

ANNEX 1
CONSTITUTION

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CONSTITUTION OF
BIOATLANTIS LIMITED

CRO COMPANY NUMBER: 377737



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Solicitors
www.homs.ie

**CONSTITUTION
OF
BIOATLANTIS LIMITED**

Company Number: 377737

1. **Company Name:** The name of the Company is: **BIOATLANTIS LIMITED**.
2. **Company Type:** The Company is a private company limited by shares, Registered under Part 2 of the Companies Act 2014.
3. **Liability of Members:** The liability of the members is limited.
4. **Share Capital:** The authorised share capital of the Company is €[REDACTED] divided into:-
 - (a) [REDACTED] Ordinary Shares of €[REDACTED] each;
 - (b) (i) [REDACTED] 'A' Ordinary Shares of €[REDACTED] each; and/or
(ii) in substitution for some or all of the A Ordinary Shares in issue for the time being and from time to time, upon their conversion (if at all) on a share for share basis pursuant to provision 6.1(d), up to [REDACTED] floating rate cumulative redeemable preference shares of €1.00 each; and
 - (c) [REDACTED] A Preference Redeemable Convertible Shares of €1.00 each.

5. **Preliminary, Definitions and Interpretation:**

5.1. In this constitution, unless the context otherwise requires:

"A Ordinary Share" means an A ordinary share of €[REDACTED] in the capital of the Company;

"A Preference Share Redemption Price" means a sum equal to the aggregate of the amount paid up (including any share premium) on the A Preference Shares to be redeemed and the amount of all arrears of accrued but unpaid dividends thereon payable;

"A Preference Shares" means A Preference Redeemable Convertible Shares of €[REDACTED] in the capital of the Company;

"Act" means the Companies Act 2014;

"Affiliate" means, in relation to a body corporate, any other body corporate which controls, is controlled by or is under common control with that party; and for this purpose "control" means direct or indirect beneficial ownership of more than fifty per cent (50%) of the voting share capital in the body corporate concerned;

"Asset Sale" means the completion of any transaction whereby any person or group of persons purchases the whole or substantially the whole of the undertaking and assets of the Company and the proceeds of such purchase and sale have been duly received by the members of the Company in accordance with applicable law;

"Auditors" means the auditors or auditor for the time being of the Company;

"Business Day" means a day (other than a Saturday or a Sunday) on which clearing banks are generally open for business in Dublin;

"Conversion Date" means in relation to a Floating Rate Preference Share, the date on which it comes into existence upon conversion of an A Ordinary Share pursuant to provision 6.1(d);

"Conversion Event" means in relation to an A Ordinary Share, the passing of the 270th day after the fifth anniversary of the date of issuance of that share without there having occurred a disposal of that share by the holder thereof: (a) to the Company, or (b) to the Founder; or (c) to any body corporate controlled by the Founder;

"Dividend Year" means, in relation to a Floating Rate Preference Share, a calendar year provided that the first such year shall begin on the Conversion Date and end on the 31st of December next following the Conversion Date, and the final such year shall end upon redemption of that Floating Rate Preference Share;

"Floating Rate Preference Share" means a floating rate cumulative redeemable preference share of €[REDACTED] in the capital of the Company coming into existence (if at all) upon conversion of an A Ordinary Share pursuant to provision 6.1(d);

"Eligible Offeree" means a holder of any shares except A Ordinary Shares, other than one in respect of whose shares an outstanding Transfer Notice has been given or is deemed to have been given (and for this purpose, a Transfer Notice is outstanding until the earlier of: (a) the date on which it is revoked in accordance with Article 7.2; and (b) the 61st day next following the Offer Round Expiry Date);

"EURIBOR" in relation to a given amount for a given Dividend Year, means: (i) the rate per annum calculated and (rounded downwards to three decimal places) published or reported on Reuters page EURIBOR 01 (or such other screen or page as may replace that screen or page on that service) at or about 12.00 p.m. on the second Business Day before the first day of that Dividend Year as being the interest rate per annum offered in the European inter-bank market for deposits in euro of €[REDACTED] for a twelve month period; or (ii) if the service in (i) above is not available, the rate per annum equal to the arithmetic mean (rounded downwards to three decimal places) of the rate (as notified to such party) at which each of three leading banks in the Dublin market (nominated by the Company) were offering deposits in euro of €[REDACTED] for a twelve month period at or about 12.00 p.m. on the second Business Day before the first day of that Dividend Year;

"Exempt Transfer" means any transfer of a share:

- (a) approved in writing by members holding a majority in nominal value of the Ordinary Shares and Kernel; or
- (b) to the Company (whether upon a re-purchase or redemption);
- (c) provided for in Clause 11.1.3 or 11.1.4 of the Supplemental Agreement;
- (d) by Kernel.

