

**DATED**

*27<sup>th</sup> January*

**2005**

(1) **EIRX THERAPEUTICS PLC** - 4927339

(2) **DR WILLIAM THOMAS MELVIN**

**AND**

(3) **DONALD ALEXANDER GRANT**

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**SHARE SALE AGREEMENT**  
relating to acquisition of Avuation Limited

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**Bircham Dyson Bell**



## TABLE OF CONTENTS

<b>OPERATIVE PROVISIONS:</b>	<b>3</b>
1 Definitions and interpretation	3
2 Sale of the Sale Shares	12
3 Conditions precedent	13
4 Pre-completion provisions	14
5 Consideration	17
6 Not used	18
7 Completion	18
8 Post-completion matters and further assurances	19
9 Warranties	20
10 Tax covenant	22
11 Not used	22
12 Announcements and confidentiality	22
13 Preservation of rights	23
14 Notices	24
15 Time	25
16 Entire agreement	25
17 Alterations	26
18 Severability	26
19 Counterparts	26
20 Payment of costs	27
21 Successors, assigns and third party rights	27
22 Applicable law and submission to jurisdiction	27
<b>SCHEDULE 1</b>	<b>28</b>
<b>The Conditions</b>	<b>28</b>
<b>SCHEDULE 2</b>	<b>29</b>
<b>The Company</b>	<b>29</b>
<b>SCHEDULE 3</b>	<b>30</b>
<b>The Sellers</b>	<b>30</b>
<b>SCHEDULE 4</b>	<b>31</b>
<b>Warranties</b>	<b>31</b>
<b>SCHEDULE 5</b>	<b>59</b>

<b>Provisions for the protection of Dr Melvin</b>	<b>59</b>
<b>SCHEDULE 6</b>	<b>62</b>
<b>Completion Provisions</b>	<b>62</b>
<b>SCHEDULE 7</b>	<b>64</b>
<b>The Property</b>	<b>64</b>

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_, 2005

day of

2005

## BETWEEN

- (1) **EiRx Therapeutics PLC** (registered number 04927339) having its registered office at 32 Clerkenwell Green, London EC1R 0DU (the “Buyer”);
- (2) **Dr William Thomas Melvin** of 5 Deeside Park, Aberdeen AB15 7PQ (“Dr Melvin”); and
- (3) **Donald Alexander Grant** of Brentwood, 16 North Deeside Road, Bieldside, Aberdeen AB15 9AB (“D Grant” and together with Dr Melvin, the “Sellers”).

## BACKGROUND:

- (A) The Company is a private limited company incorporated in Scotland with details as set out in Schedule 2.
- (B) The Sellers are together the beneficial owners of 56.1% of the issued share capital of the Company and each of them is the legal and beneficial owner of the number of shares set against their name in column 2 of Schedule 3.
- (C) The Company has no subsidiaries.
- (D) The Sellers wish to sell and the Buyer wishes to buy 56.1% of the issued share capital of the Company on the terms and conditions set out in this Agreement.

## **OPERATIVE PROVISIONS:**

## 1 Definitions and interpretation

1.1 In this Agreement unless the context otherwise requires the following expressions have the following meanings:

‘Accounts’ the audited financial statements of the Company for the accounting reference period ended on the Accounts Date, comprising a balance sheet at the Accounts Date, profit and loss account, notes and directors’ report and any other documents annexed to them;

‘Accounts Date’ 31 August 2003;

‘Admission’ means the admission of the Consideration Shares to trading on AIM and any reference to ‘Admission becoming effective’ or any similar expression means effective in accordance with the AIM Rules;

‘Agreed Documents’ means this Agreement and all the agreed form documents referred to in it;

‘agreed form’	in a form which has been agreed by the parties and which has been duly executed or initialled for identification by them or on their behalf;
‘AIM’	the Alternative Investment Market operated by the London Stock Exchange;
‘AIM Rules’	the rules relating to AIM published by the London Stock Exchange;
‘Application’	the application to be made by the Buyer for Admission;
‘business day’	any day other than a Saturday, Sunday or public holiday in England and Wales;
‘Business Information’	Confidential Information relating to or used in the activities of the Company;
‘Buyer’s Solicitors’	Bircham Dyson Bell of 50 Broadway, London SW1H 0BL;
‘CA 1985’	the Companies Act 1985;
‘Company’	Auvation Limited, details of which are set out in Schedule 2;
‘Completion’	completion of the sale and purchase of the Sale Shares by the performance by the parties of their respective obligations under clause 7 and Schedule 6;
‘Completion Date’	26 January 2005 or such other date as is the second business day following the date on which the last of the Conditions (other than Condition 6) is satisfied or waived;
‘Conditions’	the conditions precedent set out in Schedule 1;
‘Confidential Information’	all information and records wherever located (including accounts, business plans and financial forecasts, Tax records, correspondence, designs, drawings, manuals, specifications, customer, sales and supplier information, technical or commercial expertise, software, formulae, processes, trade secrets, methods, knowledge and know-how) and which (either in their entirety or in the precise configuration or assembly of their components) are not publicly available and in each case whether or not recorded;
‘Consideration Shares’	25,245,000 new ordinary shares of 2p each in the share capital of the Buyer credited as fully paid;

	share capital of the Buyer credited as fully paid;
‘Contracts Act’	the Contracts (Rights of Third Parties) Act 1999;
‘DPA 1998’	the Data Protection Act 1998;
‘Data Subject’	has the meaning given in DPA 1998;
‘Developed Software’	any software developed by or on behalf of the Company;
‘Dr Melvin’s Consideration Shares’	the Consideration Shares received by Dr Melvin pursuant to this Agreement;
‘enactment’	any statute or statutory provision (whether of the United Kingdom or elsewhere), subordinate legislation (as defined by section 21(1) Interpretation Act 1978) and any other subordinate legislation made under any such statute or statutory provision;
‘Encumbrance’	any option, trust, power of sale, title retention, pre-emption right, right of first refusal, Security Interest or other right, claim or interest, whether legal or equitable, of any third party (or an agreement or commitment to create any of them);
‘Environment’	the environment as defined in section 1(2) Environmental Protection Act 1990 or any part of it and includes ambient air, land surface or subsurface strata, any surface water (whether inland or maritime) and any ground water;
‘Environmental Claim’	any claim, notice of violation, prosecution, demand, action, official warning, abatement or other order or notice (conditional or otherwise) relating to any Environmental Matters or Environmental Liabilities or requiring compliance with the terms of any Environmental Licence or Environmental Law;
‘Environmental Damage’	any pollution, contamination, degradation, damage or injury caused by, related to or arising from or in connection with the presence, generation, use, handling, processing, treatment, storage, transportation, release, spillage, emission, leaking, pumping, injection, deposit, disposal, discharge, leaching, migration or any other form of movement into or through the Environment or into or out of any property, of any Relevant Substance;
‘Environmental Laws’	any Official Requirements relating to the protection of the Environment or the control or prevention or

	remedying of Environmental Damage;
‘Environmental Liabilities’	any liabilities, responsibilities, claims, losses, costs (including remedial, removal, response, abatement, clean-up, investigative and monitoring costs), damages, expenses, charges, assessments, liens, penalties and fines which are incurred by, asserted against or imposed on a person as a result of or in connection with:
	<ul style="list-style-type: none"> <li>(a) any violation of or non-compliance with Environmental Laws (including the failure to procure or violation of any Environmental Licence required by Environmental Laws); or</li> <li>(b) any Environmental Damage;</li> </ul>
‘Environmental Licence’	any permit, licence, authorisation, consent or other approval obtained or which ought to have been obtained under any Environmental Law at any time by the Company or in relation to the business carried on by the Company;
‘Environmental Matters’	includes:
	<ul style="list-style-type: none"> <li>(a) any generation, deposit, disposal, keeping, treatment, transportation, transmission, handling or manufacture of any Relevant Substance;</li> <li>(b) nuisance, noise, defective premises, health and safety at work or elsewhere;</li> <li>(c) the carrying out of a development (as defined in section 55(1) Town and Country Planning Act 1990);</li> <li>(d) the pollution, conservation or protection of the Environment whether relating to man or any living organism supported by the Environment or any other matter affecting the Environment; and</li> <li>(e) the recycling of packaging or other materials or waste (as defined in the Environmental Protection Act 1990);</li> </ul>
‘Event’	any event, act, transaction, action or omission (whether or not a Company is a party to it) and includes the disposal of the Sale Shares under this Agreement, any change in the residence of any person

	for the purposes of Tax, the death or dissolution of any person, the receipt or accrual of any income profits or gains, any distribution, any transfer payment, loan or advance and any event which is deemed to have occurred or is treated or regarded as having occurred for the purposes of Tax Legislation;
‘fairly disclosed’	disclosed in writing and in such manner and in such detail as to enable a reasonable buyer to make an informed and accurate assessment of the matter concerned;
‘Guarantee’	any guarantee, indemnity, suretyship, letter of comfort or other assurance, security or right of set-off given or undertaken directly or by way of counter-indemnity by a person to secure or support the obligations (actual or contingent) of any third party;
‘holding company’	a holding company as defined by sections 736 and 736A CA 1985;
‘ICTA 1988’	the Income and Corporation Taxes Act 1988;
‘income profits or gains’	includes income profits or gains (including capital gains) of any description or from any source and income profits or gains which are deemed to be earned accrued or received for the purposes of any Tax;
‘Intellectual Property’	all the Intellectual Property Rights owned and/or used by the Company at the date of this Agreement;
‘Intellectual Property Rights’	design rights, trade marks and service marks (in each case whether registered or not), patents, registered designs, copyright, moral rights, rights in databases, utility models and all similar property rights, whether registrable or not, including those subsisting (in any part of the world) in inventions, designs, drawings, performances, computer programs, semiconductor topographies, plant varieties, genetic material, Confidential Information, business or brand names, domain names, metatags, goodwill or the style of presentation of goods or services including applications for protection of any such rights;
‘IT Systems’	any computer hardware, software, operating systems, firmware, networking equipment or other equipment which is reliant on microchip technology used by the Company for any purpose;

