (or Compulsory Transfer Purchase Price as the case may be) and shall thereupon cause the name of the purchaser to be entered in the register as the holder of the Offer Shares and hold the Purchase Price (or Compulsory Transfer Purchase Price as the case may be) in trust for the Transferor. The receipt by the Directors of the Purchase Price shall be a good discharge to the purchaser and after the name of the purchaser has been entered in the register of members of the Company the validity of the transfer to the purchaser may not be questioned by the Transferor.
- 8.13 Where more than one member has stated his willingness to purchase Offer Shares and through no default of the Transferor such purchase is not duly completed, the Directors shall forthwith notify all the other members who have stated their willingness to purchase Offer Shares and if, within 7 days of such notice being given, those other members shall not between them duly complete the purchase of the Offer Shares in respect of which there has been default in completion, the provisions of Article 8.14 shall apply.
- 8.14 Following the expiry of the latest applicable of (i) the 21 day period referred to in Article 8.3 or (ii) if a Certificate of Fair Value has been obtained, the 14 day period referred to in Article 8.8 or (iii) the 7 day period referred to in Article 8.13 (in all cases the **"Relevant Expiry Date"**), if any of the Offer Shares have not been allocated:-
- 8.14.1 The Directors may within 7 days of the Relevant Expiry Date determine that the Company shall, if it is permitted to do so under the Act, attempt to purchase some or all of the Offer Shares itself at the Purchase Price (the **"Determination"**).
- 8.14.2 The Directors shall have a period of 60 days from the date of any such Determination to (i) obtain from the Transferor any necessary consents and authorities including any required under the Act for any such purchase by the Company and (ii) to complete any such purchase.
- 8.14.3 In the event that a Transferor either (i) refuses to sign any document necessary to enable the purchase of some or all of the Offer Shares by the Company or (ii) fails to respond to the Directors within 14 days of any such request (in accordance with Article 8.14.2), the Directors may authorise any Director to execute on behalf of and as attorney for the Transferor any such document and may receive the Purchase Price and hold the Purchase Price in trust for the Transferor; provided that if the Transfer Notice contains a Total Transfer Condition the Directors may only so authorise any Director if all the Offer Shares will as a result be sold.
- 8.14.4 The receipt by the Directors of the Purchase Price shall be a good discharge to the Company and after the Offer Shares purchased by the Company have been cancelled, the Transferor may not question the validity of the purchase.
- 8.15 If either (i) the Directors do not by the close of business on the last day of the 7 day period referred to in Article 8.14.1, make a Determination; or (ii) having made such a Determination, the Company shall not complete a purchase of the Offer Shares by the close of business on the last day of the 60 day period referred to in Article 8.14.2 (in each case a **"Buy-Back Expiry Date"**), then the Transferor may at

any time within a period of 30 days from the occurrence of the relevant Buy-Back Expiry Date, transfer the Offer Shares not allocated to other members of the Company to any person at the Purchase Price provided that (a) if the Transfer Notice contains a Total Transfer Condition the Transferor shall be entitled to transfer all but not some only of the Offer Shares and (b) in the case of a Compulsory Transfer, any such transfer of the Offer Shares shall be subject to the approval of the Board.

9. COMPULSORY TRANSFERS

9.1 Subject to Articles 9.3 and 9.8, the Restricted Share Agreement and the Merger Agreement, where any of the following events occurs after the date of adoption of these Articles in relation to a member (a "**Compulsory Transferor**"), the member in question shall be deemed to have immediately given a notice of transfer (a "**Deemed Transfer Notice**") in respect of all the shares as then registered in the name of such member and all of the shares as then beneficially owned or controlled by that member (the "**Offer Shares**"):-

9.1.1 in relation to a member being an individual:-

- 9.1.1.1. such member is adjudicated bankrupt; or
- 9.1.1.2. such member is suffering from a mental disorder as referred to in article 18(d) of the Model Articles or, in the case of a Director of the Company, in the event that Article 17.3 applies; or
- 9.1.1.3. such member ceases to be a Director and/or employee and/or consultant of the Company or of any Group Member of the Company for any reason other than a Good Leaver Reason where such member does not remain acting in any other of such capacities in relation to the Company or any such Group Member (as an employee, Director or consultant); or
- 9.1.1.4. such member is a Privileged Relation of a person who ceases to be a Director and/or employee and/or consultant of the Company or of any Group Member of the Company for any reason other than a Good Leaver Reason (where neither (i) such Privileged Relation nor (ii) the relevant person ceasing to be a Director, employee or consultant, remains acting in any other of such capacities in relation to the Company or any such Group Member of the Company).

