

AMENDED

## Articles of Association

RecovCo Limited

Company number. 05300915

Date of incorporation 30 November 2004

Adopted by special resolution on 17 July 2008

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**P.O. Box 176**

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**Tawe Business Village**

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**Enterprise Park**

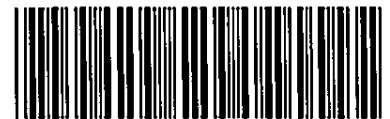
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## **1 Definitions and Interpretation**

### **1.1 In these Articles the following definitions shall apply**

**"A Shares"** means the A ordinary shares of £1 each in the capital of the Company.

**"Act"** means the Companies Act 1985 and every statutory modification or re-enactment of it for the time being in force

**"Additional Shares"** means shares in the Company's equity share capital (as that term is defined in the Act) but excluding any shares issued under a Share Option Scheme and any shares which the Company is required to issue by reason of a right specifically attached to shares under these Articles.

**"Articles"** means these Articles of Association

**"Asset Sale"** means the sale of the whole or substantially the whole of the business and/or assets of the Company.

**"B Shares"** means the B ordinary shares of £1 each in the capital of the Company

**"Bad Leaver"** means.

- (i) a Departing Employee Member where such cessation occurs in circumstances where the Employee Member is adjudged to be guilty of any fraud or dishonesty, or
- (ii) an employee member who becomes a Departing Employee Member either by their resignation prior to the expiry of two years from the date of the commencement of their employment with the Company or who is otherwise summarily dismissed in accordance with the terms of their service agreement (other than by reason of death incapacity or unsound mind) within that said period

**"Board"** means directors for the time being of the Company

**"C Shares"** means the C preferred shares of £1 each in the capital of the Company

**"C Share Liquidation Proceeds"** means the sum per C Share that the relevant Member would have received pursuant to Article 4.1(a), 4.2(a) or 4.3(a), as applicable, if there had been a Liquidation immediately following the IPO and the assets of the Company available for distribution in the course of that Liquidation had been an amount equal to (i) the total number of Ordinary Shares in issue immediately following the IPO *multiplied* by (ii) the Value

**"Controlling Interest"** means an interest in shares (as defined in Schedule 13 Part 1 and section 324 of the Act) in a company conferring in the aggregate 50% or more of the total voting rights conferred by all the issued shares in that company

**"D Shares"** means the D ordinary shares of £1 each in the capital of the Company

**"Deferred Shares"** means the deferred shares of £1 each in the capital of the Company.

**"Departing Employee Member"** means an Employee Member who ceases to be an employee of the Company or any other Group Company and does not continue as, or thereupon become, an employee of any other Group Company.

**"Employee Member"** means a person who is or has been a director and/or an employee of any Group Company.

**"Equity Shares"** means the A Shares, the B Shares, the C Shares, the D Shares and the Ordinary Shares.

**"Fair Reason for Dismissal"** means that the reason (or if more than one reason, the principle reason) for the dismissal of the Employee Member was a reason falling within section 98(2)(b) of the Employment Rights Act 1996 provided that such dismissal shall not be deemed to be unfair solely by reason of failure by the employer to follow a fair procedure under sections 98(4) or 98A of the Employment Rights Act 1996, section 31(3) Employment Act 2002 or otherwise

**"Family Trust"** means a trust which only permits the settled property and/or the income from the settled property to be applied for the benefit of

- (a) the settlor and/or a Privileged Relation of that settlor, or
- (b) any charity or charities as default beneficiaries (meaning that such charity or charities have no immediate beneficial interest in any of the settled property or the income therefrom when the trust is created but may become so interested if there are no other beneficiaries from time to time except another such charity or charities)
- (c) and under which no power of control is capable of being exercised over the votes of any shares which are the subject of the trust by any person other than the trustees or the settlor or the Privileged Relations of the settlor. For purposes of this definition "settlor" includes a testator or an intestate in relation to a Family Trust arising respectively under a testamentary disposition or an intestacy of a deceased Member

**"Good Leaver"** means a Departing Employee Member who is not a Bad Leaver.

**"Group"** means the Company, its subsidiaries, any holding company of the Company and any subsidiary of any such holding company from time to time and **"Group Company"** shall be construed accordingly.

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

**"Independent Lawyer"** means either (i) a solicitor of the supreme court of England and Wales holding a relevant practising certificate or (ii) a barrister (whether in practice as such or employed to give legal advice) in either case with at least 10 years experience specialising in giving employment law advice

**"Investors"** means the holders of the C Shares from time to time and **"Investor"** means any one of them

**"Investor Majority"** means the holders of 75% or more of the C Shares

**"IMPAX"** means together IMPAX Environmental Markets plc and IMPAX Environmental Markets (Ireland) Fund whose principal place of business is at 145-157 Saint John Street, London EC1 4RU

**"IPO"** means the becoming effective of a listing of any share capital of any Group Company on the Official List of London Stock Exchange plc or the granting of permission for any of the share capital of the Group Company to be dealt in on any recognised investment exchange (as defined by section 285 Financial Services and Markets Act 2000) including NASDAQ and NASDAQ Europe.

**"Member"** means a holder of shares in the Company

**"Notes"** means the secured convertible loan notes 2010 constituted by the instrument executed by the Company dated on or around the date of these Articles.

**"Ordinary Shares"** means the ordinary shares of £1 each in the capital of the Company

**"Original Subscription Price"** means, with respect to each C Share, the subscription price paid by the relevant Investor for such C Share.

**"Privileged Relations"** means the spouse or widow or widower of a Member and the Member's children and grandchildren (including step and adopted children and their issue) and step and adopted children of the Member's children.