‘Lease’	the two lease agreements held on Units 1 and 4 of Crombie Lodge, as more particularly described in Schedule 7;
‘London Stock Exchange’	London Stock Exchange plc;
‘Management Accounts’	the unaudited balance sheet of the Company as at 31 January 2005 and the unaudited profit and loss account of the Company for the period from 1 September 2003 to 31 January 2005 (both dates inclusive);
‘Dr Melvin’	Dr William Thomas Melvin of 5 Deeside Park Aberdeen AB15 7PQ;
‘Official Requirement’	any enactment, ordinance, pact, decree, treaty, code, directive, order, notice or official published plan or policy with legal or actual force in any geographical area and/or over any class of persons;
‘Personal Data’	any data held by the Company or sold or otherwise transferred or disclosed to the Buyer under or in contemplation of this Agreement which falls within the definition of ‘personal data’ given from time to time in DPA 1998;
‘Process’ and ‘Processing’	have the respective meanings given to them from time to time in DPA 1998;
‘Property’	the leasehold property details of which are set out in Schedule 7;
‘Purchase Price’	£1,514,700;
‘related company’	in relation to a company means any company which at the relevant time is a subsidiary or holding company of that company or any subsidiary of any such holding company;
‘Relevant Authority’	any person or authority (including any nation, national or local governmental or international organisation and any subdivision or agency or executive arm of any of them, any court or judicial officer or any securities exchange) with legal or de facto power to impose and/or enforce compliance with any Official Requirement;
‘Relevant Breach’	any event, matter or circumstance which is inconsistent with, contrary to or otherwise a breach of any of the Warranties or any of the provisions of

	clause 4.1;
‘Relevant Person’	each of the Sellers and any person (except the Buyer):
	(a) with whom, before Completion the Company or, at any time, any of the Sellers is connected; or
	(b) any person who stands or has stood in a direct or indirect relationship with the Company at any time before Completion such that failure by that person at any time to pay Tax could result in an assessment on the Company under section 767A or section 767AA ICTA 1988;
‘Relevant Substance’	any substance (whether in a solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substance) or waste (as defined in the Environmental Protection Act 1990) which is capable of causing harm to man or any other living organism supported by the Environment or damaging the Environment or public health or welfare;
‘Relief’	any loss relief allowance exemption set-off deduction credit right to repayment or other relief available in relation to Tax or to the computation of income profits or gains for the purposes of Tax;
‘Sale Shares’	the 280,500 ordinary shares of 1 pence each in the capital of the Company as referred to in Schedule 2;
‘Security Interest’	a mortgage, lien, pledge, charge (fixed or floating), assignment by way of security, hypothecation or other security interest (or an agreement or commitment to create any of them);
‘Sellers’ Solicitors’	Paull & Williamsons of Investment House, 6 Union Row, Aberdeen AB10 1DQ Scotland;
‘subsidiary’	means a subsidiary as defined by sections 736 and 736A CA 1985 or a subsidiary undertaking as defined by section 258 CA 1985;
‘Tax’	:
	(a) all forms of taxes, duties, imposts and levies in the nature of taxes whenever created or imposed and whether of the United Kingdom or elsewhere including corporation tax, advance corporation tax, income tax, any tax

	or amount equivalent to tax required to be deducted or withheld from or accounted for in respect of any payment, capital gains tax, any payment under section 601(2) ICTA 1988, inheritance tax, value added tax, landfill tax, stamp duty, stamp duty reserve tax, general or business rates, customs & excise duties, national insurance, social security or similar contributions, and any other taxes levies charges or imposts similar to or corresponding with or replaced by any of the above; and
(b)	all penalties fines charges surcharges and interest in relation to tax within paragraph (a) or to any return or information required to be provided for the purposes of any such tax;
‘Tax Authority’	the Inland Revenue, HM Customs & Excise or other Relevant Authority (whether within or outside the United Kingdom) involved in the assessment, collection or administration of Tax;
‘Tax Claim’	any notice, demand, assessment, letter or other document issued or action taken by or on behalf of any Tax Authority (whether before, on or after the date of this Agreement ) from which it appears that a Tax Liability is to be or may come to be imposed on the Company or that the Company is liable or is sought to be made liable to make any payment or increased or further payment to that Tax Authority or is denied or is sought to be denied any Relief (in whole or in part);
‘Tax Covenant’	the covenant by the Sellers contained in Schedule 9;
‘Tax Legislation’	any enactment, law or regulation providing for the imposition of Tax;
‘Tax Liability’	a liability to make an actual payment of, or of an amount in respect of, Tax (whether or not that liability is also or alternatively a liability of, or chargeable against or attributable to, any other person and whether or not the Company shall or may have a right of recovery or reimbursement against any other person) and includes the matters referred to in clause 1.6;
‘Tax Warranties’	the Warranties contained in part 2 of Schedule 4;
‘TCGA 1992’	the Taxation of Chargeable Gains Act 1992;

‘Third Party Software’ any software used by the Company, the Intellectual Property Rights in which are owned by a third party;

‘VATA 1994’ the Value Added Tax Act 1994; and

‘Warranties’ the warranties contained in clause 9 and Schedule 3.

1.2 In this Agreement unless the context otherwise requires:

1.2.1 references to a clause or schedule are to a clause of, or a schedule to, this Agreement, references to this Agreement include its schedules and references in a schedule or part of a schedule to a paragraph are to a paragraph of that schedule or that part of that schedule;

1.2.2 references to this Agreement or any other document or to any specified provision in any of them are to this Agreement, that document or that provision as in force for the time being and as amended from time to time in accordance with their terms or, as the case may be, with the agreement of the relevant parties;

1.2.3 words importing the singular include the plural and vice versa, words importing a gender include every gender and references to persons include corporations, partnerships and other unincorporated associations or bodies of persons;

1.2.4 the words and phrases ‘other’, ‘including’ and ‘in particular’ shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible;

1.2.5 a person is connected with another person if he is so connected within the meaning of section 839 ICTA 1988;

1.2.6 a reference to any enactment shall include:

(a) any provision which it has re-enacted (with or without modification) or modified; and

(b) that enactment as re-enacted, replaced or modified from time to time, whether before, on or after the date of this Agreement;

but any such changes taking effect after the date of this Agreement shall not impose any additional liability or obligation on any of the parties or (except as specified in clause 18.1) deprive any of them of any right, in each case under this Agreement; and

1.2.7 references to books, records or other information include paper, electronically or magnetically stored data, film, microfilm, and information in any other form and references to ‘writing’ or ‘written’ include faxes and any other method of reproducing words in a legible and non-transitory form (excluding email).

- 1.3 The contents table and the descriptive headings to clauses, schedules and paragraphs in this Agreement (and notes in brackets describing the subject matter of any enactment) are inserted for convenience only, have no legal effect and shall be ignored in interpreting this Agreement.
- 1.4 Where any party gives in this Agreement any indemnity in favour of any other party, the obligation of the indemnifying party shall be to make the relevant payment forthwith in full on demand and without any set-off, counterclaim or other deduction.
- 1.5 Reference to an Event occurring on or before Completion shall be deemed to include:
  - 1.5.1 any combination of two or more Events all of which occurred on or before Completion;
  - 1.5.2 any combination of two or more Events only the first or some of which occurred on or before Completion, except that for the purposes of this clause 1.5, there shall be disregarded any Event which occurred before Completion in the ordinary course of business of the Company; and
  - 1.5.3 any Event which is treated or deemed to occur on or before Completion for the purposes of any Tax.
- 1.6 For the purposes of this Agreement, where any document relating to the Company is not (or is not properly) stamped, the stamp duty (together with any accrued interest and/or penalties) required to be paid so that the relevant document is fully and properly stamped shall, notwithstanding that the Company may be under no legal obligation to stamp that document, be treated as a liability of the Company arising on the date when the document was executed and 'Tax Liability' shall be construed accordingly.

## **2 Sale of the Sale Shares**

- 2.1 The Sellers agree to sell and transfer and the Buyer (relying, as the Sellers acknowledge, on the representations, warranties, undertakings, covenants and indemnities of the Sellers referred to or contained in the Agreed Documents) agrees to purchase the whole of the legal and beneficial interest in the Sale Shares as at and with effect from the Completion Date.
- 2.2 The Sellers covenant with and warrant to the Buyer that:
  - 2.2.1 each of them has full power to enter into and perform this Agreement, which constitutes binding obligations on each of them in accordance with its terms;
  - 2.2.2 each of them has the right to dispose of the Sale Shares on the terms set out in this Agreement;
  - 2.2.3 each of them shall at their own cost do everything possible to give the Buyer full and unrestricted legal and beneficial title to the Sale Shares; and

2.2.4 the Sale Shares shall be sold and transferred free from Encumbrances including any which:

- (a) the Sellers do not know or could not reasonably be expected to know about; or
- (b) at the time of transfer is within the actual knowledge, or is a necessary consequence of facts then within the actual knowledge, of the Buyer;

and the transfer of the Sale Shares to the Buyer shall be deemed to include expressly and be made subject to all the above provisions of this clause 2.2.

- 2.3 Title to, beneficial ownership of, and any risk attaching to, the Sale Shares shall pass on Completion and the Sale Shares shall be sold and purchased together with all rights and benefits attached or accruing to them at Completion (including the right to receive any dividends, distributions or returns of capital declared, paid or made by the Company on or after Completion).
- 2.4 The Buyer shall not be obliged to complete the purchase of any of the Sale Shares unless the purchase of all the Sale Shares is completed simultaneously.

### **3 Conditions precedent**

- 3.1 The obligations of the parties (other than those contained in this clause 3 and in clauses 4, 7.5 and 12, which are unconditional) are conditional on the satisfaction or waiver of the Conditions by the Buyer (so that beneficial ownership in the Sale Shares shall not pass unless and until the Conditions are satisfied or waived) and the obligations of the parties under clause 8 are conditional on Completion taking place.
- 3.2 The Buyer and the Sellers shall use their reasonable endeavours to procure the satisfaction of each of the Conditions, in the case of the Condition listed in paragraph 1 of Schedule 1, as soon as possible.
- 3.3 The Buyer reserves the right to waive wholly or in part and conditionally or otherwise (to such extent as it may think fit) all or any of the Conditions.
- 3.4 Any waiver by the Buyer under clause 3.3 shall be effected by service of written notice on the Company and is without prejudice to any other rights which the Buyer may have under this Agreement.
- 3.5 Dr Melvin shall notify the Buyer of the satisfaction of the Condition listed in paragraph 1 of Schedule 1, within two business days of becoming aware of its satisfaction and shall procure that evidence of the satisfaction of that Condition in form and substance reasonably satisfactory to the Buyer is provided to the Buyer prior to Completion.
- 3.6 The Sellers and the Buyer agree that all requests and enquiries in relation to this Agreement from any Relevant Authority shall be dealt with by the Sellers and the Buyer in consultation with each other and the Sellers and the Buyer shall promptly

co-operate with and provide all necessary information and assistance reasonably required by any Relevant Authority on being requested to do so by the other.