9.1.2 In relation to a member being a body corporate:-

- 9.1.2.1. a receiver, manager or administrative receiver is appointed in respect of such member or over all or any part of its undertaking or its assets; or
- 9.1.2.2. such member enters into liquidation (other than a voluntary liquidation for the purposes of a bona fide scheme of solvent amalgamation or reconstruction); or
- 9.1.2.3. such member ceases to be controlled (as defined by Sections 450-451 of the Corporation Tax Act 2010) by the person(s) who controlled such member on the date on which it became the member of the Company or the date of adoption of these Articles (whichever is later); or

9.1.3 in relation to a member being a trust or charitable trust, such member is a Privileged Relation of a person who ceases to be a Director and/or employee and/or consultant of the Company or of any Group Member of the Company for any reason other than a Good Leaver Reason (where neither (i) such Privileged Relation nor (ii) the relevant person ceasing to be a Director, employee or consultant remains acting in any other of such capacities in relation to the Company or any such Group Member of the Company).

9.2 The Deemed Transfer Notice shall be deemed to constitute the Directors as the agents of the Compulsory Transferor for the sale of the Offer Shares in accordance with these Articles and it shall confer upon the Directors the authority to implement a Compulsory Transfer of the Offer Shares, subject to the passing of a Board resolution, in accordance with Article 9.3. A Deemed Transfer Notice cannot contain a Total Transfer Condition and may not be revoked by the Compulsory Transferor.

- 9.3 The following provisions shall apply in the event of a Compulsory Transfer:-
- 9.3.1 the Deemed Transfer Notice shall, unless the Directors (including the Investors' Director(s), or if none have been appointed, an Investor Majority) in their absolute discretion decide otherwise, be deemed to have been issued pursuant to this Article 9 on the earlier of (i) the date of cessation of employment, consultancy or appointment and (ii) the date of giving or receiving of notice of such cessation (the "**Deemed Transfer Notice Date**");
 - 9.3.2 the Deemed Transfer Notice shall be deemed to specify the price at which the Offer Shares are offered for sale (the "**Suggested Price**"), which price shall be the Fair Value;
 - 9.3.3 the Directors shall as soon as practicable instruct the Valuer, acting as an expert and not as an arbiter, (i) to determine the Fair Value (in accordance with Article 8.5) of the Offer Shares as at the date of the event giving rise to the Deemed Transfer Notice, whereby account shall be taken in assessing the Fair Value of the effect of the relevant person ceasing to be an employee, Director or consultant, and (ii) to produce a certificate stating such value (a "**Certificate of Fair Value**") within 30 days of being instructed to do so; and
 - 9.3.4 the other provisions of Article 9 shall apply and the provisions of Article 8 shall apply to any Deemed Transfer Notice as if it were a Transfer Notice and as if the Compulsory Transferor were a Transferor, subject always to the overriding effect of Article 9.
- 9.4 Subject to Article 9.8, the Restricted Share Agreement and the Merger Agreement, where a former employee, consultant, Director or officer of the Company (or a Group Member of the Company) who ceases to be a Director and/or employee and/or consultant of the Company or of any Group Member of the Company for any reason other than a Good Leaver Reason (a "**Former Worker**") acquires shares after cessation of such employment, consultancy or appointment by exercising an option or warrant which was granted to such Former Worker while he was an employee, consultant, Director or officer of the Company (or a Group Member of the Company, as appropriate), or where a personal representative or executor of a Former Worker acquires shares in such manner, then this Article 9 shall apply such that:-
- 9.4.1 the Former Worker (or his personal representative or executor) in question shall be deemed to have given a Deemed Transfer Notice in respect of such shares on the date of issue of such shares (provided that such date of issue is after the date of adoption of the Articles); and
 - 9.4.2 the Suggested Price shall be the Fair Value on the date of cessation of employment, consultancy or appointment (as appropriate).
- 9.5 Subject to each of the Restricted Share Agreement and the Merger Agreement, where a member who is an employee, a consultant, a Director or an officer of the Company ceases to be such an employee, a consultant, a Director or an officer of the Company and triggers a Default Circumstance, then Articles 9.1 to 9.4 shall apply regardless whether a Good Leaver Reason previously applied, with the Deemed Transfer Notice Date being deemed to be the date on which a Default Circumstance has occurred.
- 9.6 In the event that a Compulsory Transferor makes an application to an employment tribunal within any applicable time period for the making of such application, the Deemed Transfer Notice shall continue to apply but the application of the other provisions of Article 9 shall be suspended until the application has been Finally Determined. The following provisions shall also apply:-
- 9.6.1 For the purposes of this Article 9.6, any employee or Director (referred to as the "**Leaver**" in this Article 9.6) must in writing notify the Company within 30 days of the date of termination of his employment (hereinafter referred to as the "**Claim Notification Period**") of his intention to make a claim to an employment tribunal against the Company for unfair dismissal (hereinafter referred to as the "**Claim Notification**").
 - 9.6.2 If the Claim Notification Period elapses without any Claim Notification from the Leaver being served, then Good Leaver Reason (c) shall not apply to the Leaver and the shares of the Leaver must be transferred in accordance with Articles 9.1 to 9.4;
 - 9.6.3 If the Claim Notification is served by the Leaver within the Claim Notification Period, the voting rights attached to the shares held at that time by the Leaver shall be suspended until one of

Articles 9.6.4 to 9.6.7 applies and, for the avoidance of doubt, the provisions Articles 9.1 to 9.4 (if appropriate) shall not apply until such time;