"Fair Value" means the fair value of the Ordinary/New Shares held by Kernel following conversion under this Agreement as agreed or determined in accordance with the provisions of provision 6.3(b) of this constitution as the case may be;

"Founder" means J.T. O'Sullivan;

"Group" means in relation to a body corporate that body corporate and its Affiliates;

"Increased Dividend" means 5% per annum;

"Kernel" means Bank of Ireland Kernel Capital Partners Private Equity Fund II Limited Partnership;

"Kernel Conversion Price" means € [REDACTED] per share;

"Kernel Conversion Event" means the service of a notice on the Company by Kernel requesting the Company to convert the A Preference Shares as herein provided;

"Kernel Loan Instrument" means the Loan Note Instrument issued by the Company on 5th March 2010 comprising Series A Loan Notes issued to Kernel;

"Margin" means, in relation to a Floating Rate Preference Share:

- (a) 500 basis points, for any of the first five Dividend Years of that Floating Rate Preference Share; and
- (b) 1,000 basis points, for any subsequent Dividend Year of that Floating Rate Preference Share;

"New Shares" means such type and class of shares allotted to any external and/or financial and/or trade investor in return for their investment in the Company of a minimum of [REDACTED]

"Notice Price", the amount specified in the Transfer Notice as the price at which the Prospective Transferor wishes to sell the Notice Shares, expressed as a price per share;

"Notice Shares" means the shares in the capital of the Company to which a given Transfer Notice relates;

"Offer Round Commencement Date" means:

- (a) in a case involving the valuation of the Notice Shares by a Valuer, the eighth day next following the date on which notice of the Valuer's Price is issued to the Prospective Transferor (provided that the Prospective Transferor has not revoked the Transfer Notice in accordance with provision 7.2); and
- (b) in any other case, means the seventh day next following the date of receipt (actual or deemed) by the Company of a Transfer Notice;

"Offer Round Expiry Date" means that date which falls 90 days after the Offer Round Commencement Date;

"Ordinary Share" means an ordinary share of € [REDACTED] in the capital of the Company other than an A Ordinary Share;

"Prospective Transferor" means a member of the Company desiring or required to transfer some or all of his shares;

"Redemption Date" means the fifth anniversary of the date of allotment of the A Preference Shares in respect of any redemption of the A Preference Shares (or, if that day is not a Business Day, on the next succeeding Business Day);

"Relevant Interest Rate" means, in relation to a Floating Rate Preference Share for a given Dividend Year, the aggregate of:

- (a) EURIBOR for that Dividend Year; and
- (b) the Margin for that Dividend Year;

"Sale Price" means:

- (a) except in a case provided for in paragraph (b): the Notice Price;
- (b) if the directors have referred the question of the price of the Notice Shares to a Valuer the Valuer's Price;

"Share Sale" means the completion of any transaction whereby any person or group of persons acting in concert purchases the whole or a majority of the share capital of the Company,

"Transfer Notice" means a notice of the kind referred to in provision 7.2(c);

"Valuer" means an appropriately qualified person with expertise in the field of the valuation of shares such as the Notice Shares;

"Valuer's Price", the amount certified by the Valuer to be, as at the date on which the Transfer Notice is received (or deemed to have been received) by the Company, the fair value of the Notice Shares as between a willing buyer and a willing seller, determined on the basis of the whole Company as a going concern with no account being taken of the fact (if so) that the Notice Shares constitute a particular majority or minority interest in the issued share capital of the Company, and expressed as a price per share;

5.2 *Construction:* In this constitution, unless a contrary intention is stated, a reference to:

- (a) the singular shall include the plural and vice versa;
- (b) either gender includes the other;
- (c) a person shall be construed as a reference to any individual, firm or company, corporation, governmental entity or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (d) a person includes that person's legal personal representative, permitted assigns and successors
- (e) time shall be construed by reference to whatever time may from time to time be in force in Ireland;
- (f) any articles and other provisions are references to articles and other provisions of these Articles, and any reference to a sub-provision is, unless otherwise stated, a reference to a sub-provision of the provision in which the reference appears;
- (g) any agreement document or instrument is to the same as amended, novated, modified, supplemented or replaced from time to time;
- (h) 'including' means comprising, but not by way of limitation to any class, list or category
- (i) 'writing' shall include a reference to any electronic mode of representing or reproducing words in visible form; and
- (j) any Irish legal or accounting term for any action, remedy, method of judicial proceeding, insolvency proceeding, event of incapacity, legal or accounting document, legal or accounting status, court, governmental or administrative authority or agency, accounting body, official or any legal or accounting concept practice or principle or thing shall in respect of any jurisdiction other than Ireland be deemed to include what most approximates in that jurisdiction to the Irish legal or accounting term concerned.

5.3 *Headings:* Headings are to be ignored in the construction of this constitution.