3.7 If the Conditions (to the extent that they have not been waived under clause 3.3) are not satisfied immediately before Completion, all obligations of the parties under this Agreement shall terminate (except those under clauses 7.5 and 12, which shall remain in force) and neither party shall have any claim against the other under them except in respect of any breach of any of those clauses or any prior breach of clause 3.2.

#### **4 Pre-completion provisions**

4.1 The Sellers covenant that, pending Completion or the earlier termination of the obligations of the parties under this Agreement under this clause 4 or clause 7.3 or clause 7.4 below, they shall collaborate fully with the Buyer in the operation of the Company and in particular the Sellers shall:

4.1.1 procure that:

- (a) the Company shall carry on business only in the ordinary course, except as otherwise agreed in writing by the Buyer;
- (b) the Buyer and its agents shall, on reasonable notice, be allowed access to, and to take copies of, the books and records of the Company including the statutory books, minute books, lease, licences, contracts, details of book debts, Intellectual Property, Tax records, accounting and financial books and records, supplier lists and customer lists in the possession or control of the Company, correspondence with customers and suppliers, personnel records and computer or electronic records;
- (c) such representatives and advisers as the Buyer requests may be designated to work with the Sellers with regard to the management and operations of the Company. The Sellers shall consult, and shall cause the Company to consult, with those representatives and advisers before taking any action which could materially affect the business of the Company. The Sellers shall provide, and shall cause the Company to provide to those representatives and advisers such information as they may reasonably request for this purpose;
- (d) the Company shall take all reasonable steps to preserve its assets and, in particular, shall maintain in force all insurances normally kept in force;
- (e) the Company shall take all reasonable steps to preserve the validity of its Intellectual Property;
- (f) such representatives and advisers as the Buyer nominates may meet with current officers and employees of the Company at its

premises at all reasonable times to discuss matters regarding the Company's change in ownership; and

(g) the Company notifies the Buyer of any staff resignations or any intention to resign where that intention has been notified to the Company or any of the Sellers;

4.1.2 procure that the Company shall not without the prior written consent of the Buyer:

(a) incur any capital expenditure (except expenditure to which the Company is legally committed at the date of this Agreement in the ordinary course of trading or expenditure not exceeding £2,000) or enter into any commitments to incur any such expenditure;

(b) acquire or agree to acquire any material asset (other than the purchase of raw materials, components and other consumables in the ordinary course of trading and not requiring expenditure in excess of £1,000 per item);

(c) dispose or agree to dispose of or grant any option in respect of any part of its assets (other than the disposal of trading stock for full value in the ordinary course of trading);

(d) borrow any money or make any payments out of or drawings on its bank account (except for amounts paid in the ordinary course of business);

(e) enter into or vary the terms of any material contract or material legally binding commitment;

(f) grant or agree to grant any sub-lease or third party rights in respect of the Property or assign or agree to assign or otherwise dispose of any such rights;

(g) make any loan;

(h) enter into any leasing, hire purchase or other agreement or arrangement for payment on deferred terms;

(i) declare make or pay any dividend or other distribution;

(j) grant or issue or agree to grant or issue any mortgages, charges or debentures or other Security Interest or redeem or agree to redeem any such things or give or agree to give any Guarantee;

(k) create, issue or grant any option in respect of any class of share or loan capital or agree so to do;

- (l) dismiss any employee, employ or offer employment to any person not employed by it at the date of this Agreement or amend the terms of employment of any of its employees;
- (m) take steps to procure payment by any debtor generally in advance of the date on which book and other debts are usually payable in accordance with its standard terms of business or (if different) the period extended to any particular debtor in which to make payment or to reschedule any debt;
- (n) delay making payment to any trade creditors generally beyond the date on which payment of the relevant trade debt should be paid in accordance with the credit period authorised by the relevant creditors (or, if different, the period extended by creditors in which to make payment);
- (o) amend to any material extent, including by increasing existing credit lines, any of the terms on which goods, facilities or services are supplied, except where required to do so in order to comply with any applicable legal or regulatory requirement;
- (p) amend any insurance contract, fail to notify any insurance claim in accordance with the provisions of the relevant policy or settle any such claim below the amount claimed;
- (q) allot, issue, redeem or repurchase any of its share or loan capital;
- (r) acquire or agree to acquire any share, shares or other interest in any company, partnership or other venture; or
- (s) make any change to its accounting practices or policies or amend its memorandum or articles of association; and

4.1.3 not:

- (a) dispose of any interest in the Sale Shares or any of them or grant any option over or mortgage, charge or otherwise encumber the Sale Shares or any of them; or
- (b) permit the Company to pass any resolution in general meeting;

and any breach of this clause 4.1 shall be deemed a Relevant Breach.

4.2 The Sellers shall procure that written notice is given to the Buyer as soon as reasonably practicable after the Sellers or the Company becomes aware of any Relevant Breach.

4.3 The Sellers shall not do, allow or procure any act or omission prior to Completion which would constitute a breach of any of the Warranties if they were given at any time before or at Completion or which would make any of them untrue, inaccurate or misleading if they were so given.

4.4 If before Completion:

- 4.4.1 any Relevant Breach shall occur or be discovered; or
- 4.4.2 any act, omission or event shall take place or occur which renders any of the Warranties untrue, inaccurate or misleading if the Warranties were to be repeated on the date of that act omission or event; or
- 4.4.3 any other event occurs which has, or is likely to have, a material adverse effect on the financial position or business prospects of the Company;

the Buyer shall be entitled at any time prior to Completion, by notice in writing to the Sellers, to rescind this Agreement without liability to the Sellers and without prejudice to the provisions of clause 7.5.

4.5 Any failure or omission by the Buyer to exercise its right of rescission under clause 4.4 shall not prejudice or be construed as a waiver of any of its rights under this Agreement to claim damages, compensation or indemnity under the Warranties.

## 5 Consideration

5.1 The consideration for the sale of the Sale Shares shall be the allotment and issue credited as fully paid to the Sellers on Completion of the Consideration Shares in the proportions specified in column 3 of Schedule 3.

5.2 The Buyer warrants to and agrees with the Sellers that:

- 5.2.1 the existing issued ordinary share capital of the Buyer is admitted to trading on AIM;
- 5.2.2 the Buyer shall make the Application on or before Completion and shall use all reasonable endeavours to procure that Admission takes place on or as soon as reasonably practicable after the Completion Date; and
- 5.2.3 the directors of the Buyer will be duly authorised to allot the Consideration Shares under section 80 CA 1985 and that all the other requirements of Part IV of that Act in relation to that allotment have been complied with or will be complied with not later than Completion.

5.3 The Consideration Shares shall rank *pari passu* in all respects with the ordinary shares of the Buyer in issue at the date of this Agreement, except that they shall not rank for any dividend or other distribution declared, paid or made in respect of the financial year of the Buyer ended on 30 June 2004.

5.4 Each of the Sellers agrees that it will:

- 5.4.1 not, without the Buyer's prior written consent, dispose of any interest in or create any Encumbrance (including, but not limited to engaging in any investment activity in relation to the Consideration Shares and/or in relation to any derivative of or relating to the Consideration Shares) over

any of the Consideration Shares within 12 months immediately following Completion; and

5.4.2 notify and consult with the Buyer not less than five business days before disposing of any interest in or creating any Encumbrance over any of the Consideration Shares within 12 months immediately following the end of the period specified in clause 5.4.1 with a view to ensuring an orderly market.

5.5 The Purchase Price shall be payable on Completion in accordance with clause 7.

**6 Not used**

**7 Completion**

7.1 Completion shall take place at the offices of the Buyer's Solicitors (or at such other place as the parties may agree) on the Completion Date when all (but, subject to clauses 7.3 and 7.4, not part only unless the parties shall so agree) of the business set out in schedule 6 shall be transacted and the parties agree the matters contained in Schedule 6.

7.2 Following compliance with the provisions of Schedule 6, the Buyer shall issue the Consideration Shares to the Sellers in the proportions specified in column 3 of Schedule 3 and, if applicable, issue to the Sellers the respective share certificates.

7.3 If the Sellers shall fail or be unable to comply with any of their obligations under the provisions of Schedule 6 the Buyer may, at its entire discretion, without prejudice to any other rights or remedies under this Agreement or under the general law:

7.3.1 defer Completion for not more than 15 business days (or such longer period as the Sellers and the Buyer may agree) in which case the provisions of this clause 7 and Schedule 6 shall apply to Completion as so deferred;

7.3.2 provided there has been no material failure to comply with any such obligation, proceed to Completion so far as practicable; or

7.3.3 if there has been any material failure to comply with any such obligation, rescind this Agreement.

7.4 If the Buyer shall fail or be unable to comply with any of its obligations under the provisions of Schedule 6 the Sellers may without prejudice to any other rights or remedies under this Agreement or under the general law:

7.4.1 defer Completion for not more than 15 business days (or such longer period as the Sellers and the Buyer may agree) in which case the provisions of this clause 7 and Schedule 6 shall apply to Completion as so deferred;

- 7.4.2 provided there has been no material failure to comply with any such obligation, proceed to Completion so far as practicable; or
- 7.4.3 if there has been any material failure to comply with any such obligation, rescind this Agreement.

7.5 If the Buyer shall rescind this Agreement under clause 4.4 or clause 7.3 the Sellers shall on demand and without prejudice to any other right or remedy reimburse to the Buyer all out-of pocket expenses (including legal and other professional costs and expenses and any VAT on all such expenses which is not recoverable by the Buyer) incurred by the Buyer in relation to the negotiation and preparation of this Agreement and the Agreed Documents.

7.6 In consideration of the Buyer entering into this Agreement each of the Sellers:

- 7.6.1 confirm that neither it nor any of its related companies (if any or if applicable) nor any person connected with it has any claim of any kind (actual or contingent) against the Company on any account or in respect of amounts payable for goods and services supplied by way of trading in the ordinary course of business; and
- 7.6.2 waives and shall procure that each of its related companies (if any and if applicable) and each person connected with it shall waive with effect from Completion any claim (actual or contingent) which any of them may have against the Company except for those identified in clause 7.6.1.