**"Relevant Securities"** means all shares, rights to subscribe for shares or to receive them for no consideration and all securities convertible into shares, but excluding:

- (a) the grant of options to subscribe for A Shares or B Shares under a Share Option Scheme (and the issue of the shares upon exercise of such options)
- (b) any shares which the Company is required to issue by reason of a right specifically attached to shares under these Articles

**"Relevant Shares"** means in relation to an Employee Member all A Shares in the Company held by

- (a) the Employee Member in question, and
- (b) his or her Privileged Relations and Family Trusts other than those A Shares held by Privileged Relations that an Investor Majority declares itself satisfied

were not acquired directly or indirectly from the Employee Member or by reason of their relationship with the Employee Member

**"Restricted Member"**

- (a) an Employee Member who ceases to be a director or employee of a Group Company and does not continue as or thereupon become a director or employee of any other Group Company.
- (b) all Members who are such Employee Member's Privileged Relations and/or trustees holding shares in the Company on behalf of the Employee Member's Family Trusts (other than in respect of shares which an Investor Majority declares itself satisfied that they were not acquired by such holders either (i) directly or indirectly from the Employee Member or (ii) by reason of their connection with the Employee Member and the decision of the Investor Majority in this respect shall, in the absence of manifest error, be final).

**"Restricted Shares"** means as defined in Article 9.10

**"Sale"** means the sale of 100 per cent (or lower figure if agreed by Investor Majority) of the issued Equity Shares to a single purchaser (or to one or more purchasers as part of a single transaction).

**"Sale Shares"** means the shares specified or deemed to be specified for sale in a Transfer Notice or Deemed Transfer Notice

**"Seller"** means the transferor of shares pursuant to a Transfer Notice or Deemed Transfer Notice

**"Share Option Scheme"** means any share option scheme of the Company which an Investor Majority identifies in writing as being a Share Option Scheme for the purposes of these Articles.

**"Stone Fund"** means StoneFund2 NV whose registered address is Celestijnenlaan, 17 - 3001 Heverlee, Belgium.

**"Table A"** means Table A in the Companies (Tables A – F) Regulations 1985 as amended by the Companies (Tables A - F) (Amendments) Regulations 1985 and the Companies Act 1985 (Electronic Communications) Order 2000.

**"Termination Date"** means

- (a) where employment ceases by virtue of notice given by the employer to the employee, the date on which such notice expires.
- (b) where a contract of employment is terminated by the employer and a payment is made in lieu of notice, the date on which notice of termination was served
- (c) where an Employee Member dies, the date of his death

- (d) where the Employee Member concerned is a director but not an employee, the date on which his contract for services with the Company is terminated. and
- (e) in any other case, the date on which the contract of employment is terminated

**"Transfer Notice"** means a notice given by any Member of the Company where such Member desires or is required by these Articles to transfer any shares and where such notice is deemed to have been served it shall be referred to as a **"Deemed Transfer Notice"**

**"Value"** means the value of each Ordinary Share in issue immediately following the relevant IPO (after the issue of any Ordinary Shares pursuant to Article 4.6), determined by reference to the price per share at which the Ordinary Shares are to be offered for sale, placed or otherwise marketed pursuant to the relevant IPO or, if no Ordinary Shares are to be sold, placed or marketed, the listing price per Ordinary Share in the IPO

**"WHEB"** means WHEB Ventures Private Equity Limited Partnership, whose principal place of business is at 34 Queen Anne Street, London, W1G 8HE.

- 1 2 Whether or not persons are 'acting in concert' shall be determined by the then most recent edition of the City Code on Takeovers and Mergers, but Investors shall not be considered to be acting in concert merely by reason of cooperating in a syndicate in the ordinary course of their businesses.

## 2. Application of Table A

- 2 1 The regulations contained in or incorporated in Table A shall apply to the Company except save insofar as they are excluded or varied by these Articles or are inconsistent with these Articles and such regulations (except as so excluded varied or inconsistent) and these Articles shall be the regulations of the Company.
- 2 2 Regulations 54, 73-80 (inclusive), 85, 86, 94-98 (inclusive) and 118 of Table A shall not apply to the Company

## 3 Dividends

- 3 1 Any profits which the Company may determine to distribute shall, if an Investor Majority agrees in writing, be distributed amongst the holders of Equity Shares (pari passu as if the same were one class of share)

## 4 Liquidation preference

On a return of assets on liquidation or capital reduction or otherwise (a "Liquidation"), the assets of the Company remaining after the payment of its liabilities shall be applied in the following order of priority

- 4 1 In the event that on a Liquidation the holders of the C Shares would receive less than six times the Original Subscription Price per share.

- (a) first in paying to the holders of the C Shares two and a half times their Original Subscription Price per share together with a sum equal to any arrears or accruals of the dividends on the C Shares calculated down to the date of the return of capital and if there is a shortfall the proceeds shall be distributed to the holders of the C Shares in proportion to the amounts due on each such share held; and
- (b) second, any balance of such assets shall be distributed amongst the holders of Equity Shares (pari passu as if the same were one class of share) in proportion to the numbers of Equity Shares held by each

4.2 In the event that on a Liquidation the holders of the C Shares would receive six times or greater, but less than seven times the Original Subscription Price per share, but not otherwise:

- (a) first in paying to the holders of the C Shares whichever is the greater of.
  - (i) one and a half times their Original Subscription Price per share together with a sum equal to any arrears or accruals of the dividends on the C Shares calculated down to the date of the return of capital PLUS their proportion of the balance of such assets distributed amongst the holders of Equity Shares (pari passu as if the same were one class of shares) in proportion to the numbers of Equity Shares held by each; and
  - (ii) six times the Original Subscription Price, and
- (b) second either:
  - (i) where sub-Article 4.2(a)(i) applies, the balance of such assets shall be distributed amongst the holders of Equity Shares (pari passu as if the same were one class of shares) in proportion to the numbers of Equity Shares held by each, save that the holders of C Shares shall be deemed to have already received their payment under this sub-Article 4.2(b)(i) pursuant to sub-Article 4.2(a)(i); or
  - (ii) where sub-Article 4.2(a)(ii) applies, the balance of such assets shall be distributed amongst the holders of the A Shares, the B Shares, the D Shares and the Ordinary Shares (pari passu as if the same were one class of shares) in proportion to the numbers of A Shares, B Shares, D Shares and Ordinary Shares held by each

4.3 In the event that on a Liquidation the holders of the C Shares would receive seven times or greater the Original Subscription Price per share, but not otherwise.