6. SHARE CAPITAL

6.1 *Rights attaching to Shares (other than in respect of A Preference Shares):*

- (a) *Voting Rights:*

- (i) The Ordinary Shares shall confer on the holders thereof the right to receive notice of and to attend and vote at general meetings of the Company. Each Ordinary Share shall entitle the holder thereof to one vote.
- (ii) The A Ordinary Shares shall not confer on the holder(s) thereof the right to receive notice of or to attend and vote at any general meeting of the Company.
- (iii) The Floating Rate Preference Shares shall not confer on the holder(s) thereof the right to receive notice of or to attend and vote at any general meeting of the Company.
- (b) **Right to Dividends:** The profits of the Company which it shall in each year be determined to distribute shall be applied as follows and in the following order of priority:
 - (i) in payment on the Floating Rate Preference Shares in issue for the time being and from time to time (if any) of a cumulative preferential dividend at the Relevant Interest Rate per annum on the amount paid up or credited as paid up on such shares, payable annually in arrears on the last day of each Dividend Year;
 - (ii) in payment of dividends on the Ordinary Shares and the A Ordinary Shares (which shall rank pari passu with each other as to the entitlement to such dividends in respect of any financial year of the Company) until such time as the holder of each A Ordinary Share shall have received in respect of each A Ordinary Share an aggregate sum equal to 17.5% of the amount paid up or credited as paid up on that A Ordinary Share so that the maximum aggregate amount paid by way of dividends on each A Ordinary Share shall never exceed that aggregate sum; and
 - (iii) as to the balance of such profits, in payment of a further dividend on the Ordinary Shares which may be declared to the exclusion of any entitlement thereto on the part of the holders of any other class or classes of shares in the capital of the Company.
- (c) **Return of Capital:** On a return of assets on liquidation or otherwise, the assets of the Company available for distribution among the members shall be applied as follows and in the following priority:
 - (i) in payment to the holders of the Floating Rate Preference Shares then in issue (if any) of the amounts paid up or credited as paid up on the Floating Rate Preference Shares held by them together with any arrears or accruals of the dividend on the Floating Rate Preference Shares held by them, whether declared or earned or not, calculated down to the date of such payment (and the Floating Rate Preference Shares shall confer on the holders thereof no other rights as to the return of capital upon a winding up or otherwise);
 - (ii) in payment to the holders of the Ordinary Shares and the A Ordinary Shares (which shall rank pari passu with each other as to such repayment) of the aggregate of all amounts paid up or credited as paid up on each such class of shares;
 - (iii) in payment to the holders of the Ordinary Shares and the A Ordinary Shares (which shall rank pari passu with each other as to such repayment) of a sum up to an amount equal to 17.5% of the amount paid up or credited as paid up on each A Ordinary Share less the aggregate amount (if any) of all dividends previously declared on the A Ordinary Shares so that the maximum aggregate amount which may be paid on a return of assets on liquidation or otherwise pursuant to this provision 6.1(c) in respect of an A Ordinary Share when aggregated with the aggregate amount of all dividends paid on that A Ordinary Share shall not exceed the amount paid up or credited as paid up on that A Ordinary Share plus a sum equal to 17.5% of all amounts paid up or credited as paid on that A Ordinary Share; and
 - (iv) in payment to the holders of the Ordinary Shares of all remaining profits and assets of the Company available for distribution absolutely to the exclusion thereto on the part of the holders of any other class of shares in the capital of the Company.
- (d) **Conversion of A Ordinary Shares to Floating Rate Preference Shares:**

- (i) Upon the occurrence of a Conversion Event in relation to an A Ordinary Share, that share shall automatically be converted into and redesignated as a Floating Rate Preference Share.
- (ii) A Floating Rate Preference Share into which an A Ordinary Share has been converted shall rank *pari passu* in all respects with all other Floating Rate Preference Shares previously in issue except that it shall not rank for any dividend declared by reference to any date or period before the Conversion Date.
- (e) **Redemption of Floating Rate Preference Shares:** A Floating Rate Preference Share shall be redeemable upon and subject to the following terms and conditions.
 - (i) A Floating Rate Preference Share may be redeemed only in accordance with the Act. Without prejudice to the generality of the foregoing, no Floating Rate Preference Share shall be redeemed otherwise than out of distributable profits or the proceeds of a fresh issue of shares made for the purposes of the redemption.
 - (ii) Subject to paragraph (i) above, the Company may redeem a Floating Rate Preference Share at any time by the giving of written notice of redemption to the registered holder of the Floating Rate Preference Share in question provided that:
 - (A) the Company shall not redeem less than 200,000 Floating Rate Preference Shares at any one time (unless it is then redeeming all such shares as are then in issue); and
 - (B) the Company shall redeem the same proportion (as near as may be, fractions being avoided) of each holding of Floating Rate Preference Shares in issue at the time in question.
 - (iii) Subject to paragraph (i) above, a Floating Rate Preference Share shall be redeemed by the Company upon the written request of the holder thereof made at any time after the fifth anniversary of the Conversion Date.
 - (iv) The date for redemption of a Floating Rate Preference Share shall be a Business Day specified by the Company which shall not be more than 21 days after the date of the redemption notice issued by the Company or the holder pursuant to paragraph (ii) or (iii) above (as applicable).
 - (v) The redemption price for a Floating Rate Preference Share shall be an amount in euro equal to the aggregate of the amount paid up or credited as paid up on that share together with any arrears or accruals of the dividend on that share, whether declared or earned or not, calculated down to the date of such redemption.
 - (vi) Upon redemption of a Floating Rate Preference Share, the registered holder thereof shall be bound to deliver up to the Company the relative certificate for cancellation, and the Company shall pay to that holder the redemption price for that Floating Rate Preference Share.
 - (vii) On the date fixed for redemption of a Floating Rate Preference Share, dividends shall cease to accrue on that share except in respect of any share in respect of which, on due presentation of the certificate or certificates (or an indemnity in respect thereof in form reasonably satisfactory to the Company), the payment due at such redemption was not made by the Company.
 - (viii) Every Floating Rate Preference Share shall be cancelled upon redemption and, following its cancellation, the directors may convert the authorised share capital created as a consequence of that cancellation into a share of any other class of share capital into which the authorised share capital of the Company is or may at that time be divided of the same nominal amount (as nearly as may be) as the shares of such class then in issue or into an unclassified share of the same nominal amount as the Floating Rate Preference Share.