## **8 Post-completion matters and further assurances**

8.1 Each of the Sellers declares that for so long as it remains the registered holder of any of the Sale Shares after Completion it shall:

- 8.1.1 hold the Sale Shares and the dividends and other distributions of profits or surplus or other assets declared, paid or made in respect of them after Completion and all rights arising out of or in connection with them in trust for the Buyer and any successors in title to the Buyer; and
- 8.1.2 deal with and dispose of the Sale Shares and all such dividends, distributions and rights as are described in clause 8.1.1 as the Buyer or any such successor may direct.

8.2 The Sellers appoint the Buyer as their lawful attorney for the purpose of receiving notices of and attending and voting at all meetings of the members of the Company from Completion to the day on which the Buyer or its nominee is entered in the register of members of the Company as the holder of the Sale Shares and for that purpose the Sellers authorise:

- 8.2.1 the Company to send any notices or other communications in respect of its holding of Sale Shares to the Buyer; and

8.2.2 the Buyer to complete in such manner as it thinks fit and to return proxy forms, consents to short notice and any other document required to be signed by it in its capacity as a member.

8.3 As soon as reasonably practicable following Completion the Sellers shall (and shall procure that any relevant third party shall) send to the Buyer at its registered office for the time being all documents, correspondence, memoranda, files and other records to which the Company is entitled and which are not located at the Property or delivered at Completion (whether or not referred to in Schedule 6).

8.4 Each of the Sellers shall execute or, so far as is within its power, procure that any relevant third party shall execute, all such documents and/or do or, so far as each is able, procure the doing of such acts and things as the Buyer shall after Completion require in order to give effect to this Agreement and any documents entered into under it and to give to the Buyer the full benefit of all the provisions of this Agreement.

8.5 The Sellers shall procure that the Company notifies pursuant to the Data Protection Act 1998 within one month of Completion.

## **9 Warranties**

9.1 In consideration of the Buyer entering into this Agreement Dr Melvin warrants to the Buyer:

9.1.1 (subject to clause 9.4) in the terms set out in Schedule 4; and

9.1.2 that any statement in Schedule 4 which is qualified as being made 'so far as Dr Melvin is aware' or 'to the best of the knowledge, information and belief of Dr Melvin' or any similar expression has been so qualified after due diligent and careful enquiries by Dr Melvin (including enquiry of the directors, company secretary, general managers, financial controller, taxation manager and personnel manager of the Company and the accountants, solicitors, tax advisers and insurance brokers who act, or at the relevant time acted, for the Company) and that Dr Melvin has used all reasonable endeavours to ensure that all information given, referred to or reflected in that statement is accurate in all material respects.

9.2 Dr Melvin further warrants to the Buyer without prejudice to clause 9.1 in the same terms as those set out in clause 9.1 but so that those warranties shall be deemed to be given immediately before Completion with reference to the facts and circumstances then prevailing and so that for this purpose any reference in Schedule 4 to the date of this Agreement or any period ending on that date shall be deemed to refer to the Completion Date and the period ending on that date.

9.3 Dr Melvin indemnifies the Buyer against any loss, claim, demand or damage (including cost) arising from breach of the Warranties in paragraphs 2.2.1 and 2.1 of Schedule 4 or of the covenants in clause 2.

9.4 The indemnity set out in clause 9.3 shall not be subject to the provisions of schedule 5 and shall not be qualified by anything contained in or referred to in writing in any disclosure to the Buyer.

9.5 Not used.

9.6 Each of the paragraphs in Schedule 4:

9.6.1 shall be construed as a separate and independent warranty; and

9.6.2 except as expressly provided otherwise in this Agreement, shall not be limited by reference to any other paragraph in Schedule 4 or by any other provision of any Agreed Document;

and the Buyer shall have a separate claim and right of action in respect of every Relevant Breach.

9.7 The rights and remedies conferred on the Buyer under this Agreement:

9.7.1 are cumulative and are additional to, and not exclusive of, any rights or remedies provided by law or otherwise available at any time to the Buyer in respect of any Relevant Breach (including the right to damages for any loss or additional loss suffered by the Buyer);

9.7.2 shall not be affected or limited, and the amount recoverable shall not be reduced, on the grounds that the Buyer may before Completion have had actual, constructive or implied knowledge of the matter giving rise to the claim; and

9.7.3 shall not be affected or limited by any investigation made by or on behalf of the Buyer into the Company or any report on the Company prepared at the instance of or made available to the Buyer.

9.8 All claims by the Buyer for damages or compensation in respect of any Relevant Breach shall (subject to clause 9.4) be subject to the provisions for the protection of Dr Melvin in Schedule 5.

9.9 Dr Melvin shall indemnify the Buyer against any costs (including legal costs on an indemnity basis), expenses and other liabilities (together with any VAT on them which is not recoverable by the Buyer) which the Buyer may reasonably incur, either before or after the commencement of any action, in connection with:

9.9.1 the settlement of any claim by the Buyer that there has been a Relevant Breach;

9.9.2 any legal proceedings in which the Buyer claims that there has been a Relevant Breach and in which judgement is given for the Buyer; or

9.9.3 the enforcement of any such settlement or judgement.

9.10 The Warranties shall not in any respect be extinguished or affected by Completion.

9.11 Dr Melvin agrees with the Buyer:

- 9.11.1 that the giving by any of the Company's directors (other than Dr Melvin), employees (other than Dr Melvin), agents or advisers of any information or opinion in connection with the Warranties or the Agreed Documents or otherwise in relation to the business or affairs of the Company or in connection with the negotiation and preparation of the Agreed Documents shall not be deemed a representation, warranty or guarantee to any party of the accuracy of any such information or opinion;
- 9.11.2 to waive any right or claim which it may have against any of the Company's directors (other than Dr Melvin), employees (other than Dr Melvin), agents or advisers for any error, omission or misrepresentation in any such information or opinion; and
- 9.11.3 that any such right or claim shall not constitute a defence to any claim by the Buyer under or in relation to the Agreed Documents (including the Warranties).

## **10 Tax covenant**

10.1 The Sellers covenant with the Buyer in the terms of the Tax Covenant, which shall take effect from Completion.

## **11 Not used**

## **12 Announcements and confidentiality**

- 12.1 The Sellers shall and shall procure that the Company shall use their respective reasonable endeavours to comply with all requirements of the London Stock Exchange made on them so as to enable the Application to be granted.
- 12.2 Each of the Sellers shall provide all information known to him or which on reasonable enquiry ought to be known to him and relating to the Company or otherwise as the Buyer may reasonably require for the purpose of complying with any requirements of law or of the London Stock Exchange.
- 12.3 Except as expressly required by any Official Requirement or by the London Stock Exchange or by any other Relevant Authority, all announcements or circulars by, for or on behalf of either party made before the first date on which the Consideration Shares to be allotted and issued under this Agreement are dealt in on AIM and/or relating to any matter provided for in any Agreed Document, shall be in a form approved in writing by the parties in advance of issue.
- 12.4 Each party shall (without limit in time, but subject to clause 12.5) keep and procure to be kept secret and confidential all Confidential Information belonging to the other party disclosed or obtained as a result of the discussions and negotiations leading to

the execution of, or the performance of, this Agreement and shall neither use nor disclose any such Confidential Information except for the purposes of the proper performance of this Agreement or with the prior written consent of the other party. Where disclosure is made to any employee, consultant, adviser or agent, it shall be made subject to obligations equivalent to those set out in this Agreement. Each party shall use its best endeavours to procure that any such employee, consultant, adviser or agent complies with each of those obligations. Each party shall be responsible to the other party in respect of any disclosure or use of any of the other party's Confidential Information by a person to whom disclosure is made. In this clause 12, disclosure includes disclosure in writing or by any other means.

12.5 The obligations of confidentiality in this clause 12 shall not extend to a party in respect of any matter which that party can show:

- 12.5.1 is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement;
- 12.5.2 was in that party's written records prior to the date of this Agreement and not subject to any obligations as to confidentiality;
- 12.5.3 was independently disclosed to that party by a third party entitled to disclose it; or
- 12.5.4 is required to be disclosed under any Official Requirement or by any Relevant Authority.

### **13 Preservation of rights**

13.1 The Buyer may, in its discretion, in whole or in part release, compound or compromise, or waive its rights or grant time or indulgence in respect of, any liability to it under any Agreed Document without affecting its rights in respect of any other liability.

13.2 If the Buyer:

- 13.2.1 grants any other party any indulgence, forbearance or extension of time; or
- 13.2.2 does not ascertain or exercise any of its rights or remedies, or delays in doing so;

the rights and remedies of the Buyer in respect of this Agreement are not diminished, waived or extinguished.

13.3 Any waiver of any right, obligation or remedy under, or compliance with or breach of any provision of, this Agreement must be expressly stated in writing to be such a waiver, must specify the right, remedy, obligation, provision or breach to which it applies and must be signed by an authorised signatory of the Buyer.

13.4 If the Buyer waives any right, obligation or remedy under, or compliance with or breach of any provision of this Agreement, it can still enforce that right, obligation or provision or claim that remedy subsequently and that waiver shall not be deemed to be a waiver of any subsequent breach of that or any other provision or of any other right, obligation or remedy.

13.5 The discontinuance, abandonment or adverse determination of any proceedings taken by the Buyer to enforce any right or any provision of this Agreement shall not operate as a waiver of, or preclude any exercise or enforcement or (as the case may be) further or other exercise or enforcement by the Buyer of, that or any other right or provision.

13.6 All references in clauses 13.2 to 13.5 to:

- 13.6.1 any right shall include any power, right or remedy conferred by this Agreement on, or provided by law or otherwise available to, the Buyer; and
- 13.6.2 any failure to do something shall include any delay in doing it.

13.7 The giving by the Buyer of any consent to any act which by the terms of this Agreement requires that consent shall not prejudice the right of the Buyer to withhold or give consent to any similar or future act.

13.8 Clauses 13.1 to 13.6 inclusive shall apply (with the appropriate changes) to any rights under this Agreement enforceable under the Contracts Act by any person who is not party to it.