- (a) first in paying to the holders of the C Shares whichever is the greater of.
  - (i) their respective proportion of such assets if such assets were distributed amongst the holders of Equity Shares (pari passu as if the same were one class of shares) in proportion to the numbers of Equity Shares held by each; and



- (ii) seven times the Original Subscription Price per share; and
- (b) second, either:
  - (i) where sub-Article 4.3(a)(i) applies, the balance of such assets shall be distributed amongst the holders of Equity Shares (pari passu as if the same were one class of shares) in proportion to the numbers of Equity Shares held by each, save that the holders of C Shares shall be deemed to have already received their payment under this sub-Article 4.3(b)(i) pursuant to sub-Article 4.3(a)(i); or
  - (ii) where sub-Article 4.3(a)(ii) applies, the balance of such assets shall be distributed amongst the holders of the A Shares, the B Shares, the D Shares and the Ordinary Shares (pari passu as if the same were one class of shares) in proportion to the numbers of A Shares, B Shares, D Shares and Ordinary Shares held by each.

4.4 Upon a Sale the Members who sell shares in such Sale will be entitled to share in the proceeds thereof as if the same had been distributed under the provisions of Article 4.1, 4.2 or 4.3, as the case may be

4.5 On an Asset Sale, the Company shall (insofar as it is legally able), as soon as practicable, distribute (whether by means of a dividend or otherwise) to the Members the proceeds of such Asset Sale and those proceeds shall be distributed between the Members in the manner set out in Article 4.1, 4.2 or 4.3, as the case may be, as if the same constituted a Liquidation

4.6 Immediately prior to an IPO, the Company shall allot at par to each holder of C Shares, by way of capitalisation of reserves, such number of Ordinary Shares per C Share held (disregarding any fraction of a share) as have an aggregate Value equal to the C Share Liquidation Proceeds

## 5 Voting

Subject to any other provisions in these Articles concerning voting rights, share in the Company shall carry votes as follows:

"A Shares" carry one vote per share

"B Shares" carry one vote per share

"C Shares" carry one vote per share

"D Shares" carry no votes

"Deferred Shares" carry no votes

"Ordinary Shares" carry one vote per share

Votes on shares may be exercised

- on a show of hands by every Member who (being an individual) is present in person or (being a corporation) is present by a representative (in which case each Member holding shares with votes shall have one vote)
- on a poll by every Member who (being an individual) is present in person or by proxy or (being a corporation) is present by a representative or by a proxy (in which case each Member holding shares with votes shall have votes as determined in accordance with these Articles.

## 6. Class rights

6.1 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 entitled at that time to vote at a general meeting of the Company. .

6.2 Without prejudice to the generality of this Article, the special rights attached to the C Shares as a class, the A Shares as a class, the B Shares as a class and the Ordinary Shares as a class shall be deemed to be varied:

(a) by the Company:

- (i) altering its memorandum or articles of association, or
- (ii) varying in any way (whether directly or indirectly) the rights attached to any of the shares for the time being in the capital of the Company, or
- (iii) applying by way of capitalisation any sum in or towards paying up any share or loan capital of the Company (except as specifically provided for in these Articles); or
- (iv) entering into a contract to purchase any of its shares, or
- (v) redeeming or buying in any of its shares (except as specifically provided for in these Articles), or
- (vi) passing a resolution that it be wound up, or

(b) by the Company or any of its subsidiaries altering, increasing, reducing, subdividing or consolidating its authorised or issued share capital (other than in connection with the operation of a share option scheme) or the issue of shares which the Company is required to make by reason of a right specifically attached to any share under these Articles.

**7. Subscription pre-emption rights**

- 7.1 All Relevant Securities shall be offered to the holders of A Shares, B Shares, C Shares and Ordinary Shares in proportion as nearly as possible to the numbers of Equity Shares held by them. Any such offer shall be open for acceptance for not less than 21 days from the date of despatch.
- 7.2 Any Relevant Securities taken up pursuant to sub-Article 7.1 by holders of C Shares shall be issued as C Shares, those taken up by holders of A Shares shall be issued as A Shares, those taken up by holders of B Shares shall be issued as B Shares and those taken up by holders of Ordinary Shares shall be issued as Ordinary Shares, provided that any Relevant Securities taken up in the form of Notes shall, notwithstanding the class of shares held by the accepting Member, only convert into Ordinary Shares
- 7.3 Any Relevant Securities not accepted in the period referred to in sub-Article 7.1 shall be at the disposal of the directors who may (within the period of three months from the end of that period) allot, grant options over or otherwise dispose of the same only as A Shares or in the form of Notes and to such persons at a price per share and on terms not more favourable to the subscribers than that at which the same were offered to the Members pursuant to sub-Article 7.1, and otherwise on such terms as they think proper.
- 7.4 Section 89 of the Act shall not apply to the Company

**8. Transfer of shares**

The directors shall refuse to register any transfer of shares made in contravention of the provisions of these Articles but (subject to Regulation 24 of Table A) shall not otherwise be entitled to refuse to register any transfer of shares. For the purpose of ensuring that a particular transfer of shares is permitted under the provisions of these Articles, the directors may request the transferor, or the person named as transferee in any transfer lodged for registration, to furnish the Company with such information and evidence as the directors may reasonably think necessary or relevant. Failing such information or evidence being furnished to the satisfaction of the directors and within a period of 28 days after such request, the directors shall be entitled to refuse to register the transfer in question

**9 Prohibited, permitted and mandatory transfers**

**9.1 *Transfers prohibited absolutely***

Without the written consent of the holders of the C Shares, of the holders of more than 50 per cent. of the A Shares, of the holders of more than 50 per cent. of the B Shares and of the holders of more than 50 per cent. of the Ordinary Shares, no sale or transfer of the legal or beneficial interest in any shares in the Company may be made or validly registered if as a result of such sale or transfer and registration thereof a Controlling Interest would be obtained in the Company by a company in which one or more of the Members of the Company (or persons acting in concert with them) has a Controlling Interest

**9.2 Permitted transfers to relations and family trusts etc.**

Subject to the provisions of sub-Article 9.9 any Member may at any time during his lifetime transfer all or any shares held by him to any person approved or nominated by an Investor Majority, to a Privileged Relation or to trustees to be held upon a Family Trust of which he is the settlor, provided that any such transfer of shares to trustees to be held upon a Family Trust may only be made with the consent in writing of an Investor Majority

**9.3 Criteria for consents to family trusts**

Where the consent of an Investor Majority is requested to a transfer to a Family Trust such consent must be given if the Investor Majority is satisfied.