6.2 A Preference Share Rights:

- (a) **Attendance at General Meetings:** The holder or holders of the A Preference Shares shall be entitled to receive notice of and to attend all general meetings of the Company but not to vote on any resolution proposed thereat.
- (b) **Dividends:**
 - (i) The holders of the A Preference Shares shall be entitled in priority to any payment of dividend on any other class of shares in the Company to be paid annually a fixed cumulative preferential dividend at the rate of 1% per annum on the amount paid up (including any share premium) on the A Preference Shares.
 - (ii) The dividend shall be accrued annually in arrears on each anniversary of the date of first allotment of the A Preference Shares and payment of same shall be deferred and will only be paid to the holder in the event of the Shares being converted or redeemed in accordance with provision 6.2(d) and/or provision 6.2(e) or on the repayment of capital (prior to conversion) in accordance with provision 6.2(c).
 - (iii) In the event of the Company being in breach of the terms of the Kernel Loan Instrument or failing to redeem or convert any of the A Preference Shares as herein provided the holder of the A Preference Shares entitlement to 1% preferential dividend shall from the date of such breach or failure as the case may be increase to a default rate of interest of EURIBOR plus 7%.

The dividends shall be paid on redemption and/or conversion of the A Preference Shares.

- (c) **Repayment of Capital:** The holders of the A Preference Shares shall have the right on the winding up of the Company to repayment of the capital paid up thereon (including any share premium) together with payment of all arrears of preferential dividend whether declared or not down to the date of repayment (including all accruing dividends both before and after the commencement of the winding up) in priority to payment of any dividends or repayment of capital to the holder of any other class of shares in the capital of the Company but shall not be entitled to any further right to participate in profits or assets.
- (d) **Redemption:** Unless otherwise directed by the holder(s) of the A Preference Shares the Company shall, out of the profits or monies which may lawfully be applied for that purpose, redeem the A Preference Shares on the Redemption Date; provided that if, pursuant to the Act (as may be amended from time to time) and/or the terms of the Share Subscription and Shareholders' Agreement, the Company cannot redeem some or all of the A Preference Shares then due for redemption, then those Shares which the Company cannot then redeem shall be redeemed as soon as the Company becomes capable of doing so pursuant to the Act (as may be amended from time to time) and/or the terms of the Share Subscription and Shareholders' Agreement. If the Company does not redeem all of the A Preference Shares on the Redemption Date then, until the Company has redeemed all of the A Preference Shares, it will not make any other distribution. The price to be paid by the Company on redemption shall be the Redemption Price.
- (e) **Conversion:**

On the occurrence of a Kernel Conversion Event Kernel shall be entitled to convert such number of the A Preference Shares (as is required) into such number of Ordinary Shares or New Shares (at the discretion of Kernel) in the capital of the Company at the Kernel Conversion Rate calculated as follows:

$$X = A/B$$

Where:

X = the Kernel Conversion Rate A = the Kernel Conversion Price

B = the issue price of the New Shares or the Fair Value of the Ordinary Shares as determined in accordance with provision 6.3(b)

Where B is greater than A then in such event each A Preference Share will convert into 1 Ordinary Share or 1 New Share as appropriate,

For the avoidance of doubt the shares acquired by the holder of the A Preference Shares under this provision 6.2(e) shall be subject mutatis mutandis to the terms of the Share Subscription and Shareholders' Agreement and shall be issued on similar terms (save as to price) as the New Shares/Ordinary Shares.

- (e) **Realisation:** In the event that the A Preference Shares have not already been redeemed in full or converted to Ordinary/New Shares, the Company shall at the election of the holder of the A Preference Shares by notice in writing to the Company redeem the A Preference Shares and require payment of any dividend accrued thereon in cash immediately prior to a Share Sale or Asset Sale at the A Preference Share Redemption Price

If the Company cannot redeem all the A Preference Shares and the holder of the A Preference Shares has elected for redemption as herein provided in provision 6.2(e) then it shall be a condition of such Asset Sale or Share Sale and the Shareholders shall procure that any purchaser on an Asset Sale or Share Sale shall purchase the A Preference Shares at the A Preference Share Redemption Price.