- 9.6.4 If the employment tribunal upholds the Leaver's claim against the Company for unfair dismissal, then Good Leaver Reason (c) shall apply to the Leaver;
- 9.6.5 If the employment tribunal does not uphold the Leaver's claim against the Company for unfair dismissal, then Good Leaver Reason (c) shall not apply to the Leaver and the shares of the Leaver must be transferred in accordance with Articles 9.1 to 9.4; declaring for the avoidance of doubt that any valuation required by a Valuer shall be based on the date of cessation of the employment of the Leaver;
- 9.6.6 If the Claim Notification is served by the Leaver within the Claim Notification Period and the Leaver then subsequently fails to make a claim within 90 days of his dismissal to an employment tribunal against the Company for unfair dismissal, then Good Leaver Reason (c) shall not apply to the Leaver and the shares of the Leaver must be transferred in accordance with Articles 9.1 to 9.4; declaring for the avoidance of doubt that any valuation required by a Valuer shall be based on the date of cessation of the employment of the Leaver;
- 9.6.7 If the Claim Notification is served by the Leaver within the Claim Notification Period and the Leaver then subsequently withdraws the claim against the Company for unfair dismissal, then Good Leaver Reason (c) shall not apply to the Leaver and the shares of the Leaver must be transferred in accordance with Articles 9.1 to 9.4; declaring for the avoidance of doubt that any valuation required by a Valuer shall be based on the date of cessation of the employment of the Leaver.
- 9.7 Any obligation to transfer a share under the provisions of this Article 9 shall be deemed to be an obligation to transfer the entire legal and beneficial interest in such share free from any lien, charge or other encumbrance.
- 9.8 Article 9 shall:-
 - 9.8.1 not apply to Mr Waddell, the Investors' Directors or any Corporate Representative of any of the Investors' Directors;
 - 9.8.2 not apply to the Investors;
 - 9.8.3 not apply to SHEL;
 - 9.8.4 not apply to Archangel;
 - 9.8.5 not apply to the 150,150 Ordinary Shares issued to Mr Stevens' SIPP on or around 5 June 2014;
 - 9.8.6 not apply to Stuart Mead;
 - 9.8.7 not apply to David Gow; and
 - 9.8.8 only apply to Thomas Passero in so far as the Restricted Share Agreement and the Merger Agreement each permit.
- 9.9 The provisions of this Article 9 in relation to the compulsory transfer of shares (but not in relation to the Restricted Share Agreement or the Merger Agreement) may be waived in whole or in part in any particular case with the prior consent in writing or email of an Investor Majority.

10. LIMITATION ON CHANGE OF CONTROL – TAG ALONG RIGHTS

- 10.1 Notwithstanding any other Article, no sale or transfer (other than a sale or transfer permitted by Articles 7.2.3 to 7.2.10 (provided that there is no change in the Controlling Interest)) of the legal or beneficial interest in any shares in the Company (the "Specified Shares") may be made or validly registered if as a result of a sale or transfer of the legal and or beneficial interest in any such shares in the Company, a Controlling Interest would be obtained in the Company by any person or group of persons Acting in Concert unless the proposed transferee or transferees or his or their nominees has or have offered to purchase all the shares for the time being in issue at the Specified Price (as defined

below) (the **"Tag Along Offer"**), such offer to be made by notice in writing to all Recipients (as defined below) and such offer stipulated to be open for acceptance for at least 21 days.

- 10.2 A Tag Along Offer shall expire 21 days (or such longer period of acceptance stipulated within the Tag Along Offer) after the date of the Tag Along Offer. Any Recipient who wishes to accept the Tag Along Offer must notify the proposed transferee(s) in writing of its acceptance of such offer. Any Recipient who fails to accept the Tag Along Offer within the period limited for acceptance shall be deemed to have rejected it. In the event that an Option Holder wishes to accept a Tag Along Offer, such person must also notify the Company in writing no less than seven days prior to expiry of the period of acceptance of the Tag Along Offer of its intention to exercise the relevant option or other right to acquire shares, and any failure to do so or any inability under the terms of the relevant option agreement to exercise such option or right to acquire shares within 30 days of notification shall be deemed a rejection of the Tag Along Offer.
- 10.3 The Specified Price in respect of a particular share shall take into account any differences in class rights between it and any other share including, without limitation, any Specified Share.
- 10.4 If any part of the Specified Price is to be paid except by cash then each Recipient may, at its option, elect to take a price per share of such cash sum as may be agreed by it and the proposed transferee having regard to the transaction as a whole.
- 10.5 In the event of a disagreement, the calculation of the Specified Price (including a determination of the Fair Value) shall be referred to an independent expert (acting as an expert and not as an arbiter and whose decision shall be final and binding) nominated by the President for the time being of the Institute of Chartered Accountants of Scotland and acting at the expense of the proposed transferee(s) or his or their nominees (as appropriate).
- 10.6 For the purposes of this Article 10:-
- | | |
|--------------------------|--|
| "Recipients" | means all members of the Company and all Option Holders (and "Recipient" means any one of them); and |
| "Specified Price" | means a price per share being not less than the Fair Value and at least equal to the value of the consideration (in cash or otherwise) offered or paid or payable by the proposed transferee(s) or his or their nominees for the Specified Shares being acquired including without limitation (i) the relevant proportion of any other consideration (in cash or otherwise) received or receivable by the holders of the Specified Shares which having regard to the substance of the transaction as a whole can reasonably be regarded as an addition to the price paid or payable per share and (ii) all arrears and accruals of the dividends on such shares calculated down to the date of the sale or transfer. |