- (a) with the terms of the trust instrument and in particular with the powers of the trustees,
- (b) with the identity of the proposed trustees;
- (c) that the proposed transfer will not result in a Controlling Interest being held by trustees of that and any other persons and/or trusts, and
- (d) that no costs incurred in connection with the setting up or administration of the Family Trust in question are to be paid by the Company

**9.4 Permitted transfers by family trusts**

Where any shares are held by trustees upon a Family Trust such shares may be transferred without restriction as to price or otherwise

- (a) on any change of trustees, to the new trustees of that Family Trust,
- (b) at any time to the settlor or to another Family Trust of which he is the settlor or to any Privileged Relation of the settlor

**9.5 Permitted transfers by corporate Investors and holders of B Shares**

Notwithstanding any other provisions of these Articles, a transfer of any shares in the Company held by any Investor or any holder of B Shares or any holder of Ordinary Shares which is a company may be made to any person approved or nominated by an Investor Majority or otherwise to its holding company or to any subsidiary of that holding company (a "member of the same group") without restriction as to price or otherwise, and any such transfer shall be registered by the directors. If any such transferee ceases to be a member of the same group as the original transferor it shall forthwith transfer the relevant shares back to the original transferor, or to a transferee which is then another member of the same group as the original transferor.

## 9.6 *Permitted transfers by Investment Managers and Investment Funds*

Notwithstanding any other provision of these Articles, a transfer of any shares may be made without restriction as to price or otherwise (and any such transfers shall be registered by the directors) between any Member (or a nominee of a Member) who is

- a person whose principal business is to make, manage or advise upon investments (an "Investment Manager"), or
- a fund, partnership, company, investment trust, syndicate or other entity whose principal business is to make investments and whose business is managed by an Investment Manager (an "Investment Fund"); or
- a nominee of an Investment Manager of an Investment Fund,

and

- (a) where that Member is an Investment Manager or a nominee of an Investment Manager:
  - (i) any participant or partner in or member of any Investment Fund in respect of which the shares to be transferred are held (but only in connection with the dissolution of such Investment Fund or any distribution of assets of the Investment Fund pursuant to the operation of the Investment Fund in the ordinary course), or
  - (ii) any Investment Fund whose business is managed by the Investment Manager who is or whose nominee is the transferor, or
  - (iii) any other Investment Manager who manages the business of the Investment Fund in respect of which the shares are held;
- (b) where that Member is an Investment Fund or nominee of an Investment Fund:
  - (i) any participant or partner in or member of (or if approved by the Board, their respective nominees) the Investment Fund which is or whose nominee is the transferor (but only in connection with the dissolution of such Investment Fund or any distribution of assets of the Investment Fund pursuant to the operation of the Investment Fund in the ordinary course), or
  - (ii) any other Investment Fund whose business is managed by the same Investment Manager as manages the Investment Fund which is or whose nominee is the transferor, or
  - (iii) the Investment Manager who manages the business of the Investment Fund which is or whose nominee is the transferor.

**9.7 *Transfers with shareholder approval***

Notwithstanding any other provision of these Articles, a transfer of any shares approved by the Investors may be made without restriction as to price or otherwise and any such transfer shall be registered by the directors.

**9.8 *Mandatory transfer if trust ceases to be a Family Trust***

If and whenever any shares in the Company held by trustees upon a Family Trust cease to be so held upon a Family Trust (otherwise than in consequence of a transfer to the settlor or to any Privileged Relation of the settlor) or there cease to be any beneficiaries of the Family Trust other than a charity or charities which are not Family Trusts, a Transfer Notice shall be deemed to have been given in respect of all shares in the Company by the holders thereof and such shares may not otherwise be transferred.

**9.9 *Mandatory transfer on cessation of employment***

- (a) If an Employee Member becomes a Departing Employee Member then, unless the Board determines that the Employee Member is a Good Leaver or the Employee Member agrees that he is a Bad Leaver, the Board shall, within 14 days of the date upon which the Employee Member becomes a Departing Employee Member, appoint an Independent Lawyer to determine whether there was a Fair Reason for Dismissal. The Independent Lawyer shall be instructed to make his or her determination within 28 days of the date of the instructions from the Board
- (b) In the event that the Independent Lawyer determines that there was a Fair Reason for Dismissal then the Departing Employee Member shall be treated as a Bad Leaver and Transfer Notice(s) shall be deemed to have been served on the relevant Termination Date in respect of all of his or her Relevant Shares.
- (c) If the Independent Lawyer determines that there was not a Fair Reason for Dismissal then the Departing Employee Member shall be treated as a Good Leaver and their Shares shall be treated in accordance with Article 12.
- (d) For the period commencing with the date upon which the Employee Member becomes a Departing Employee Member until the date upon which the Independent Lawyer makes his or her determination, then the voting rights attaching to that Departing Employee Member's Relevant Shares shall be suspended and that Departing Employee Member shall have no right to vote either in his capacity as a director of the Company at a board meeting or in his capacity as a Member of the Company on any shareholders' resolution whether passed at a general meeting or otherwise, save in respect of any Ordinary Shares held by him or her
- (e) The decision of the Independent Lawyer as to whether or not there was a Fair Reason for Dismissal shall, except in the case of manifest error, be final and binding on the Board and the Departing Employee Member in respect of the Departing Employee Member's status as a Bad Leaver or a Good Leaver.

- (f) Transfers under this sub-Article 9.9 are in these Articles referred to as **"Compulsory Employee Transfers"**.