6.3 Ordinary Shares held by Kernel

- (a) **Sale of Shares:** Notwithstanding any other provisions of this constitution, if Kernel wish to sell any of the Ordinary Shares held by them they shall first offer by written notice to sell these Shares (the "Offer") to the other holders of the Ordinary Shares in the Company pro rata to their respective holdings of such shares at the higher of Fair Value of each Ordinary Share or the original subscription price of each Ordinary Share ("Specified Price"), for a period of 60 days from the date of the Offer. If the said holders of the Ordinary Shares shall fail to unconditionally and irrevocably accept the Offer within the 60 day period from the date of the Offer, Kernel shall be entitled to transfer its Ordinary Shares to any person or persons at a price being not less than the Specified Price and upon such other terms as it shall so decide and the directors of the Company shall be obliged to register any duly executed transfers of shares made pursuant to this provision.
- (b) **Fair Value:** Fair Value of an Ordinary Share shall be based on the open market price between a willing buyer and a willing seller and shall be calculated as at the date on which Kernel offers to sell Ordinary Shares in accordance with provision 6.3(a) above. In respect of an Offer by Kernel, a representative of the shareholders of the Company shall within ten (10) Business Days of the service of a notice by Kernel as the case may be on the Company advising the Company that it wishes to sell its shares in accordance with provision 6.3(a) above, enter into discussions for the purpose of determining the Fair Value. In the event that the parties fail to agree the Fair Value within the said ten (10) Business Days period (or such longer period as may be agreed by the parties) then any of the parties shall have the right to refer the matter to a firm of chartered accountants agreed between them or in default of agreement on choice of such firm within a period of thirty (30) Business Days from the date of the notice making the offer to such firm of chartered accountants as shall be chosen by the President for the time being of the Institute of Chartered Accountants in Ireland and who shall be requested to make such appointment. The said firm of chartered accountants so agreed or so determined, shall be requested to give their determination of the Fair Value within a period of seventeen (17) Business Days of their appointment. In making their determination, the independent firm of accountants shall act as experts and not arbitrators and the provisions of the Arbitration Acts 1954 - 1998 (as may be amended from time to time) shall not apply and their decision shall be final and binding on all parties save in the case of manifest error. The cost of determining the Fair Value by the firm of chartered accountants shall be borne by the Company.

6.4 Issue of Shares:

- (a) For the purposes of section 69 of the Act, the directors are generally and unconditionally authorised to allot relevant securities up to an aggregate nominal amount of that amount in euro which is equal to the authorised but unissued capital of the Company upon adoption of these provisions as the constitution of the Company.

- (b) Section 69(6) of the Act is hereby excluded in relation to all allotments of relevant securities by the Company.

- 6.5 **Amendment of Articles:** A holder of any share in the capital of the Company shall take all necessary actions and exercise all such voting rights as he may from time to time have in the Company so as to procure (insofar as lies within his powers of procurement individually or collectively with others) on the occurrence of a Conversion Event or a Kernel Conversion Event, amendment of these provisions as required or permitted by this constitution.
- 6.6 **Purchase of Own Shares:** Subject to and in accordance with the provisions of the Act, the Company may purchase its own shares (including any redeemable shares).
- 6.7 **Financial Assistance:** The Company may give any form of financial assistance which is permitted by the Act for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the Company or in the Company's holding company.

7. TRANSFER OF SHARES

- 7.1 The instrument of transfer of a fully paid up share need not be signed by or on behalf of the transferee.

7.2

- (a) No member shall dispose of any interest in, or right attaching to, or renounce or assign any right to receive or to subscribe for, any share (other than an A Preference Share or an Ordinary Share held by Kernel) in the capital of the Company, or create or permit to exist any charge, lien, encumbrance or trust over any share, or agree (whether subject to any condition precedent, condition subsequent or otherwise) to do any of the foregoing things, except as expressly permitted or required by this provision 7.
- (b) The restrictions on the transfer of shares in the capital of the Company contained in this provision 7.2 shall not apply to, and there shall be no restriction on, any Exempt Transfer, and accordingly, but subject to provision 7.2(1) (furnishing of information), the directors shall register every such transfer.
- (c) With the exception of Kernel, a member proposing to transfer one or more shares shall give notice to the Company of his desire to do so, specifying in that notice the shares concerned and the price per share at which he wishes to sell. A Transfer Notice may state that the Prospective Transferor shall be under no obligation to transfer some only of the Notice Shares. A Transfer Notice shall not relate to shares of more than one class. Save where expressly provided to the contrary in this provision 7.2, a Transfer Notice shall not be revocable without the agreement of the directors.
- (d) A Transfer Notice shall constitute the Company the agent of the Prospective Transferor for the sale of the Notice Shares at the Sale Price per share in accordance with this provision 7.2
- (e) Promptly following receipt of the Transfer Notice, the directors shall canvass such Eligible Offerees as they see fit with a view to forming an opinion as to whether or not there will be found a purchaser or purchasers for all of the Notice Shares at the Notice Price.
- (f) If the directors form the opinion that there will not be found a purchaser or purchasers for all of the Notice Shares at the Notice Price a Valuer shall be appointed for the purpose of determining the Valuer's Price in respect of the Notice Shares. The Valuer shall be chosen by agreement between the Company and the Prospective Transferor or, in default of agreement, by the president for the time being of the Law Society of Ireland. The Valuer shall act as an expert and not as an arbitrator (and accordingly the Arbitration Acts, 1954 to 1998 shall not apply). The determination of the Valuer shall, in the absence of manifest error, be final and binding on all

persons interested. The cost of engaging the Valuer shall be borne by the Company (subject to its right to indemnification by the Prospective Transferor in the event of the revocation of the Transfer Notice). Following receipt of written notification of the Valuer's Price, the Company will promptly notify the Prospective Transferor of it in writing.