11. SALE BY QUALIFYING MAJORITY – DRAG ALONG RIGHTS

- 11.1 Notwithstanding any other Article but subject to Article 11.3, where any person or persons (an **"Offeror"**) makes a Qualifying Offer (as hereinafter defined) and this is to be accepted by the Majority Members (as hereinafter defined), the Majority Members may by notice in writing (a **"Drag Along Notice"**) to the other members of the Company (the **"Minority Members"**) require the Minority Members to (i) forthwith accept such Qualifying Offer, and (ii) transfer all of their shares free from all charges, liens, encumbrances and other third party rights to the Offeror at the same time as the Majority Members transfer all of their own shares to the Offeror. The Majority Members shall also serve the Drag Along Notice on all Option Holders of the Company who shall be bound by its terms on the exercise by them of their Options prior to the sale of shares pursuant to this Article.
- 11.2 A Drag Along Notice is irrevocable but the Drag Along Notice and all obligations thereunder shall lapse if for any reason the sale of the shares of the Majority Members pursuant to Article 11.1 does not complete within 60 days after the date of the Drag Along Notice.
- 11.3 Upon any person, following the issue of a Drag Along Notice, becoming a member of the Company pursuant to the exercise of a pre-existing option to acquire shares in the Company or otherwise (a

"New Member"), a Drag Along Notice shall be deemed to have been served upon the New Member on the same terms as the previous Drag Along Notice and the New Member shall thereupon be bound to sell and transfer all such shares acquired by him to the Offeror and the provisions of this Article 11 shall apply to the New Member (and the New Member shall be deemed to be a "Minority Member" for the purposes of this Article 11).

- 11.4 In the event that any Minority Member fails to accept such Qualifying Offer or having accepted such Qualifying Offer fails to execute and deliver any of the documents required to effect any transfer of shares pursuant thereto, such Minority Member shall be deemed to have irrevocably appointed any of the Directors to be his agents and attorneys for the purposes of accepting such Qualifying Offer and/or transferring all of that Minority Member's shares (as the case may) and executing and delivering any such documents. The provisions of Article 8.12 shall have effect as if such Minority Member was the Transferor and the Offeror was the purchaser.

- 11.5 For the purposes of this Article 11:-

"Majority Members" means members holding shares conferring in aggregate more than the Qualifying Majority of the total voting rights conferred by all the shares in the capital of the Company for the time being in issue and conferring the right to attend and vote at all general meetings of the members of the Company, and such group of members must include an Investor Majority;

"Qualifying Offer" means an offer which:

- (i) is made on identical or substantially similar terms (taking into consideration any differences in class rights between shares) to all members (and Option Holders in the event that they become New Members) as to the price and terms and conditions as to the payment of the price; and
- (ii) specifies a price which is not less than the Fair Value of each share; and
- (iii) is certified as complying with conditions (i) and (ii) above by an independent expert (acting as expert and not as arbiter and whose decision shall be final and binding) acting at the expense of all the members of the Company (in proportion to their respective shareholdings) and nominated by the Majority Members or (in the event of disagreement as to nomination) appointed by the President for the time being of the Institute of Chartered Accountants of Scotland.

- 11.6 In determining whether an offer satisfies condition (i) of Article 11.5 above such independent expert shall take into account:

11.6.1 any differences in class rights between shares; and

11.6.2 any consideration (in cash or otherwise) received or receivable by any member which having regard to the substance of the transaction as a whole can reasonably be regarded as an addition to the price paid or payable to that member including, without limitation, any increase in salary, any bonus or termination payment.

- 11.7 The determination of the Fair Value pursuant to condition (ii) of Article 11.5 may be referred by the Company to an independent expert (acting as an expert and not as an arbiter and whose decision shall be final and binding) nominated by the President for the time being of the Institute of Chartered Accountants of Scotland and acting at the expense of the Company.

- 11.8 For the avoidance of doubt, the provisions of Article 8 do not apply in the event of any acquisition of shares pursuant to this Article 11.