**9.10 Restriction of voting rights**

- (b) All voting rights attached to Relevant Shares held by an Employee Member and his Privileged Relations and Family Trusts shall at the time he becomes a Restricted Member forthwith be suspended. Such Relevant Shares whose voting rights are suspended pursuant to Article 9.10(a) ("**Restricted Shares**") shall confer on the holders the right to receive notice of and attend all general meetings of the Company but shall have no right to vote either in person or by proxy in respect of the Relevant Shares. If a Restricted Member transfers any Restricted Shares in the Company in accordance with these Articles to a person an Investor Majority declares itself satisfied not to be a Privileged Relation of the Restricted Member or a trustee for a Family Trust of the Restricted Member, all voting rights attached to Restricted Shares so transferred shall upon completion of the transfer (as evidenced by the transferee's name being entered in the Company's register of Members) automatically be restored and such shares shall cease to be Restricted Shares.

**10. Pre-emption rights**

**10.1 Transfer Notices and Sale Price**

Except where otherwise provided in these Articles, every Member who desires to transfer any interest in shares must serve a Transfer Notice and any Member who is required by these Articles to transfer any interest in shares will be deemed to have served a Deemed Transfer Notice. Transfer Notices and Deemed Transfer Notices shall constitute the Company the Seller's agent for the sale of the Sale Shares in one or more lots at the discretion of the Board at the price agreed by the Seller and the Board (the "**Sale Price**"). If the Seller and the Board are unable to agree a price within 21 days of the Transfer Notice being given or being deemed to have been given the Sale Price shall instead be the price which the Independent Expert shall report to be in his opinion a fair value of the Sale Shares. In arriving at his opinion the Independent Expert shall value the Sale Shares as at the date the Transfer Notice is given, or is deemed to have been given, on a going concern basis as between a willing seller and a willing buyer, ignoring any reduction in value which may be ascribed to the Sale Shares by virtue of the fact that they represent a minority interest in an unlisted security and on the assumption that the Sale Shares are capable of transfer without restriction. The decision of the Independent Expert as to the Sale Price in the absence of manifest error shall be final and binding.

**10.2 Restriction of Sale Price for certain transfers by Employee Members, their Privileged Relations and Family Trusts**

In the case of a Compulsory Employee Transfer, the Sale Price shall be the lesser of:  
(i) fair market value of the Sale Shares (as determined in accordance with the procedure set out in Article 10.1); and (ii) the original subscription price of the Sale Shares

**10.3 *Right of Seller to reject partial sales***

A Transfer Notice (but not a Deemed Transfer Notice) may contain a condition ("a **Total Transfer Condition**") that unless all the Sale Shares are sold by the Company pursuant to this Article none shall be sold. Any such provision shall be binding on the Company

**10.4 *Certification of the Sale Price and right of Seller to cancel***

If the Independent Expert is asked to report on the fair value his report shall be delivered to the Company. As soon as the Company receives the report it shall deliver a copy of it to the Seller. The Seller shall be entitled by notice in writing given to the Company within 7 days of the service upon him of the copy report to cancel the Company's authority to sell the Sale Shares unless the shares are to be sold pursuant to a Deemed Transfer Notice. The cost of obtaining the report shall be paid by the Company unless the Seller cancels it in which case the Seller shall bear the cost.

**10.5 *Pre-emptive offers-general***

Once the Sale Price has been determined then, unless the Seller has given a valid notice of cancellation, the Sale Shares shall be offered for sale in accordance with the following provisions of this Article 10

**10.6 *Compulsory Employee Transfers to be offered to the Company***

Provided an Investor Majority has given its prior written consent, any Sale Shares being sold by reason of a Compulsory Employee Transfer shall first be offered to the Company. Consent shall be deemed to have been refused by any Investor who has not given consent within 14 days of being requested to do so. If consent is refused under this sub-Article the Sale Shares in question may instead be offered for sale to any other person jointly nominated by the Company and an Investor Majority. Any offer under this Article to the Company or other such persons must be made within 14 days of the consent being given or refused. Any Sale Shares not sold under this sub-Article within 14 days of being offered to the Company or other person (as the case may be) shall be available for sale to the Members of the Company as set out below

**10.7 *Offer to Members***

As soon as the Sale Shares become available they shall forthwith be offered for sale by the Company giving notice in writing to that effect to all holders of Equity Shares (other than the Seller and Restricted Members) (subject to the Company or any employee benefit trust being first offered for purchase the same ahead of the holders of the Equity Shares). The notice shall specify:

- the number of Sale Shares on offer and the Sale Price,
- whether the Sale Shares are subject to a Total Transfer Condition;



- the date by which the application to purchase the Sale Shares has to be received by the Company (being a date no less than 14 days and no more than 21 days after the date of the notice).

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

#### 10.8 *Basis of allocation to Members*

- (a) The Sale Shares shall, save as otherwise directed by the Board with the approval of WHEB Ventures Private Equity Limited Partnership (including where the Board so directs for the avoidance of doubt, for the purposes of the allocation of a Departing Employee Member's (who is a Bad Leaver) Relevant Shares to their incoming replacement who is to be or has been appointed a director of the Company, an "**Employee Replacement**") be allocated by the directors in satisfaction of the applications received in accordance with the procedure set out in this Article

The Sale Shares of the class specified in column (1) below shall be allocated first in satisfaction of the applications received from Members holding the class of share set out in the corresponding line of column (2) and after all applications for Sale Shares by that class have been satisfied any Sale Shares remaining shall be allocated in satisfaction of applications received from Members holding the class of share set out in the corresponding line of column (3) and then (4) in that order of priority.