13.9 All of the provisions of this Agreement shall, so far as they are capable of being performed or observed, continue to be effective notwithstanding Completion except in respect of those matters then already performed and Completion shall not constitute a waiver of any of the Buyer's rights in relation to this Agreement.

## 14 Notices

14.1 Except as otherwise provided in this Agreement, every notice under this Agreement shall be in writing and shall be deemed to be duly given if it (or the envelope containing it) identifies the intended recipient as the addressee and:

- 14.1.1 it is delivered by being handed personally to the addressee (or, where the addressee is a corporation, any one of its directors or its secretary);
- 14.1.2 it is delivered by being left in a letter box or other appropriate place for the receipt of letters at the addressee's authorised address (as defined below); or
- 14.1.3 the envelope containing the notice is properly addressed to the addressee at the addressee's authorised address and duly posted by the recorded delivery service (or by international recorded post if overseas) or the notice is duly transmitted to that address by facsimile transmission;

and, in proving the service of any such notice, it shall be conclusive evidence to prove that the notice was duly given within the meaning of this clause 14.1.

- 14.2 A notice sent by post (or the envelope containing it) shall not be deemed to be duly posted for the purposes of clause 14.1.3 unless it is put into the post properly stamped or with all postal or other charges in respect of it otherwise prepaid.
- 14.3 For the purposes of this clause 14 the authorised address of the Buyer and the Company respectively shall be the address of its registered office for the time being or (in the case of notices sent by facsimile transmission) its facsimile number at that address and the authorised address of the Sellers shall be the address of the Sellers' Solicitors or (in the case of notices sent by facsimile transmission) the facsimile number of the Sellers' Solicitors.
- 14.4 Any notice duly given within the meaning of clause 14.1 shall be deemed to have been both given and received if it is:
  - 14.4.1 delivered in accordance with clauses 14.1.1 or 14.1.2, on that delivery; and
  - 14.4.2 duly posted or transmitted in accordance with clause 14.1.3 by any of the methods specified in that clause, on the second (or, when sent by airmail, fifth) business day after the day of posting or (in the case of a notice transmitted by facsimile transmission) on receipt by the sender of a transmission report showing the successful transmission of the whole of the relevant notice or (if that transmission is not made during normal working hours on a business day) at 9.00 a.m. on the next business day.
- 14.5 For the purposes of this clause 'notice' shall include any request, demand, instruction, communication or other document.

## **15 Time**

- 15.1 Time shall be of the essence of this Agreement as regards any time, date or period whether as originally fixed or as altered in accordance with this Agreement.

## **16 Entire agreement**

- 16.1 The Agreed Documents constitute the entire agreement between the parties in relation to the sale and purchase of the Sale Shares and other matters covered by them and supersede any previous agreement between the parties in relation to those matters, which shall cease to have any further effect. It is agreed that:
  - 16.1.1 no party has entered into any Agreed Document in reliance on, and each party unconditionally waives any claims in relation to, any statement, representation, warranty or undertaking which is not expressly set out or referred to in the Agreed Documents;

- 16.1.2 in the absence of fraud, no party shall have any remedy in respect of any untrue statement made, to it or its representatives or agents, prior to this Agreement being entered into and on which it or they relied other than representations, warranties or undertakings set out or referred to in the Agreed Documents and (subject only to clauses 4.4, 7.3 and 7.4) that party's only remedy in respect of representations, warranties and undertakings set out in the Agreed Documents shall be for breach of contract; and
- 16.1.3 this clause 16 shall not exclude any remedy or liability for fraudulent concealment or fraudulent misrepresentation.

16.2 Each of the Sellers hereby confirms that there are no agreements to which he (or any connected person) and the Company or to which he (or any connected person) and the Buyer are party, other than the Agreed Documents.

## **17 Alterations**

17.1 No purported alteration of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly executed by each party to this Agreement.

## **18 Severability**

18.1 Each provision of this Agreement is severable and distinct from the others. The parties intend that each of those provisions shall be and remain valid and enforceable to the fullest extent permitted by law. If any such provision is or at any time becomes to any extent invalid, illegal or unenforceable under any enactment or rule of law, it shall to that extent be deemed not to form part of this Agreement but (except to that extent in the case of that provision) it and all other provisions of this Agreement shall continue to be effective and their validity, legality and enforceability shall not be affected or impaired as a result, subject to the operation of this clause not negating the commercial intent and purpose of the parties under this Agreement. The proviso to clause 1.2.6 shall be read subject to this clause 18.1.

18.2 If any provision of this Agreement is illegal or unenforceable because any period or area specified in it exceeds that permitted by a Relevant Authority, that provision shall take effect with the minimum modification necessary to make it valid, effective and acceptable to that Relevant Authority subject to that modification not negating the commercial intent of the parties under this Agreement.

## **19 Counterparts**

19.1 This Agreement may be executed in any number of counterparts each executed by one of the parties but, taken together, executed by all of them and, provided that each party duly executes such a counterpart, each of the executed counterparts, when duly

exchanged or delivered, shall be deemed to be an original, and, taken together, they shall constitute one instrument.

**20 Payment of costs**

20.1 Subject to clause 7.5, each party shall be responsible for that party's own legal and other costs incurred in relation to the negotiation, preparation and completion of each of the Agreed Documents and all other relevant documents.

**21 Successors, assigns and third party rights**

21.1 This agreement shall be binding on and shall enure for the benefit of the successors in title and personal representatives of each party.

21.2 Except as provided in clause 21.3, none of the parties (nor any other person entitled to enforce rights under this Agreement) may assign the benefit of any rights under this Agreement.

21.3 The benefit of this Agreement (including the Warranties) shall be freely assignable by the Buyer and, following any such assignment, all references in this Agreement to the Buyer shall be deemed to include the Buyer's assigns.

21.4 A person who is not a party to this Agreement has no right under the Contracts Act to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from the Contracts Act.

**22 Applicable law and submission to jurisdiction**

22.1 This Agreement and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with English law.

22.2 All disputes or claims arising out of or relating to this Agreement shall be subject to the non-exclusive jurisdiction of the English Courts, to which the parties irrevocably submit.

IN WITNESS of the above the parties have executed this Agreement as a deed on the date written at the head of this Agreement.

## **SCHEDULE 1**

### **The Conditions**

- 1 The passing of a resolution by the board of directors of the Company that the transfer of the Sale Shares to the Buyer is approved.
- 2 The ordinary shares of the Buyer continuing to be admitted to trading on AIM as at the Completion Date.

## **SCHEDULE 2**

### **The Company**

Status:	Private company limited by shares
Date of incorporation:	14 May 1996
Place of incorporation:	Scotland
Registered number:	SC165636
Registered office:	Crombie Lodge, Science Park, Balgownie Drive, Bridge of Don, Aberdeen, Grampian AB22 8GU
Authorised share capital:	£5,000 divided into 500,000 ordinary shares of 1 pence each
Issued share capital:	£5,000 divided into 500,000 ordinary shares of 1 pence each (all fully paid)
Directors:	Dr Francis Joseph Carr Donald Alexander Grant Dr William Thomas Melvin
Secretary:	Margaret June Carr
Bankers:	Investec Bank (UK) Ltd of 2 Gresham Street, London EC2V 7QP
Accounting reference date:	31 August

### **SCHEDULE 3**

#### **The Sellers**

**Column 1: Name and Address of each Seller**      **Column 2: Number of Sale Shares held by each Seller**      **Column 3: Consideration to be allotted and issued to each Seller**

1	Dr William Thomas Melvin 5 Deeside Park Aberdeen AB15 7PQ	255,500	22,995,000
2	Donald Alexander Grant Brentwood 16 North Deeside Road Bieldside Aberdeen AB15 9AB	25,000	2,250,000

## **SCHEDULE 4**

### **Warranties**

#### **Part 1 – General Warranties**

##### **1 Information**

- 1.1 The information in Schedule 2 and Schedule 3 is accurate.
- 1.2 All information provided to the Buyer and all replies to enquiries raised by the Buyer or its professional advisers with the Company or its professional advisers in relation to the Company or its affairs, assets or liabilities are correct and there is no other fact, matter or circumstance which renders any such information misleading.

##### **2 Sale Shares**

- 2.1 The Sale Shares constitute the whole of the issued share capital of the Company held by Dr Melvin and D Grant and together constitute 56.1% of the entire issued share capital of the Company.
- 2.2 All the Sale Shares are fully paid or are properly credited as fully paid and the Sellers are the sole legal and beneficial owner of all the Sale Shares free from Encumbrances.

##### **3 Accounts**

- 3.1 The Accounts comply with CA 1985 and all other relevant legislation and have been prepared in accordance with generally accepted accounting conventions, policies, principles and practices consistently applied and the accounting conventions, policies, principles and practices (including methods of valuation) adopted for the Accounts and all items included in them are the same as those adopted in preparing the audited accounts of the Company for its three preceding accounting reference periods.
- 3.2 The Accounts give a true and fair view of the assets, liabilities (including contingent unquantified and disputed liabilities whether for Tax or otherwise), capital commitments and state of affairs of the Company as at the Accounts Date and of the profits and losses of the Company for the financial period to which the Accounts relate and in particular:
  - 3.2.1 do not overstate the value of any asset of the Company as at the Accounts Date;
  - 3.2.2 include full provision for all actual liabilities;

- 3.2.3 include proper provision (or notes in accordance with generally accepted accounting practice) for all contingent liabilities; and
- 3.2.4 include adequate provision for all bad or doubtful debts.

3.3 The Accounts and the financial statements of the Company for the three preceding financial years include full provision for the depreciation of fixed assets in accordance with the policies stated in them.

3.4 Long-term work in progress included in the Accounts was valued at net cost less progress payments and potential losses.

3.5 The profits (or losses) of the Company for its three accounting reference periods up to the Accounts Date as shown by the audited accounts relating to those periods have not been affected by any unusual or non-recurring income, expenditure or other factor.

3.6 The accounting reference date of the Company is and has at all times during the period of five years ended on the Completion Date or (if shorter) since its incorporation been 31 August.