12. ANTI-DILUTION PROVISIONS

12.1 For the purposes of this Article 12:-

- "Exercising Investor"** means any holder of B Ordinary Shares who subscribed for his *pro rata* share of the relevant New Securities;
- "New Securities"** means all shares, rights to subscribe for shares or to receive them for no consideration and all securities convertible into shares, but excluding any Approved Issue and excluding any shares which the Company is required to issue by reason of a right specifically attached to shares under these Articles;
- "Qualifying Issue"** means the issue of New Securities at less than the Starting Price after the date of adoption of these Articles, where the aggregate value of such New Securities equals or exceeds £500,000 in any 12 month period;
- "Starting Price"** means £0.75 per New Security, and in the event that the New Security is not issued for cash shall be a price certified by an Expert as being in their opinion the current cash value of the new consideration for the allotment of the New Securities;

12.2 In the event of a Qualifying Issue, the Company shall, unless and to the extent that any of the holders of B Ordinary Shares shall have specifically waived their rights under this Article in writing or by email, offer to each Exercising Investor (such offer, unless waived, to remain open for acceptance for not less than 15 Working Days) the right to receive a number of new 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 12.3.1 (the "Anti-Dilution Shares"):-

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

- (b) where the holder of B Ordinary Shares is required to subscribe in cash for any Anti-Dilution Shares in accordance with Article 12.3, the following calculation shall apply:

$$N = \frac{(W + (XZ))}{(X - V)} - Z$$

Where:

N = the number of Anti-Dilution Shares;

W = the total amount subscribed (whether in cash or by way of conversion of a loan) by each Exercising Investor for his B Ordinary Shares;

X = the price (if any) at which each New Security is to be issued (which in the event that the New Security is not issued for cash shall be the sum certified by an Expert as being in their opinion the current cash value of the non cash consideration for the allotment of the New Securities), provided that in the event that such price is less than £0.45 per share, such price shall be deemed to be £0.45 per share for the purpose of this Article 12;

Z = the number of B Ordinary Shares held by each relevant Exercising Investor prior to the Qualifying Issue;

V = the nominal value of each Anti-Dilution Share.

12.3 The Anti-Dilution Shares shall:-

- 12.3.1 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 a majority of the Exercising Investors shall agree otherwise, in which event the Exercising Investors shall be entitled to

subscribe for the Anti-Dilution Shares in cash at par (being the par value approved in advance by the Board (including all Investors' Directors)). In the event of any dispute between the Company and any Exercising Investor as to the effect of Article 12.2, the matter shall be referred (at the cost of the Company) to an Expert 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 the Exercising Investor; and

- 12.3.2 subject to the payment of any cash payable pursuant to Article 12.3.1 (if applicable), be issued, credited fully paid up in cash and shall rank *pari passu* in all respects with the existing Ordinary Shares, within 5 Business Days of the expiry of the offer being made by the Company to the Exercising Investor and pursuant to Article 12.3.1.
- 12.4 In the event of any bonus issue, capitalisation of profits, sub-division or consolidation of shares or other relevant reorganisation, the Starting Price shall also be subject to adjustment on such basis as may be agreed by the Company with the Investor Majority within 10 Working Days after any such reorganisation. If the Company and the Investor Majority cannot agree such adjustment it shall be referred to an Expert whose determination shall, in the absence of manifest error, be final and binding on the Company and each of its Shareholders. The costs of the Expert shall be borne by the Company.
- 12.5 The anti-dilution provisions contained in this Article 12 may only be exercised by the holders of B Ordinary Shares on the first Qualifying Issue after the date of adoption of these Articles.

13. PROCEEDINGS AT GENERAL MEETINGS

- 13.1 If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, and such meeting was convened on the requisition of members, then the chairman of the meeting must dissolve the meeting.
- 13.2 If the persons attending an adjourned general meeting within half an hour of the time at which the adjourned meeting was due to start do not constitute a quorum, then the members present shall be a quorum.
- 13.3 On a show of hands or on a poll, votes may be given either personally or by proxy, or if a corporation, by its Corporate Representative.
- 13.4 Unless waived in writing or by email by an Investor Majority, the Company shall hold an annual general meeting each calendar year.

14. WRITTEN RESOLUTIONS

- 14.1 Where a resolution is to be proposed as a written resolution and such written resolution is accepted by or on behalf of:-
 - 14.1.1 in the case of an ordinary resolution, over 50%; and
 - 14.1.2 in the case of a special resolution, 75% or moreof the members who would be entitled to receive notice of and to attend and vote at a general meeting at which such resolution was to be proposed shall, subject always to the provisions of the Act from time to time, be valid, effectual and binding on all of the members of the Company. Any such written resolution may consist of several documents in materially the same form, each accepted by or on behalf of the requisite number of members. Acceptance of a written resolution shall be in terms of the procedure set out in section 296 of the Act. In the case of a corporation which is a member of the Company, acceptance (following section 296 of the Act) by a Director or its secretary or by a duly appointed and authorised attorney or Corporate Representative shall be sufficient.
- 14.2 A proposed written resolution circulated to the members shall lapse if it is not passed by the requisite number of members before the expiration of 90 days from the Circulation Date stated on the proposed written resolution.

15. NUMBER OF DIRECTORS

- 15.1 Unless otherwise determined by ordinary resolution of the Company, the number of Directors shall not be subject to any maximum and the minimum number of Directors shall be one.
- 15.2 A Director shall not be required to hold any share in the Company in order to qualify for office as a Director. A Director, whether or not the Director holds any share in the Company, shall be entitled to attend and speak at any general meeting, or any meeting of any class, of the members of the Company.