(1) <i>Class of Sale Shares</i>	(2) <i>First Preferred Applicants</i>	(3) <i>Second Preferred Applicants</i>	(4) <i>Third Preferred Applicants</i>	(4) <i>Third Preferred Applicants</i>
A	C	A	B	Not applicable
B	C	B	A	Not applicable
C	C	B	A	Not applicable
D	C	A	D	B

- (b) Notwithstanding the generality of sub-Article 10.8(a), if the Sale Shares are being sold under a Compulsory Employee Transfer and are being offered for sale at a price restricted to no more than their original subscription price then the procedure set out in sub-Article 10.8(a) will not be applied on a class by class basis and all Equity Shares will be treated as being the same class as the Sale Shares.
- (c) Notwithstanding the generality of sub-Article 10.8(a), if and to the extent that the Sale Shares comprise of Ordinary Shares, the procedure set out in sub-Article 10.8(a) will not apply and the Sale Shares will be allocated amongst the holders of Equity Shares (pari passu as if the same were one class of shares) in proportion to the numbers of Equity Shares held by each

- (d) If the total number of Sale Shares applied for by the Members is equal to or (if they are not subject to a Total Transfer Condition) less than the number of Sale Shares available, the Sale Shares shall be allocated in satisfaction of the applications received.
- (e) If the total number of Sale Shares applied for is more than the number of Sale Shares available, the Board shall allocate Sale Shares in satisfaction of each Member's application for Sale Shares in accordance with the following formula. This formula shall be applied repeatedly until such time as there are no Sale Shares remaining to be allocated but not so as to allocate to any Member a total number of Sale Shares greater than the number for which he applied. Each application of the formula is herein referred to as an "Iteration".

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

**A** is the number of Sale Shares to be allocated to the relevant Member in the Iteration.

**B** is the number of Equity Shares held by the Member

**C** is the number of Equity Shares held by all Members to whom the Iteration is being applied.

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

- 10.9 The Company shall notify the Seller and each Member who applied for Sale Shares of the number of Sale Shares that have been allocated and the persons to whom they have been allocated. The notification shall include the place and time (being not later than 14 days after the date by which applications had to be received) at which the sale of the Sale Shares shall be completed.
- 10.10 For the avoidance of doubt D Shares which are allocated in accordance with the provisions of this Article 10 cannot be redesignated as any other class of share.
- 10.11 *Transfer procedure for pre-emptive offers*

If the Company finds a purchaser or purchasers for all or any of the Sale Shares under the terms of this Article the Seller shall be bound, upon receipt of the Sale Price, to transfer the Sale Shares (or such of the same for which the Company shall have found a purchaser or purchasers) if they are not subject to a Total Transfer Condition to such persons. If the Seller defaults in transferring Sale Shares the Company shall, if so required by the person or persons willing to purchase such Sale Shares, receive and give a good discharge for the purchase money on behalf of the Seller and shall authorise some person to execute transfers of the Sale Shares in favour of the purchasers and shall enter the names of the purchasers in the Register of Members as the holder of such of the Sale Shares as have been transferred to them

#### 10.12 *Transfers free of pre-emption*

If the Company does not find purchasers for all of the Sale Shares under the terms of this Article 10, the Seller shall at any time within six months after the date of the offer by the Company to its Members be free to sell and transfer such of the Sale Shares as have not been so sold to any person (not being someone the Board reasonably considers may be involved other than to an insignificant extent with another business in competition with all or part of the Company's business or that would give rise to a conflict of interest) at a price which is no less than the Sale Price. If the Sale Shares were the subject of a Total Transfer Condition such a sale may only be made of all the Sale Shares and not part only.

#### 10.13 *Effect of non-compliance*

Any purported transfer of shares otherwise than in accordance with the provisions of these Articles shall be void and have no effect

#### 11. **Tag along and drag along rights**

##### 11.1 *Tag along*

No sale or transfer of the legal or beneficial interest in any shares in the Company may be made or validly registered without the consent in writing of an Investor Majority if, as a result of such sale or transfer and registration thereof, 15 per cent. or a greater percentage of the Equity Shares would be obtained by any person or group of persons acting in concert unless the proposed transferee or transferees and/or his or their nominees:

- (a) is or are independent third parties acting in good faith;
- (b) has or have offered to purchase all the Equity Shares; and
- (c) has or have allocated the consideration payable for all the shares it is purchasing and offering to purchase in the same manner as if the consideration was to be distributed to the selling shareholders in accordance with the provisions of Article 4

##### 11.2 *Drag along*

- (a) If the holders of 75% or more of the Equity Shares (the "**Selling Shareholders**") wish to transfer all their interest in Equity Shares (the "**Sellers' Shares**") to a bona fide arms length purchaser (the "**Third Party Purchaser**") the Selling Shareholders shall have the option (the "**Drag Along Option**") to require all the other holders of Equity Shares (the "**Called Shareholders**") to sell and transfer all their shares to the Third Party Purchaser or as the Third Party Purchaser shall direct in accordance with the provisions of this Article.
- (b) The Selling Shareholders may exercise the Drag Along Option by giving a written notice to that effect (a "**Drag Along Notice**") at any time before the transfer of the Sellers' Shares to the Third Party Purchaser. A Drag Along

Notice shall specify that the Called Shareholders are required to transfer all their Equity Shares (the "Called Shares") pursuant to this Article, the person to whom they are to be transferred, the consideration for which the Called Shares are to be transferred (calculated in accordance with this Article) and the proposed date of transfer

- (c) Drag Along Notices shall be irrevocable but shall lapse if for any reason there is not a sale of the Sellers' Shares by the Selling Shareholders to the Third Party Purchaser within 60 days after the date of service of the Drag Along Notice. The Selling Shareholders shall be entitled to serve further Drag Along Notices following the lapse of any particular Drag Along Notice.
- (d) The consideration (in cash or otherwise) for which the Called Shareholders shall be obliged to sell each of the Called Shares shall be that to which they would be entitled if the total consideration proposed to be paid by the Third Party Purchaser were distributed to the holders of the Called Shares and the Sellers' Shares in accordance with the provisions of Article 4.
- (e) No Drag Along Notice may require a Called Shareholder to agree to any terms save those specifically provided for in this Article

Completion of the sale of the Called Shares shall take place on the same date as the date proposed for completion of the sale of the Sellers' Shares unless.