#### **4 Position since the accounts date**

4.1 Since the Accounts Date, the Company has not:

- 4.1.1 agreed to acquire any business;
- 4.1.2 disposed of any of its assets except in the ordinary and normal course of business at the full market values of the assets concerned;
- 4.1.3 incurred any capital commitment;
- 4.1.4 made any offer or tender which is capable of being converted into an obligation of the Company by acceptance or other act of some other person;
- 4.1.5 agreed to purchase stocks in quantities or at prices materially greater than was the practice of the Company prior to the Accounts Date;
- 4.1.6 materially increased or reduced the level of its stock;
- 4.1.7 other than in respect of director's loan payments and repayments, entered into any transaction or incurred any liabilities (actual or contingent) or made any payment not provided for in the Accounts except, in each case, in the ordinary course of trading;
- 4.1.8 ceased to deal with any customer or supplier which, in either of the two financial periods ending on the Accounts Date, accounted for five per cent or more of (for a customer) the sales made by the Company or (for a supplier) the goods or services supplied to the Company; or

4.1.9 declared made or paid any dividend or other distribution.

## **5 Debtors and creditors**

5.1 The Company does not have any indebtedness except:

- 5.1.1 to the University of Aberdeen and ExpressOn Biosystems Limited, as fairly disclosed to the Buyer; or
- 5.1.2 as fairly disclosed in the Accounts or in the Management Accounts; or
- 5.1.3 amounts due to trade creditors incurred in the ordinary course of trading since the date of the Management Accounts.

5.2 The Company is not owed any moneys other than in the ordinary course of business.

5.3 The book debts shown in the Accounts have realised or will realise within a period of 120 days from the Accounts Date their full nominal amount and no indication has been received by the Company or the Sellers that any debt due to the Company is bad or doubtful.

5.4 No book debt has been duplicated or otherwise incorrectly recorded in the Accounts or the Management Accounts.

5.5 The Company has not factored or discounted any of its debts.

5.6 The Company has not given any Guarantee or entered into any agreement for the postponement of debt (or regulating the priority of any security for debt) or for lien or set-off.

5.7 The Company does not have any borrowing and there are no Security Interests over the Sale Shares (or any of them) or any of the assets or liabilities of the Company.

## **6 Subsidiaries**

6.1 Since its incorporation the Company has not been a member of a group of companies within the meaning of Section 170 of the TCGA 1992 and has had no subsidiaries or subsidiary undertakings and the Company is not and has not been a subsidiary or subsidiary undertaking of any other company or the holder or beneficial owner of or interested in more than 5 per cent of any class of the share or other capital of any company or corporation whether limited or unlimited and whether incorporated in the United Kingdom or elsewhere or a member of any partnership or unincorporated company or association, nor does the Company have any branch, agency or permanent establishment outside the United Kingdom.

## 7 Property

7.1 The Company does not own, use or occupy or have any interest in any land and/or buildings other than the Property.

7.2 The description of the Property and the particulars of the estate owner and present use contained in Schedule 7 are correct and plans which accurately delineate the extent of the Property have been provided to the Buyer.

7.3 In this paragraph the expression 'the present use' means in respect of the Property the present use specified in Schedule 7. In addition:

- 7.3.1 the Property is not subject to any covenant, condition, agreement, restriction, reservation or right adversely affecting it or its value or its present use;
- 7.3.2 the Company has not breached any covenants, restrictions or stipulations which affect the Property (including covenants contained in the Lease);
- 7.3.3 the Company is in exclusive and undisputed occupation of the whole of the Property;
- 7.3.4 the Property is not subject to (or to any agreement to create) any lease, tenancy, licence to occupy or other Encumbrance (other than the Lease);
- 7.3.5 no party claims the benefit of any right, easement, reservation or other privilege or Encumbrance in or over the Property adverse to the interest of the Company or its present use;
- 7.3.6 the Property and all buildings on the Property and its present use comply with all relevant Town and Country Planning legislation, byelaws and regulations and no consents or approvals obtained under any of those enactments are temporary or personal or subject to any conditions which have not been fully complied with;
- 7.3.7 the Property complies in all material respects with the Offices Shops and Railway Premises Act 1963, the Fire Precautions Act 1971, the Health and Safety at Work etc. Act 1974 and all other relevant Official Requirements and all orders consents or permissions given under any of them;
- 7.3.8 where required a fire certificate has been issued (or is in the course of being issued and neither the Company nor Dr Melvin is aware of any reason why any such certificate will not be issued) for the Property and the Property complies with current fire regulations; and
- 7.3.9 all documents required to prove the interest of the Company in the Property are in the possession of or under the control of the Company.

7.4 All replies to enquiries given by the Company or Dr Melvin or the Sellers' Solicitors to enquiries raised by the Buyer or the Buyer's Solicitors in respect of the Property are correct and complete in all material respects.

7.5 The Company has not at any time assigned or otherwise disposed of any freehold or leasehold property in respect of which the Company has any continuing liability either as original contracting party or by virtue of any direct covenant or under an authorised guarantee agreement given on a sale or assignment to or from the Company or as a surety for the obligations of any other person in relation to any real property and no claim has been made against the Company in respect of any leasehold property formerly held by it or in respect of which it acted as a guarantor nor is any such claim anticipated.

7.6 No notices under the Landlord and Tenant (Covenants) Act 1995 have been served on the Company.

7.7 No claims have been made against the Company in respect of repairs, dilapidations or any similar liability, and no other monetary claim or liability is outstanding, in each case in relation to the Property.

7.8 Neither the Company nor Dr Melvin is aware of any fact or circumstance which may give rise at any time in the future to any claim or liability of the kind referred to in paragraph 7.7 above and in particular neither the Company nor Dr Melvin expects any requirement for material expenditure in respect of repairs to the Property within the five years following the date of this Agreement.

## **8 Environmental matters**

8.1 The Company:

8.1.1 complies and has at all times complied with all Environmental Laws; and

8.1.2 is not and is not likely to be required by any Environmental Licence or any Environmental Law or as the result of any Environmental Claim to incur any expenditure which is material in the context of the business of the Company or to desist from taking any action which might have a material adverse effect on the financial condition of the Company.

8.2 The Company does not require any Environmental Licences and has not received any orders, notices, directions, applications, appeals, amendments or reports or any other communications relating to or in connection with any Environmental Licence.

8.3 No Environmental Claim is pending or has been made or threatened against the Company or any of its past or present directors, secretary or senior employees in their capacity as such or any occupier of any property at any time owned or leased by the Company and neither the Company nor Dr Melvin has any reason to believe that the Company or any of its officers has or is likely to have any liability in relation to Environmental Matters.

8.4 No Relevant Substance has been deposited, disposed of, kept, treated, imported, exported, transported, processed, manufactured, used, collected, sorted or produced at any time, or is present in the Environment (whether or not on property owned, leased, occupied or controlled by the Company) in circumstances which could result in an Environmental Claim against the Company or which would entitle any Relevant Authority to bring an Environmental Claim against the Company or which would have a material adverse effect on the use or value of any property owned, leased, occupied or controlled by the Company.

8.5 Full details (including copies of any relevant reports or other documents) of any inspections, investigations, studies, audits, tests, reviews or other analyses in relation to Environmental Matters relating to the Company or any property now or previously owned, leased or occupied by the Company have been provided in writing to the Buyer.

## **9 Assets**

9.1 All assets (excluding the Property and those acquired under hire purchase from Lombard Finance (agreement numbers AE78000050, AE78000665 and AE78000915)) used in connection with the business of the Company belong to the Company free from any lease, rental, hire or hire purchase agreement, agreement for payment on deferred terms, conditional sale agreement or bill of sale or other Encumbrance and there are no agreements or arrangements restricting the freedom of the Company to use or dispose of any of those assets as it thinks fit.

9.2 Other than as disclosed to the Buyer, the Company does not make use of any asset which is not included in the Accounts.

9.3 Other than as disclosed to the Buyer, all assets of, or used in connection with the business of, the Company are in the possession and under the control of the Company and are in good repair and condition and regularly maintained and fully serviceable.

## **10 Insurances**

10.1 All assets of the Company which are capable of being insured (including debtors) have at all material times been and are at the date of this Agreement insured for their full replacement value against fire and other risks normally insured against by companies carrying on similar businesses or owning assets of a similar nature and the Company has at all material times been and is at the date of this Agreement adequately covered against accident, physical loss or damage, third party liability (including product liability), environmental liability (to the extent that cover is available at reasonable commercial premiums) and other risks normally covered by insurance by such companies.

10.2 In respect of all insurances referred to in paragraph 10.1 above:

10.2.1 all premiums and any related insurance premium taxes have been duly paid to date;

- 10.2.2 each policy is in force and effective and no act, omission, misrepresentation or non-disclosure by or on behalf of the Company has occurred which makes any of those policies voidable, nor have any circumstances arisen which would render any of those policies void or unenforceable for illegality or otherwise, nor has there been any breach of the terms, conditions or warranties of any of those policies which would entitle the relevant insurer to decline to pay all or any part of any claim made under those policies;
- 10.2.3 there are no special or unusual limits, terms, exclusions or restrictions in any of the above policies, the premiums payable under them are not in excess of prevailing normal rates for comparable cover and so far as the Company and Dr Melvin are aware no circumstances exist which are likely to give rise to any increase in premiums;
- 10.2.4 no claims have been made during the period of three years preceding the date of this Agreement;
- 10.2.5 no claim is outstanding and no circumstances exist which are likely to give rise to any claim under the above policies; and
- 10.2.6 full details of all the relevant policies have been disclosed in writing to the Buyer.

10.3 No claims have been made by employees of the Company in respect of industrial injury in the three years preceding the date of this Agreement.

## **11 Bank accounts**

- 11.1 Full details of each of the investment, deposit and bank accounts maintained by or on behalf of the Company and of the banks and other financial institutions at which they are kept have been disclosed in writing to the Buyer.
- 11.2 Statements from each such bank and/or institution of the credit or debit balances on each of the above accounts on the last business day prior to the date of this Agreement have been provided to the Buyer.
- 11.3 Other than in respect of the hire purchase agreements with Lombard Finance (agreement numbers AE78000050, AE78000665 and AE78000915), the Company does not have any overdraft, loan and other financial facilities available to it or borrowings of any kind.
- 11.4 There are no unpresented cheques drawn by the Company otherwise than in the normal course of trading.