- (g) If in a case involving a Valuer, the Valuer's Price is less than the Notice Price, then the Prospective Transferor shall be entitled, for a period of seven days beginning on (and including) the day next following the day on which the Valuer's Price is notified to him by the Company, to revoke the Transfer Notice. If the Prospective Transferor revokes the Transfer Notice, then he shall indemnify the Company against all expenses incurred by it in consequence of the issuance of the Transfer Notice.
- (h) From and after the Offer Round Commencement Date, the Notice Shares shall be dealt with as follows:
 - (i) Unless the Notice Shares are held by the Founder, the Notice Shares shall first be offered to the Founder at the Sale Price. That offer shall stipulate a deadline (no earlier than the 21st day, and no later than the 30th day following the date of the offer) upon expiry of which, the offer, if and to the extent not accepted, will be deemed to have been declined.
 - (ii) The Notice Shares in respect of which the Founder declines the offer made to it under paragraph (i) or all of the Notice Shares where they are held by the Founder shall next be offered to Kernel at the Sale Price. That offer shall stipulate a deadline (no earlier than the 21st day, and no later than the 30th day, following the date of the offer) upon expiry of which, the offer, if and to the extent not accepted, will be deemed to have been declined.
 - (iii) The Notice Shares in respect of which the Founder and/or Kernel declines the offer made to it under paragraphs (i) and (ii) herein shall be offered at the Sale Price to the Eligible Offerees (other than the Founder) as nearly as may be in proportion to the number of Ordinary Shares held by them respectively.

The offer shall in each case stipulate a deadline (no earlier than the 21 day and no later than the 30th day, following the date of the offer) upon expiry of which, the offer, if not accepted, will be deemed to have been declined. The offer shall also state that an offeree who wants to buy a number of Notice Shares in excess of his proportion should, in his reply to the Company, state how many shares in excess he wants to buy. Any Notice Shares unclaimed shall be used (in such manner as the directors in their absolute discretion see fit) for satisfying the claims in excess.

- (iv) If following implementation of the procedures envisaged by sub-paragraphs (i), (ii) and (iii) above there remain unclaimed Notice Shares, the directors may offer the unclaimed shares to such persons not being members of the Company as they see fit with the prior consent in writing of Kernel.

If

- (i) accepting offerees are found for all Notice Shares; or
- (ii) accepting offerees are found for some but not all of the Notice Shares, but the Transfer Notice does not state that the Prospective Transferor shall be under no obligation to transfer some only of the Notice Shares;

then, upon payment to him or to the Company (as his agent) of the Sale Price per share, the Prospective Transferor shall be bound to transfer to the accepting offerees all of the Notice Shares in respect of which offers of sale have been accepted.

- (j) If in any case the Prospective Transferor, after becoming bound to do so, makes a default in transferring any Notice Shares, then the Company, and each and every person appointed by it in writing for that purpose, in each case acting alone, shall be entitled to execute, on behalf of the Prospective Transferor and in his name or otherwise, a transfer or transfers of the shares and, following execution and, where necessary, the stamping, of the required transfer or transfers, the Company shall cause the name or names of the transferee or transferees to be entered in the register as the holder or holders of the shares and shall hold the purchase money (subject to any lien in favour of the Company) in trust for the Prospective Transferor (but without any obligation to pay interest on, or to invest, that money). The Company's receipt shall be a good discharge to each transferee for the purchase price, and no question shall be raised as to the title of a transferee to any such shares after he is registered as the owner thereof.
 - (k) If by the Offer Round Expiry Date, the Notice Shares have not been accepted for purchase by persons to whom they have been offered in accordance with the foregoing procedures, and the Transfer Notice has not been revoked, then the Prospective Transferor shall be free for a period of 60 days commencing on the day next following the Offer Round Expiry Date to sell some or all of the Notice Shares (other than any which he has become bound to sell to accepting offerees in accordance with provision 7.2 for a consideration not less than the Sale Price per share to such person or persons as he sees fit, and, subject to provision 7.2(l), the directors will not be entitled to decline or refuse to register any such transfer or transfers provided that the admission of the transferee or transferees to membership of the Company would not, in the opinion of the directors bona fide held by them, be adverse to the interests of the Company.
 - (l) For the purpose of ensuring that a particular transfer of shares is permitted under this constitution, the directors may require the transferor or the person named as transferee in any transfer lodged for registration to furnish them with such information and evidence, as they may think reasonably necessary or relevant. Failing such information or evidence being furnished to the reasonable satisfaction of the directors within a period of 28 days after such request the directors shall be entitled to refuse to register the transfer in question.
- 7.3 **Restrictions on Transmission:** All the limitations, restrictions and provisions of this constitution relating to the right to transfer, and the registration of transfers of shares, shall be applicable to the transmission of shares in the event of the death or bankruptcy of a member.
- 7.4 **Directors' Discretion:** Save as otherwise provided in provision 6.2(d) and this Article 7, the directors may, in their absolute discretion, and without assigning any reason for doing so, decline to register any transfer of any share, whether or not it is a fully paid share.

8. GENERAL MEETINGS

- 8.1 **Location:** Annual general meetings shall be held in Ireland unless in respect of any particular meeting either all the members entitled to attend and vote at such meeting consent in writing to its being held elsewhere or a resolution providing that it be held elsewhere has been passed at the preceding annual general meeting. Extraordinary general meetings may be held in or outside Ireland.
- 8.2 **Auditors' Requisition:** An extraordinary general meeting shall be convened upon the requisition of the Auditors under the circumstances described in section 401 of the Act.

9. PROCEEDINGS AT GENERAL MEETINGS

- 9.1 **Chairman:** The chairman, if any, of the directors shall preside as chairman at every general meeting of the Company, or if there is no such chairman, or if he is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.
- 9.2 **Delivery of Proxies:** The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority shall be deposited

at the office or at such other place within the State as is specified for that purpose in the notice convening the meeting, before the commencement of the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, before the commencement of the taking of the poll, and, in default, the instrument of proxy shall not be treated as valid.