16. ALTERNATE DIRECTORS

- 16.1 Any Director (for the avoidance of doubt, including any Investors' Director(s)) (the "Appointor") may appoint as an alternate any other Director, or any other person approved by resolution of the Directors, to exercise that Director's powers and carry out that Director's responsibilities, in relation to the taking of decisions by the Directors in the absence of the alternate's Appointor.
- 16.2 Any appointment or removal of an alternate must be effected by notice in writing to the Company signed by the Appointor, or in any other manner approved by the Directors.
- 16.3 Any notice relating to an alternate must identify the proposed alternate and, in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the Director giving the notice.
- 16.4 An alternate Director may act as alternate Director to more than one Director and has the same rights in relation to any decision of the Directors as the alternate's Appointor.
- 16.5 Except as the Articles specify otherwise, alternate Directors are deemed for all purposes to be Directors, are liable for their own acts and omissions, are subject to the same restrictions as their Appointors, are not deemed to be agents of their Appointors and, in particular (without limitation), each alternate Director shall be entitled to receive notice of all meetings of Directors and of all meetings of committees of Directors of which his Appointor is a member.
- 16.6 A person who is an alternate Director but not a Director:-
- 16.6.1 may be counted as participating for the purposes of determining whether a quorum is present (but only if that person's Appointor is not participating);
- 16.6.2 may participate in a unanimous decision of the Directors (but only if his Appointor is an Eligible Director in relation to that decision, but does not participate); and
- 16.6.3 shall not be counted as more than one Director for the purposes of Articles 16.6.1 and 16.6.2.
- 16.7 A Director who is also an alternate Director is entitled, in the absence of his Appointor, to a separate vote on behalf of his Appointor, in addition to his own vote on any decision of the Directors (provided that his Appointor is an Eligible Director in relation to that decision), but shall not count as more than one Director for the purposes of determining whether a quorum is present.
- 16.8 An alternate Director is not entitled to receive any remuneration from the Company for serving as an alternate Director except such part of the alternate's Appointor's remuneration as the Appointor may direct by notice in writing made to the Company.
- 16.9 An alternate Director's appointment as an alternate terminates:-
- 16.9.1 when the alternate's Appointor revokes the appointment by notice to the Company in writing specifying when it is to terminate;
- 16.9.2 on the occurrence, in relation to the alternate, of any event which, if it occurred in relation to the alternate's Appointor, would result in the termination of the Appointor's appointment as a Director;
- 16.9.3 on the death of the alternate's Appointor; or
- 16.9.4 when the alternate's Appointor's appointment as a Director terminates.

17. APPOINTMENT AND RETIREMENT OF DIRECTORS

- 17.1 The Company may by ordinary resolution appoint a person who is willing to act as a Director, either to fill a vacancy or as an additional Director (but not to fill the vacancy of any Investors' Director).
- 17.2 The Directors may appoint any person who is willing to act as a Director, either to fill a casual vacancy or as an additional Director (but not to fill the vacancy of any Investors' Director).
- 17.3 In addition to any other ground of termination of a Director's appointment as may be set out in these Articles or in the Model Articles, the Board may also terminate a Director's appointment by reason of that person's mental health, as soon as a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have. For the avoidance of doubt, insofar as this Article 17.3 relates to any appointment of an Investor Director, termination of such appointment shall be a decision of the Investor Majority, rather than a decision of the Board.

18. PROCEEDINGS OF DIRECTORS

- 18.1 A sole Director shall have and may exercise all the powers of, and the full authority conferred on, the Directors in terms of these Articles, and all references to the Directors in the Articles and Model Articles shall be construed accordingly.
- 18.2 The quorum for the transaction of business of the Directors shall be two Directors, of which at least one must be an Investors' Director or his alternate, except when the Director in question, in respect of his attendance or that of his alternate, has waived such requirement. In the absence of any person holding the office of Investors' Director, the quorum shall be two, except in the case of a sole Director, when the quorum shall be one.

19. OBSERVER

- 19.1 Each of Scottish Enterprise and Archangel shall be entitled to have one person attend as an observer all meetings of the Board. Such observer shall be entitled to speak, but not to vote, at such meetings of the Board.