## **12 Conduct of business**

- 12.1 The Company is not now nor has it been during the period of two years prior to the date of this Agreement a party to any contracts or transactions which are, or involve obligations, of an unusual, onerous or long term nature nor has it given at any time any gifts, bribes or inducements to any person.
- 12.2 No event or omission has occurred which would entitle any third party to terminate prematurely any contract to which the Company is a party or call in any money before the date on which payment of the relevant sum would normally or otherwise be due.
- 12.3 There is no claim against and there are no circumstances which may lead to a claim against the Company for defective goods, services, work or materials or for breach of representation, warranty, condition or Official Requirement in relation to goods or services or for delays in delivery or completion of contracts or for deficiencies of design or performance or otherwise relating to liability for goods or services sold or supplied by the Company.
- 12.4 The Company has not agreed to produce or deliver replacement goods after the date of this Agreement or to take back or make good any defective goods or services or repair or service any goods free of charge or otherwise not at arm's length rates or issue a credit note or write off or reduce indebtedness in respect of any goods or services.
- 12.5 As far as Dr Melvin is aware, after Completion whether by reason of an existing agreement or arrangement or as a result of the acquisition of the Sale Shares by the Buyer or otherwise:
  - 12.5.1 no supplier of the Company will cease or be entitled to cease supplying the Company, or substantially reduce or be entitled substantially to reduce its supplies to the Company;
  - 12.5.2 no customer of the Company will cease or be entitled to cease to deal with the Company, or substantially reduce or be entitled substantially to reduce its existing level of business with the Company;
  - 12.5.3 the Company will not lose the benefit of any right or privilege which it currently enjoys; and
  - 12.5.4 no officer or senior employee of the Company will leave his office or employment.
- 12.6 Other than the University of Aberdeen, as a supplier and Schering Plough and Biovation Limited as customers, in the three years preceding the date of this Agreement not more than ten per cent in value of purchases by the Company have been placed in any twelve month period with any one supplier and not more than twenty per cent in value of sales by the Company have been made in any twelve month period to any one customer.
- 12.7 The Company does not require any licence, permission or consent required for the carrying on of its business.

12.8 The Company does not have any branch, place of business or substantial assets outside the United Kingdom or any permanent establishment (as that expression is defined in any relevant Order in Council made under section 788 ICTA 1988) in any country outside the United Kingdom.

### **13 Directors and employees**

13.1 Full, accurate and up to date particulars of the terms of employment of all of the directors and employees of the Company have been provided, in writing, to the Buyer including their names, dates of birth, salaries and dates of commencement of employment.

13.2 No change has been made nor agreed to be made by the Company in the terms of employment of any of its directors or employees.

13.3 Other than the customary December salary review, no negotiations for any increase in remuneration or benefits or change in any other term of the employment of any of the employees of the Company are current or are due to take place within six months after the date of this Agreement, no offer of or demand for any such increase has been made, and no employee of the Company has within the last 12 months received an increase in remuneration of more than five per cent or suffered any reduction in remuneration.

13.4 There are not in existence:

- 13.4.1 any employment contracts or other contracts with directors or employees of the Company which cannot be terminated by three months' notice or less without giving rise to any right to claim damages or compensation (other than compensation under the Employment Rights Act 1996);
- 13.4.2 any contracts or any arrangements to which the Company is a party involving share options, profit sharing or bonus, incentive or other similar payments for any existing or former employees or directors or any of their dependants;
- 13.4.3 other than through a Department of Trade and Industry Knowledge Transfer Partnership Scheme, any contracts or arrangements, other than those disclosed in relation to paragraphs 13.4.1 or 13.4.2 above, of whatever kind (whether legally enforceable or not) between the Company and existing or former directors or employees of the Company including contracts or arrangements for any benefit or payments of any nature to or for the benefit of any existing or former directors or employees or any of their dependants;
- 13.4.4 any consultancy, secondment or agency agreements between the Company and any other person, firm or company for the provision of an individual's services to the Company.

13.5 There are no maternity or paternity, parental, emergency, child caring or other leave schemes (whether legally enforceable or not) which vary the rights, privileges and powers granted by law to any employee of the Company.

13.6 There have been no strikes or industrial action short of strike action (official or unofficial) by any of the employees of the Company during the period of six years immediately preceding the date of this Agreement.

13.7 There is no agreement or arrangement written or oral or by custom and practice between the Company and any trade union or other body representing employees of the Company in relation either to recognition of the trade union or other body or to collective terms and conditions or representation.

13.8 None of the employees of the Company are members of a trade union or any similar organisation and there is no recognised trade union, closed shop or collective agreement of any kind relating to any of the employees of the Company.

13.9 There is no claim, demand or liability outstanding or threatened (nor as far as the Company or Dr Melvin is aware any circumstances, facts or events which may lead to any claim, demand or liability) against the Company on the part of any person who has been or is its director or employee (or the defendant of any such person).

13.10 Within a period of one year preceding the date of this Agreement the Company has not:

13.10.1 given notice of any redundancies to any Relevant Authority or started consultations with any independent trade unions or employee representatives under the provisions of Chapter II of Part IV Trade Union and Labour Relations (Consolidation) Act 1992 nor failed to comply with any such obligation under those provisions; or

13.10.2 been a party to any relevant transfer as defined in the Transfer of Undertakings (Protection of Employment) Regulations 1981 nor has the Company failed to comply with any duty to inform and consult any independent trade unions or employee representatives under those Regulations.

13.11 The Company has in relation to each of its employees (and, so far as relevant, to each of its former employees) complied with:

13.11.1 all obligations imposed on it by all enactments, rules, regulations, acts and codes of conduct and practice relevant to the relations between it and its employees or any trade union or employee representatives and has maintained current adequate and suitable records regarding the service and terms of employment of each of its employees;

13.11.2 all relevant orders and awards made under any relevant enactment or code of conduct and practice affecting the conditions of service of its employees;

13.11.3 all orders, judgements, and decisions of any court or tribunal; and

- 13.11.4 all obligations imposed on it under the contracts or terms of employment of its employees.
- 13.12 No person is a shadow director of the Company within the meaning of section 741(2) CA 1985.
- 13.13 All part-time, temporary and fixed-term employees of the Company enjoy the same benefits as full time employees of the Company.
- 13.14 There are no amounts of remuneration outstanding (including bonuses, holiday pay, and liabilities under section 13 Employment Rights Act 1996 accrued to the Completion Date) to any existing or former employee or director of the Company (other than amounts representing salary accrued due for the current pay period or for reimbursement of legitimate business expenses).
- 13.15 No employee or director of the Company has given notice to terminate, or is under notice of termination of, and there are no grounds on which any such employee or director may give, or may be given, notice to terminate, his employment with the Company
- 13.16 The Company has not made an offer of employment to any person which has yet to be accepted or rejected.
- 13.17 No individual is seconded to or from the Company except through a Department of Trade and Industry Knowledge Transfer Partnership Scheme.
- 13.18 No employee of the Company is required to have a work permit in order to perform his duties in full.

## **14 Pensions**

- 14.1 In this paragraph 14 these definitions apply:
  - 14.1.1 ‘Benefits’ means pensions, allowances, lump sums or other like benefits payable on retirement or on death or during periods of sickness or disablement;
  - 14.1.2 ‘Employees’ means the Company’s employees, directors, former employees and former directors;
  - 14.1.3 ‘Pension Arrangement’ means an agreement, arrangement, custom or practice (whether legally enforceable or not) for the payment of or contribution towards any Benefits; and
  - 14.1.4 ‘Stakeholder Scheme’ means the stakeholder scheme (as defined in section 1 of the Welfare Reform and Pensions Act 1999).
- 14.2 Other than the Stakeholder Scheme there is no Pension Arrangement in operation for the benefit of any of the Employees or for the benefit of any dependants of Employees

and no assurance has been given to any of the Employees about the introduction of any Pension Arrangement.

14.3 The Company has complied with its obligations under the Welfare Reform and Pensions Act 1999 in relation to the provision of access for Employees to a stakeholder scheme, including:

- 14.3.1 undertaking the necessary consultation process with the Employees in selecting the stakeholder scheme; and
- 14.3.2 designating the stakeholder scheme;

and there are no circumstances which could result in any penalty for failure to comply with the Welfare Reform and Pensions Act 1999 or regulations made under it becoming payable by the Company.

## **15 Commercial contracts and joint ventures**

15.1 There are not now outstanding:

- 15.1.1 any debenture, mortgage, charge, lien or other Security Interest given or issued by or in relation to the Company and not disclosed against any other Warranty;
- 15.1.2 any contract or arrangement to which the Company is party and which is loss-making or of an onerous or long-term nature (which for this purpose includes a contract or arrangement which is not capable of being terminated by three or less than three months' notice without payment of compensation or damages) or involving obligations which by reason of their nature or magnitude ought reasonably to be made known to an intending purchaser of the Sale Shares;
- 15.1.3 any agreements or arrangements (whether executed or executory) entered into by the Company otherwise than by way of bargain at arm's length or otherwise than in the ordinary course of business;
- 15.1.4 any contracts to which the Company is party and which cannot be assigned without the consent of another party; or
- 15.1.5 any powers of attorney given by the Company or any other authority (express or implied) by which any person may enter into any contract or commitment on behalf of the Company.

15.2 The Company is not a party to any such contract as is referred to in section 169(4) CA 1985 (Disclosure by company of purchase of own shares).

15.3 The Company is not in material breach of any arrangement or contract to which it is a party.

15.4 The Company has never been, nor is it now party to any joint venture, consortium or partnership arrangement or agreement (including any limited liability partnership) or a member of any unincorporated association.

**16 Unissued capital**

16.1 There are no agreements or instruments in force which require or confer the right (conditionally or unconditionally) to require the issue of any share or loan capital of the Company now or at any time in the future nor are there any agreements restrictions or obligations entered into by or binding on the Company as to its unissued share or loan capital.

**17 Intellectual property**

17.1 Full and accurate details of all registrations of and applications for registration of Intellectual Property and of all material unregistered Intellectual Property have been disclosed, in writing, to the Buyer.

17.2 Full and accurate details of all licences of any of the Intellectual Property by or to the Company have been disclosed, in writing, to the Buyer.

17.3 The Company owns all Intellectual Property Rights (other than any Third Party Software) relating to products manufactured and services provided by it or on its behalf or used by it in connection with its business in each case free from Encumbrances.

17.4 The Intellectual Property is valid and subsisting and neither the Company nor Dr Melvin knows of, or of any basis for, any claim for revocation, amendment, opposition or rectification or any challenge to ownership or entitlement in respect of any of the Intellectual Property (due to non-payment of renewal or other fees or for any other reason).