9.3 **Poll:** A poll may be demanded at any general meeting by any member present in person or by proxy who is entitled to vote thereat.

9.4 **Casting Vote:** Where there is an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

10. VOTES OF MEMBERS

No Votes for Certain Shares: For so long as:

- (a) the Company holds shares as treasury shares; or
- (b) any subsidiary of the Company holds shares in the Company

the Company or the subsidiary as the case may be shall not exercise any voting rights in respect of the shares.

11. MEMBERS' WRITTEN RESOLUTIONS

A members' written resolution can be made in accordance with sections 193, 194 and 195 of the Act.

12. SINGLE-MEMBER COMPANY

12.1 **Single Member Status:** If at any time the Company has only one member, that is to say that all the issued shares of the Company are registered in the name of a single person, it will be a single-member company within the meaning as contained in the Act.

12.2 **Annual General Meetings:** The sole member may decide to dispense with the holding of annual general meetings.

12.3 **Accounts & Associated Reports:** Where a decision to dispense with the holding of annual general meetings is in force, the accounts and the directors' and Auditors' reports that would otherwise be laid before an annual general meeting shall be sent to the sole member.

12.4 **Quorum at General Meetings:** The sole member, present in person or by proxy, is a sufficient quorum at a general meeting.

12.5 **Resolutions of Shareholders:** All matters requiring a resolution of the Company in general meeting (except the removal of the Auditors from office) may be validly dealt with by a decision of the sole member. The sole member must provide the Company with a written record of any such decision or, if it is dealt with by a written resolution, with a copy of that resolution, and the decision or resolution shall be recorded and retained by the Company.

13. DIRECTORS

13.1 **Number:** The Company will have not less than two and not more than seven directors.

13.2 **No Rotation:** The directors will not retire at the first annual general meeting or by rotation, or require to be re-elected in general meeting following appointment by the directors.

- 13.3 **No Share Qualification:** A director or alternate director will not be required to hold any shares in the Company by way of qualification.
- 13.4 **Directors' Right to Attend Meetings:** A director who is not a member of the Company will nevertheless be entitled to receive notice of, attend and speak at any general meeting or separate meeting of the holders of any class of shares.
- 13.5 **Executive Directors:** The directors may from time to time appoint one or more of themselves to be managing director or any other category of executive director for such period and on such terms as to remuneration or otherwise as they think fit, and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment.
- 13.6 **Alternate Directors:**
- (a) Any director may from time to time appoint any person approved by a majority of the directors to be his alternate and may at any time revoke any such appointment.
 - (b) An alternate director shall be entitled to attend and vote at any meeting of the directors at which the appointor is not personally present and, in the absence of the appointor, to exercise all the powers, rights, duties and authorities of the appointor as a director including (without limitation) with regard to the signing or countersigning of instruments to which the seal of the Company is affixed, but excluding the right to appoint an alternate.
 - (c) A person may act as an alternate for more than one director and while he is so acting will be entitled to a separate vote for each director he is representing and, if he is himself a director, his vote or votes as an alternate will be in addition to his own vote. An alternate will be counted for the purpose of reckoning whether a quorum is present at any meeting attended by him at which he is entitled to vote, but where he is himself a director or is the alternate of more than one director he will only be counted once for such purpose.
 - (d) An alternate director shall not be entitled to be remunerated otherwise than out of the fees of the appointor.
 - (e) An appointment of an alternate director or revocation of any such appointment shall be effected by notice in writing given by the appointor to the Secretary.
 - (f) An alternate director's appointment will ipso facto come to an end if for any reason the appointor ceases to be a director.
- 13.7 **Disqualification of directors:** The office of director shall be vacated if the director:
- (a) is adjudged bankrupt in any part of the world, or makes any arrangement or composition with his or her creditors generally;
 - (b) is prohibited from being a director by any order made under any provision of the Act, or is made the subject of a declaration under Chapter 3 and 4 of Part 14 of the Act.
 - (c) becomes unsound of mind;
 - (d) resigns his office by notice in writing to the Company;
 - (e) is absent from meetings of the directors for six successive months without leave, and his alternate director (if any) shall not during such period have attended in his stead, and the directors resolve that his office be vacated;
 - (f) is convicted of an indictable offence, and the directors resolve that his office be vacated; or

(g) is removed from office by a resolution duly passed pursuant to this constitution.

13.8 **Directors' Contracts:** No contract will be entered into by the Company for the employment of, or the provision of services by, a director or a director of a holding company of the Company containing a term to which section 249 of the Act applies without obtaining the approval provided for in that section.

14. **POWERS AND DUTIES OF DIRECTORS**

14.1 **Powers Generally:** The business of the Company shall be managed by the Directors, who may exercise all such powers of the Company and do on behalf of the Company all such acts, as may be exercised and done by the Company and as are not, by the Act or by this constitution, required to be exercised or done by the Company in general meeting, subject, nevertheless, to any of these provisions and to such directions being not inconsistent with the aforesaid provisions or provisions as may be given by the Company in general meeting; but no direction given by the Company in general meeting shall invalidate any prior act of the Directors which would have been valid if that direction had not been given.