20. REPRESENTATION OF CORPORATIONS

- 20.1 Any corporation which is a member or Director (in this Article called the "**Corporate Appointor**") may, by resolution of its directors or other governing body, authorise any person to act as its representative (a "**Corporate Representative**") at, in the case of a member, any general meeting of the Company or at any separate meeting of the holders of any class of shares or, in the case of a Director, at any meeting of the Directors.
- 20.2 The Company may require a certified copy of such a resolution to be delivered at the meeting to the chairman of the meeting or secretary, and unless such certified copy of such resolution is so delivered the authority granted by such resolution may at the discretion of the Board not be treated as valid. The authority granted by any such resolution shall, unless the contrary is stated in the certified copy thereof delivered to the Company pursuant to this Article, be treated as valid for any adjournment of any meeting at which such authority may be used as well as at such meeting.
- 20.3 For the purposes of these Articles, the Corporate Appointor shall be deemed to be present personally at any meeting at which a Corporate Representative is present. If the Corporate Representative is already a member or Director then such person shall be able to vote in each capacity (i.e. on one hand for the Corporate Appointor and on the other hand as a member or Director (as applicable)).
- 20.4 A vote given or, in the case of a general meeting of the Company, poll demanded by a Corporate Representative shall be valid notwithstanding that he is no longer authorised to represent the Corporate Appointor unless notice of the termination was delivered in writing to the Company not less

than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the Corporate Representative proposes to vote.

21. THE SEAL

- 21.1 The Company shall not have a seal.

22. INDEMNITY

- 22.1 Without prejudice to any indemnity to which any person referred to in this Article 22 may otherwise be entitled, every present and former Director, alternate Director, secretary or other officer of the Company (excluding any present or former Auditors) (an "Indemnified Person") shall be indemnified by the Company against all liabilities, costs, charges and expenses incurred by him in the execution and discharge of his duties to the Company and any Associated Company, including any liability incurred by any Indemnified Person in defending any proceedings, civil or criminal, which relate to anything done or omitted or alleged to be done or omitted by him as an officer or employee of the Company or an Associated Company provided that such indemnity shall not extend to any liability arising out of the fraud or dishonesty of the relevant Indemnified Person (or the obtaining of any personal profit or advantage to which the relevant Indemnified Person was not entitled) and no Indemnified Person shall be entitled to be indemnified for:

- 22.1.1 any liability incurred by him to the Company or any Associated Company of the Company as above defined;
- 22.1.2 any fine imposed in any criminal proceedings;
- 22.1.3 any sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature howsoever arising;
- 22.1.4 any amount for which he has become liable in defending any criminal proceedings in which he is convicted and such conviction has become final;
- 22.1.5 any amount for which he has become liable in defending any civil proceedings brought by the Company or any Associated Company in which a final judgment has been given against him;
- 22.1.6 any amount for which he has become liable in connection with any application under sections 661(3) or (4) or 1157 of the Act in which the court refuses to grant him relief and such refusal has become final; and
- 22.1.7 any liability incurred by a Director or other officer of the Company pursuant to the Round 8 Investment Agreement, any previous investment agreements any future investment or subscription agreement, the Restricted Share Agreement or the Merger Agreement, or pursuant to any other claim made by the Investors from time to time.

23. INSURANCE

- 23.1 The Company shall have power to purchase and maintain for (i) any Indemnified Person (as defined in Article 22), (ii) any Director, secretary or other officer (other than any present or former auditors) or employee of an Associated Company and (iii) any persons who are or were at any time trustees of any pension fund or employees' share scheme in which employees of any Associated Company are interested, insurance against any liability incurred by him in connection with any negligence, default, breach of duty or breach of trust (actual or purported) by him in relation to the Company or any Associated Company or any such pension fund or employees' share scheme or otherwise in connection with his duties, powers or office.

24. NOTICES

- 24.1 Subject to Article 24.2, anything sent or supplied by or to the Company under the Articles may be sent or supplied in any way in which the Act provides for documents or information which are authorised or required by any provision of the Act to be sent or supplied by or to the Company.

- 24.2 Any notice required or permitted to be given by the Company to a member shall be sufficiently given to that member if sent in a legible form by facsimile transmission ("fax"), first class or express registered post ("post"), or airmail, or by personal delivery, including courier delivery, to the registered address of the member, or by electronic mail ("e-mail") to the e-mail address of the member notified to the Company. A notice shall be deemed to have been received: (i) in the case of fax, when a successful transmission report is generated during that or the next Business Day; (ii) in the case of post, thirty-six hours from midnight (00.00 hrs) on the date of posting, postage prepaid, evidenced by the relevant proof of posting; (iii) in the case of airmail, on the seventh Business Day following mailing, if mailed by airmail, postage prepaid, evidenced by the relevant proof of posting; (iv) in the case of personal delivery, thirty minutes after the time of delivery, evidenced, where appropriate, by the courier's receipt duly counter-signed for or on behalf of the addressee and (v) in the case of e-mail, when a successful delivery receipt is generated during that or the next Business Day. Where the deemed day of receipt of a notice is not a Business Day or where deemed receipt occurs at the place of delivery on a Business Day but after 1800hrs, that notice shall be deemed to have been received at 0930hrs on the next Business Day. For the avoidance of doubt and notwithstanding the foregoing, notice shall not be validly served if sent to Scottish Enterprise by fax. Any notice to be served on Scottish Enterprise shall require to be addressed to "The Head of the Scottish Co-Investment Fund" (with a copy of the notice also being sent to the "Investments Team" at Scottish Enterprise Investments). In the case of any notices being sent to Scottish Enterprise by email, then a hard copy notice must also be sent to Scottish Enterprise at the same time as such email.
- 24.3 Subject to the Articles, any notice or document to be sent or supplied to a Director in connection with the taking of decisions by Directors may also be sent or supplied by the means by which that Director has asked to be sent or supplied with such notices or documents for the time being.
- 24.4 A Director may agree with the Company that notices or documents sent to that Director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than as expressly required in these Articles.