- (i) all of the Called Shareholders and the Selling Shareholders agree otherwise, or
  - (ii) that date is less than 21 days after the Drag Along Notice where it shall be deferred until the twenty first day after the Drag Along Notice.
- (f) The rights of pre-emption set out in these Articles shall not arise on any transfer of shares to a Third Party Purchaser (or as he may direct) pursuant to a sale in respect of which a Drag Along Notice has been duly served.
  - (g) If any holder of Equity Shares does not on completion of the sale of Called Shares execute transfer(s) in respect of all the Called Shares held by them the defaulting holder shall be deemed to have irrevocably appointed any person nominated for the purpose by the Selling Shareholders to be their agent and attorney to execute all necessary transfer(s) on his behalf against receipt by the Company (on trust for such holder) of the purchase monies or any other consideration payable for the Called Shares deliver such transfer(s) to the Third Party Purchaser (or as he may direct) and the Board shall forthwith register the Third Party Purchaser (or as he may direct) as the holder thereof. After the Third Party Purchaser (or their nominee) has been registered as the holder, the validity of such proceedings shall not be questioned by any such person. It shall be no impediment to registration of shares under this sub-Article that no share certificate has been produced
  - (h) 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 ("a New Member"), a Drag Along Notice shall be deemed to have been served on the New Member on the same terms as the previous Drag Along Notice and he shall thereupon be bound to sell and transfer to the Third Party Purchaser (or as he may direct) all such shares acquired by him and the provisions of this Article shall apply mutatis mutandis to the New Member save that completion of the sale of such shares shall take place forthwith upon the Drag Along Notice being deemed served on the New Member

## **12 Good Leavers – conversion of shares**

12.1 Subject to sub-Article 9.9, when an Employee Member becomes a Departing Employee Member who is a Good Leaver, such Departing Employee Member's Relevant Shares shall automatically convert into D Shares which shall have the rights appertaining to them set out in these Articles. The Company shall maintain sufficient authorised but unissued D Shares to effect the provisions of this Article 12.

12.2 Any conversion of A Shares pursuant to this Article 12 shall be made on the following terms

- (a) conversion shall take effect at no cost to the holder of the A Shares, and
- (b) forthwith after conversion the Company shall (if requested) issue to the persons entitled thereto certificates for the D Shares resulting from the conversion and the holders thereof shall be bound to deliver up to the Company for cancellation the certificates in respect of their pre-conversion holdings of A Shares.

## **13 Replacement Employee anti-dilution provisions**

13.1 Subject to sub-Article 13.2, when a Employee Replacement is appointed a director of the Company and is granted any options or rights to purchase or subscribe for Additional Shares, on the date of such grant of options or rights, such number of D Shares held by the former employee in whose place the Employee Replacement has been appointed, which equals the number of shares to which the options or rights entitle the Employee Replacement will be automatically converted into an equal number of Deferred Shares. The Company shall maintain sufficient authorised but unissued Deferred Shares to effect the provisions

13.2 of this Article 13.

13.3 For the avoidance of doubt, the number of D Shares held by the former employee referred to in sub-Article 13.1 which can be subject to the conversion shall be limited to such number of D Shares which represent 4 per cent. of the issued share capital of the Company at that time excluding any issued Deferred Shares. If the Employee Replacement is to be granted options or rights which entitle it to more than 4 per cent of the issued share capital of the Company at that time, the excess number of A Shares to which the options or rights will entitle the Employee Replacement will be provided

for by way of conversion of the shares held by the holders of Equity Shares pro rata to their percentage shareholdings in the capital of the Company into Deferred Shares

- 13.4 Any conversion of D Shares (or, where the right to a greater percentage than 4 per cent of the issued share capital of the Company is to be granted to the Employee Replacement, Equity Shares) pursuant to this Article 12 shall be made on the following terms
- (a) conversion shall take effect at no cost to the relevant holder of D Shares or the holders of Equity Shares, as applicable, and
  - (b) forthwith after conversion the Company shall (if requested) issue to the persons entitled thereto certificates for the Deferred Shares resulting from the conversion and for the remaining shares and the holders thereof shall be bound to deliver up to the Company for cancellation the certificates in respect of their pre-conversion holdings of shares

**14 Appointment of directors**

The Board shall consist of a maximum of 8 directors and a minimum of 4 directors (including at least 3 non-executive directors) The Board may appoint a person who is willing to act to be a director, either to fill a vacancy or as an additional director In addition, the holders of shares representing more than half of the shares which carry the right to attend and vote at general meetings of the Company may by notice to the Company together appoint a person who is willing to act to be a director either to fill a vacancy or as an additional director.

**15. Board appointees**

- 15.1 Notwithstanding any other provisions of these Articles, for so long as WHEB is an Investor it shall be entitled to appoint as a director of the Company any one person and to remove from office any person so appointed and to appoint another person in his place.
- 15.2 Upon request by an Investor Majority the directors shall also procure that an Investor Majority appointee is appointed and acts as Chairman of the board of directors of the Company
- 15.3 The remuneration and reasonable expenses to be paid to a WHEB appointee or an Investor Majority appointee shall be payable by the Company and shall be such sum as may be agreed between him and the Company or failing agreement such reasonable sum as shall be fixed by an Investor Majority. Upon request by WHEB or an Investor Majority the Company shall also procure that a WHEB appointee or an Investor Majority appointee, as the case may be, is appointed as a director to any subsidiary of the Company
- 15.4 After the Board has confirmed that there are no reasonable grounds for an objection to the proposed appointee's identity, for so long as each of IMPAX and the Stone Fund are Investors, they shall each be entitled to appoint one person as an observer to attend and speak, but not vote, at all Board meetings (or meetings of any committee of the

Board), to remove such observer and to appoint another person in his place. A duly appointed Board observer shall be provided with the same notice of meetings as the other Board members together with any agenda or supporting papers provided to the other Board members in respect of any meeting.

- 15.5 Any observer appointed pursuant to Article 15.4 shall be entitled to be reimbursed expenses reasonably and properly incurred by him up to a maximum of £5000 per annum

**16. Anti-dilution**

- 16.1 Until the Company achieves an IPO, if the Company issues any Additional Shares without consideration or for a consideration per share less than the Original Subscription Price of the C Shares (a "**Qualifying Issue**") and a holder of C Shares does not take up his pro rata entitlement of such Additional Shares then such holder of C Shares shall be issued with such number of C Shares for no consideration so that its percentage of Equity Shares in the entire issued capital of the Company shall be the same after the issue of Additional Shares as before the issue of those Additional Shares

- 16.2 Where the total number of C Shares to be received by a person holding C Shares as a result of an issue of C Shares for no consideration pursuant to sub-Article 16.1 above would not be a whole number, it will be rounded to the nearest whole number.