14.2 **Power to Borrow and Grant Security:** The directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof and, subject to section 69 of the Act, to issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.

14.3 **Interests in Contracts:**

(a) A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company shall declare the nature of his interest at a meeting of the directors in accordance with section 231 of the Act.

(b) For these purposes, a director shall be treated as having the interests of all persons who are connected with his (in addition to any interest which he may have in his own right); and in this context:

(i) a person shall be treated as being connected with a director if that person (or an Affiliate of that person):

(A) is so treated by the Act; or

(B) acting alone, has appointed the director concerned in accordance with this constitution; and

(ii) an alternate director shall be treated as having all of the interests of his appointor (in addition to any interest which he may have in own right).

(c) The obligations of a director to disclose the nature of his interest in any contract or proposed contract with the Company will apply equally to any shadow director who shall declare his interest in the manner prescribed by section 221 of the Act.

(d) Provided that the director concerned shall have disclosed such interest in accordance with this Article 14.3, he shall be entitled to vote in respect of any transaction, contract, arrangement or agreement with the Company in which he is in any way, whether directly or indirectly, interested and if he shall do so his vote shall be counted and he shall be taken into account in ascertaining whether a quorum is present.

15. **PROCEEDINGS OF DIRECTORS**

15.1 **Quorum:**

- (a) No business shall be transacted at any meeting of the directors unless a quorum is present throughout the meeting.
 - (b) The quorum necessary for the transaction of the business of the directors, or of any committee of the directors, shall be two directors including a Kernel Director where Kernel has nominated a director for appointment to the Board. Provided however that where the Kernel Director has indicated in writing that the meeting may proceed in his absence then the meeting may proceed with a quorum of any two directors provided only those matters set out in the agenda for the meeting which was provided to the Kernel Director or dealt with at the said meeting.
 - (c) A person who holds office only as an alternate director shall, if the director he has been appointed to represent is not present, be counted in the quorum.
 - (d) Any director who ceases to be a director at a board meeting may continue to be present and to act as a director and be counted in the quorum until the termination of the board meeting if no other director objects and if otherwise a quorum of directors would not be present.
- 15.2 **No Casting Vote:** Where there is an equality of votes in relation to a question arising at any meeting, the chairman of the directors shall not have a second or casting vote.
- 15.3 **Written Resolutions:** A resolution in writing signed by all of the directors shall be as valid as if it had been passed at a meeting of the directors duly convened and held and may consist of several documents in the like form each signed by one or more directors.
- 15.4 **Board Meetings by Telephone:**
- (a) For the purposes of this constitution, the contemporaneous linking together by telephone or other means of audio communication, in a manner contemplated by this constitution, of a number of directors not less than the quorum shall be deemed to constitute a meeting of the directors, and all the provisions in this constitution as to meetings of the directors shall apply to such meetings provided that:
 - (i) each of the directors taking part in the meeting must be able to speak, be heard and to hear each of the other directors taking part;
 - (ii) at the commencement of the meeting each director must acknowledge his presence and that he accepts that the conversation shall be deemed to be a meeting of the directors; and
 - (iii) a director may not cease to take part in the meeting by disconnecting his telephone or other means of communication unless he has previously obtained the express consent of the chairman of the meeting, and a director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting unless he has previously obtained the express consent of the chairman of the meeting to leave the meeting as aforesaid.
 - (b) A minute of the proceedings at such meeting by telephone or other means of communication shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairman of the meeting.
- 15.5 **Committees of Directors:** The meetings and proceedings of any committee formed by the directors will be governed by the provisions of this constitution regulating the meetings and proceedings of directors so far as the same are applicable and are not superseded by any regulations imposed on such committee by the directors.
16. **ACCOUNTS**

The Company will comply with the provisions of the Act and all other relevant legislation with regard to accounts.

17. **AUDITORS**

The Auditors will be appointed and removed and their rights and duties regulated in accordance with the Act. The Auditors will be entitled to attend any general meeting and to receive all notices of, and other communications relating to, any general meeting which any member is entitled to receive, and to be heard on any part of the business which concerns them as auditors.

18. **NOTICES**

A notice to be given by the Company to any person entitled to receive it (the "addressee") shall be in writing and may be given to the addressee personally, delivered or posted (properly addressed and prepaid) to his registered address or transmitted by electronic mail to any electronic mail address, or by facsimile machine to any facsimile machine number, which the addressee may have furnished to the Company for the purpose. A notice given in a manner referred to in this constitution will be deemed to be given as follows:

- (a) if given to the addressee personally or delivered, when so given or delivered;
- (b) if posted, in the case of the notice of a meeting, 24 hours after posting or, in any other case, at the time at which the letter would be delivered in the ordinary course of post;
- (c) if transmitted by electronic mail, six hours after sending, (provided that if the sender receives notification that the transmission has not been successful, then it shall not be deemed to have been delivered); and
- (d) if transmitted by telecopier, when so transmitted provided the correct code or telecopier number is received on the transmission report.

19. **INDEMNITY**

Subject to the Act, every director, managing director, agent, auditor, secretary and other officer for the time being of the Company shall be indemnified out of the assets of the Company against any liability incurred by him in defending any proceedings, whether civil or criminal, in relation to his acts while acting in such office, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 233 and 234 of the Act in which relief is granted to him by the court.