25. INVESTORS' DIRECTOR

- 25.1 Notwithstanding any restriction on the number of Directors set out in these Articles:-
- 25.1.1 the Investor Majority (other than Scottish Enterprise) shall be entitled from time to time to nominate and appoint one person at any given time as a Director of the Company and remove from office any such person so appointed and to nominate and appoint another person in his place; and
- 25.1.2 Scottish Enterprise shall be entitled from time to time to nominate and appoint one person at any given time as a Director of the Company and remove from office any such person so appointed and to nominate and appoint another person in his place; and
- 25.1.3 each such Director appointed pursuant to this Article 25.1 shall be an "Investors' Director".
- 25.2 Each Investors' Director shall:
- 25.2.1 not be required to comply with any share qualification nor shall he be subject to retirement by rotation; and
- 25.2.2 be paid such remuneration as may be approved by the Board and/or the Remuneration Committee; and
- 25.2.3 be reimbursed for all travel expenses which are incurred by the Investors' Director in attending meetings on behalf of the Company within the United Kingdom.
- 25.3 The Investor Majority shall be entitled from time to time to appoint one of the Investors' Director as the chairman of the Board and of the Remuneration Committee (if applicable) from time to time and remove from office any such person so appointed and to appoint another Director in his place.
- 25.4 In the absence of an Investors' Director holding office at the relevant time:-

- 25.4.1 any provision in these Articles requiring the prior consent, approval or agreement of an Investors' Director shall be deemed instead to refer to an Investor Majority; and
- 25.4.2 any provision in these Articles requiring the notification of the Investor Directors shall be deemed instead to refer to Archangel and Scottish Enterprise.
- 25.5 In the event that only one Investors' Director is appointed by the Investor Majority or Scottish Enterprise (as the case may be), then to avoid any doubt only the prior consent, approval or agreement of that sole appointed Investors' Director shall be required to approve a matter in accordance with these Articles which requires either the consent of all of the Investors' Directors or one of the Investors' Directors.

26. DIRECTORS' CONFLICT OF INTEREST

- 26.1 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 (a "Conflict").
- 26.2 Any authorisation under this Article will be effective only if:-
 - 26.2.1 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;
 - 26.2.2 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
 - 26.2.3 the matter was agreed to without his voting or would have been agreed to if his vote had not been counted.
- 26.3 Any authorisation of a Conflict under this Article may (whether at the time of giving the authorisation or subsequently):-
 - 26.3.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised;
 - 26.3.2 be subject to such terms and for such duration, or impose such limits or conditions as the Directors may determine; and
 - 26.3.3 be terminated or varied by the Directors at any time.
- 26.4 This will not affect anything done by the Director prior to such termination or variation in accordance with the terms of the authorisation.
- 26.5 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:-
 - 26.5.1 disclose such information to the Directors or to any Director or other officer or employee of the Company; or
 - 26.5.2 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.
- 26.6 Where the Directors authorise a Conflict they may (whether at the time of giving the authorisation or subsequently) provide, without limitation, that the Director:-
 - 26.6.1 is excluded from discussions (whether at meetings of Directors or otherwise) related to the Conflict;
 - 26.6.2 is not given any documents or other information relating to the Conflict; and
 - 26.6.3 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.

26.7 Where the Directors authorise a Conflict:-

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

26.7.2 the Director will not infringe any duty he owes to the Company by virtue of 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.

26.8 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.

26.9 For the purposes of section 175 of the Act, any Investors' Director appointed in accordance with Article 25 may be expressly authorised to have interests which arise from or are connected with their having a relationship (as employees or otherwise) with and acting as appointed representatives of, the Investors ("**Investor-related interests**"), notwithstanding that their Investor-related interests may directly or indirectly conflict, or have the potential to conflict, with the interests of the Company.

26.10 Each Investor Director so appointed shall:

26.10.1 be at liberty from time to time to make such disclosure to the Investors concerning the Company as he shall think fit, subject always to the requirement that prior to making any such disclosure, the Investors' Director shall ensure that the intended Investor recipients have entered into a binding confidentiality arrangement in respect of the Company's confidential information;

26.10.2 be entitled to keep confidential and not to disclose to the Company any information which comes into his possession as a result of his Investor-related interests where such information is confidential as regards the Investors or third parties; and

26.10.3 in relation to any meeting at which Investor-related interests may directly or indirectly conflict, or have the potential to conflict, with the interests of the Company, be entitled to receive notice thereof (including all relative papers), attend, count in the quorum and vote.

27. **GOVERNING LAW**

These Articles shall be governed by, and construed in accordance with, the Law of Scotland and the Company, its officers and its members, from time to time, prorogate the non-exclusive jurisdiction of the Scottish Courts.