- 16.3 In the case of an issue of Additional Shares for a consideration in whole or in part other than cash, in calculating the subscription price of these shares for the purposes of this Article, the consideration other than cash shall be deemed to be the fair value of such consideration as determined by the auditors of the Company (acting as experts and not as arbitrators), irrespective of any accounting treatment

- 16.4 If the Company grants or issues:

- any options or rights to purchase or subscribe for Additional Shares ("**Options**"),
- securities (other than Notes) by their terms convertible into or exchangeable for Additional Shares ("**Convertible Shares**"), or
- options or rights to purchase or subscribe for such convertible or exchangeable securities ("**Convertible Options**"),

the following provisions shall apply for all purposes of this Article:

- (a) The aggregate maximum number of Additional Shares issuable upon the exercise (assuming the satisfaction of any conditions) of such Options shall be deemed to have been issued at the time such Options were issued and for a consideration equal to that, if any, received by the Company upon issuing such Options plus the minimum exercise price provided in such Options.
- (b) The aggregate maximum number of Additional Shares issuable:

- (i) upon the conversion of, or in exchange for, any Convertible Shares (assuming the satisfaction of any conditions on convertibility or exchangeability), or
- (ii) upon the exercise of any Convertible Options and subsequent conversion or exchange thereof,

shall be deemed to have been issued at the time such Convertible Shares or Convertible Options (as appropriate) were issued and for a consideration equal to that, if any, received by the Company for any such Convertible Shares or Convertible Options plus the minimum additional consideration, if any, to be received by the Company upon the conversion or exchange of such Convertible Shares or the exercise of such Convertible Options.

- (c) If the Company is prohibited from effecting a capitalisation of reserves required by this Article whether by virtue of the Act or for any other reason, the person entitled to the bonus issue shall be entitled, at any time, to subscribe at par for the C Shares that they would otherwise have been entitled to have received as a bonus issue by virtue of this Article.
- (d) The Board and the Members of the Company shall use their respective rights and powers to procure, so far as they are able, that the Company has sufficient authorised but unissued C Shares to meet any obligations which may arise under this Article.

## **17 Meetings of directors**

Notice of every meeting of the Board shall be given to each director at any address supplied by him to the Company for that purpose whether or not he be present in the United Kingdom provided that any director may waive notice of any meeting either prospectively or retrospectively and if he shall do so it shall be no objection to the validity of such meeting that notice was not given to him. Meetings of the directors may be held by conference telephone or similar equipment so long as all the participants can hear each other. Such meetings shall be as effective as if the directors had met in person.

## **18. Directors' conflicts of interest**

**18.1** Subject to the provisions of the Act and provided that he has disclosed to the directors the nature and extent of any material interest of his, a director notwithstanding his office:

- (a) may be a party to or otherwise interested in any transaction or arrangement with the Company or in which the Company is in any way interested;
- (b) may be a director or other officer of or employed by or be a party to any transaction or arrangement with or otherwise interested in any body corporate promoted by the Company or in which the Company is in any way interested;



- (c) may (and any firm or company of which he is a partner or Member or director may) act in a professional capacity for the Company or any body corporate in which the Company is in any way interested;
- (d) shall not by reason of his office be accountable to the Company for any benefit which he derives from such office service or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit; and
- (e) shall be entitled to vote and be counted in the quorum on any matter referred to in the foregoing paragraphs of this Article

**18.2 For the purposes of this Article**

- (a) a general notice to the Board that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified;
- (b) an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his, and
- (c) an interest of a person who is for any purpose of the Act (excluding any statutory modification not in force when these Articles were adopted) connected with a director shall be treated as an interest of the director and in relation to an alternate director an interest of his appointor shall be treated as an interest of the alternate director without prejudice to any interest which the alternate director has otherwise

**19 Lien**

The lien conferred by regulation 8 of Table A shall apply to all shares of the Company whether fully paid or not and to all shares registered in the name of any person indebted or under liability to the Company whether he be the sole registered holder of the shares or one of several joint holders

**20 Partly paid shares**

- 20.1 The liability of any Member in default in respect of a call shall be increased by the addition at the end of the first sentence of regulation 18 in Table A of the words "and all expenses that may have been incurred by the Company by reason of such non-payment "
- 20.2 If the subscription price of any share (including any premium) is partly paid, the rights to dividend and on a return of capital of any such share shall be abated in the same proportion as the unpaid amount bears to the total subscription price

**21. Seal**

Regulation 6 of Table A shall be modified so as to remove the reference to the company seal and regulation 101 of Table A shall be modified by the insertion of the words", if the Company has one," after the words "The seal" at the beginning of that regulation.

**22 Indemnity**

- 22.1 Subject to the provisions of the Act but without prejudice to any indemnity to which a director may otherwise be entitled, every director or other officer or auditor of the Company shall be indemnified out of the assets of the Company against all costs, charges, losses, expenses and liabilities incurred by him in the execution of his duties or in relation thereto including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company
- 22.2 The Company may purchase and maintain insurance against any liability falling upon its directors or other officers or auditors which arises out of their respective duties to the Company or in relation to its affairs.

**23. Data Protection**

Each of the shareholders and directors of the Company (from time to time) consent to the processing of their personal data by the Company, its shareholders and directors (each a "Recipient") for the purpose of due diligence exercises, compliance with applicable laws, regulations and procedures and the exchange of information amongst themselves. A Recipient may process such personal data either electronically or manually. The personal data which may be processed for such purposes under this Article shall include any information which may have a bearing on the prudence or commercial merits of investing, or disposing of any shares (or other investment or security) in the Company. Subject to any confidentiality undertakings given to them by a Recipient, each of the Company's shareholders and directors (from time to time) consent to the transfer of such personal data to persons acting on behalf of any Recipient and to the offices of any Recipient both within and outside the European Economic Area for the purposes stated above, where it is necessary or desirable to do so