17.5 The Company has complied with all its obligations under any licence of the Intellectual Property and no such licence is or will become liable to termination because of any breach by or on behalf of the Company or the transaction contemplated by this Agreement.

17.6 The Company is not required nor is it likely to become liable to pay a royalty or any other sum to any third party in respect of any of the Intellectual Property except as fairly disclosed to the Buyer in writing.

17.7 The Company is free to disclose any Business Information but has not disclosed any of it except in the ordinary course of business and against written undertakings from the recipient to keep all such disclosed Business Information confidential, or to the Buyer.

- 17.8 The Company is not infringing nor has it ever infringed, either directly or through any other person, the Intellectual Property Rights of any third party, and no third party has alleged any such infringement.
- 17.9 None of the Sellers have any rights to use any of the Intellectual Property, except as fairly disclosed to the Buyer in writing.
- 17.10 No claim under sections 39 to 43 Patents Act 1977 (Right to employees' inventions, etc.) and no assertion of any rights under Chapter IV Copyright Designs and Patents Act 1988 (Moral Rights) or their equivalents in any applicable territory have been made in respect of any of the Intellectual Property.
- 17.11 The Company does not require any Intellectual Property Rights other than the Intellectual Property in order to use all the processes employed by it in its business as presently constituted or to manufacture, use and sell the products which result from those processes or otherwise to carry on its business.
- 17.12 The Company does not use or require the use of any Developed Software.

## **18 Litigation, offences and processes**

- 18.1 The Company is not engaged in any litigation (whether criminal or civil), arbitration, reference of any dispute or disagreement to an expert or any alternative dispute resolution process and so far as each of the Company and Dr Melvin are aware there are no facts or circumstances likely to give rise to any such litigation, arbitration, reference or alternative dispute resolution process.
- 18.2 No injunction has been granted against the Company and the Company has not given any undertaking to any Court or to any third party arising out of any legal proceedings.
- 18.3 No unsatisfied judgement is outstanding against the Company.
- 18.4 No distress execution or other process has been levied on any asset of the Company nor has any person threatened any such distress execution or other process.
- 18.5 The Company has no liability (direct or vicarious) arising from any violation of any Official Requirement of the United Kingdom or the European Communities or the agreement relating to the European Economic Area or any local laws of any other jurisdiction nor from any ruling penalty or sanction which could adversely affect the business or financial condition of the Company nor in particular from any violation of any enactment relating to Tax, consumer protection, employment, or industrial or labour relations.
- 18.6 The Company is not, nor has ever been, party to or concerned in any agreement, arrangement, understanding or practice which constitutes a breach of any term or condition of any licence, authorisation, appointment, code or similar instrument applicable to the Company or its business.

## **19 Insolvency**

- 19.1 No order has been made and no resolution has been passed for the winding up of the Company or for a provisional liquidator to be appointed in respect of the Company and no petition has been presented and no meeting has been convened for the purpose of winding up the Company.
- 19.2 No administration order has been made and no petition for such an order has been presented in respect of the Company nor has an administrator been appointed in respect of the Company, nor has any notice of intention to appoint any such administrator been given, nor have any other steps been taken by any person (including the Sellers) to appoint any such administrator.
- 19.3 No person has appointed or threatened to appoint a receiver (including any administrative receiver) in respect of the Company or any of its assets.
- 19.4 The Company is not insolvent, or, other than in respect of its current debts to the University of Aberdeen and ExpressOn Biosystems Limited, unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 and nor has it stopped payment of its debts as they fall due.
- 19.5 No voluntary arrangement has been proposed under section 1 of the Insolvency Act 1986 in respect of the Company.
- 19.6 No statutory demand has been issued against Dr Melvin nor are there any reasonable grounds for believing that he is unable to pay any debts within the meaning of section 268 of the Insolvency Act 1986 as amended.
- 19.7 No petition has been presented and no order made for Dr Melvin's bankruptcy or for the appointment of a receiver over any of his assets.
- 19.8 No Encumbrance has been enforced and no distress, execution or other process has been levied, on or over any of the Sale Shares or any assets held by Dr Melvin.
- 19.9 No proposal has been made in respect of an individual voluntary arrangement of Dr Melvin, pursuant to the Insolvency Act 1986 as amended.
- 19.10 No event analogous to any of the above has occurred in or outside England and Wales.

## **20 Grants**

- 20.1 The Company has not done or omitted to do or agreed to do or to omit to do anything as a result of which all or any part of any investment or other grant or employment subsidy or similar payment made or due to be made to the Company is or may be liable to be repaid, forfeited or withheld in whole or in part.

## **21 Special contracts and arrangements**

- 21.1 The Company has not at any time:
- 21.2 repaid, redeemed or purchased or agreed to repay, redeem or purchase any shares in its share capital or otherwise reduced or agreed to reduce its issued share capital or any class of issued shares;
- 21.3 directly or indirectly provided any financial assistance (as defined for the purpose of section 151 CA 1985) for the purpose of the acquisition of its shares or shares in any company which was at the relevant time its holding company or for the purpose of reducing or discharging any liability incurred in any such acquisition whether in accordance with section 155 CA 1985 or otherwise; or
- 21.4 capitalised or agreed to capitalise in the form of shares, debentures or other securities or in paying up any amounts unpaid on any shares debentures or other securities any profits or reserves of any description or passed or agreed to pass any resolutions to do so.

## **22 Transactions with shareholders or directors and others**

- 22.1 Except for bona fide employment contracts with executive directors of the Company in the ordinary course of business, no transactions, contracts or arrangements (including any loan or Guarantee made or given by the Company) have been entered into during the six years prior to the date of this Agreement to which the Company is a party in which a shareholder in or director of the Company or any person connected with a shareholder in or director of the Company has been interested whether directly or indirectly.
- 22.2 No moneys are owed by the Company to any director of the Company or to any of the Sellers or to any person connected with any such director or Sellers or to any company or partnership in which any of those directors or any of the Sellers are directly or indirectly interested other than as holders of listed securities.
- 22.3 The Company has no debts owed to it by its directors or any of them or by any of the Sellers (or by a person connected with any such director or Seller) or by any company in which the directors of the Company or any of them or any of the Sellers (or any person connected with any of them) are directly or indirectly interested (other than as holders of listed securities) nor do any of the Sellers or the Company's directors or any of them (or any person connected with any of them) or any such company have any claims against the Company on any account including claims for compensation for loss of office or for unfair dismissal or redundancy payment.

## **23 Administration**

- 23.1 Accurate copies of the Memorandum and Articles of Association of the Company incorporating all amendments made up to and including the date of this Agreement have been provided to the Buyer.

- 23.2 The register of members of the Company contains an accurate record of the members and all former members of the Company and their holdings of shares in the capital of the Company.
- 23.3 There are no mortgages, charges and debentures by or in favour of the Company to which section 395 CA 1985 applies.
- 23.4 All returns, particulars, resolutions and other documents required to be filed with or delivered to the Registrar of Companies and the Department of Trade and Industry by the Company have been correctly and properly prepared and so filed or delivered.
- 23.5 All the accounts books, ledgers and financial and other material records of whatever kind of the Company are held or stored in means which are under the exclusive ownership and control of the Company, have at all times been properly and accurately kept and completed in all material respects, record all matters required to be entered in them by CA 1985, do not contain or reflect any material inaccuracies or discrepancies and give and reflect a true and fair view of the financial contractual and trading position of the Company and of its equipment, fixed and current assets and liabilities (actual and contingent), debtors and creditors, stock-in-trade and work-in-progress.

## **24 Competition matters**

- 24.1 The Company is not nor has it ever been party to or concerned in any agreement, arrangement, understanding or concerted practice, or any other conduct or practice (unilateral or otherwise) which:
  - 24.1.1 contravenes the Competition Act 1998 or the Enterprise Act 2002;
  - 24.1.2 infringes Articles 81 or 82 of the EC Treaty or any similar provisions of the ECSC, Euratom or EEA Treaties, or any other competition provision of those treaties or enacted under them, including any rule relating to state aid, public procurement or anti-dumping;
  - 24.1.3 was required to be furnished to the Director General of Fair Trading under the Restrictive Trade Practices Act 1976;
  - 24.1.4 constitutes a breach of any relevant undertaking, order, assurance or other measure taken under the Fair Trading Act 1973, the Restrictive Trade Practices Act 1976, the Resale Prices Act 1976 or the Competition Act 1980; or
  - 24.1.5 infringes any competition, anti-trust or equivalent legislation of any other jurisdiction.
- 24.2 The Company is not subject to any prohibition, order, condition, undertaking, assurance or similar measure or obligation imposed by or under any of the laws referred to in paragraph 24.1.

- 24.3 The Company is not, nor has ever been, subject to any enquiry, investigation, request for information, notice or other communication (whether formal or informal, and whether or not in writing) by any Relevant Authority under any of the laws referred to in paragraph 24.1.
- 24.4 Neither the Company nor Dr Melvin has any reason to believe that any such action as is mentioned in paragraphs 25.1 or 25.2 will be taken against the Company in relation to any of its current activities.
- 24.5 Particulars of any agreements, practices and arrangements to which the Company is a party which are registrable with the Director-General of Fair Trading in the United Kingdom or with the Directorate-General for Competition at the Commission of the European Communities (as the case may be) have been correctly registered.

## **25 IT Systems**

- 25.1 The Company has not breached any of its obligations under any of the agreements it has in place in relation to its IT Systems, those agreements all remain in force and effective as at the date of this Agreement and no notice has been served by any person to terminate any of those agreements.
- 25.2 The Company is not subject to any restriction in using the IT Systems (whether by way of a technical device or otherwise).
- 25.3 The operation of the IT Systems and the storage, processing and retrieval of all data stored on the IT Systems is under the exclusive control of the Company and any Intellectual Property Rights in that data are owned solely by the Company.
- 25.4 The IT Systems have adequate functionality, capability and capacity for the present and foreseeable future requirements of the Company and each part of the IT Systems is compatible with each other part.
- 25.5 Prudent and up-to-date procedures to ensure internal and external security of the IT Systems, (including procedures for taking and storing on-site and off-site back-up copies of computer programs and data, for preventing introduction of viruses into the IT Systems and for the protection of security of data stored on the IT Systems) have been established by the Company, have been complied with in all material respects and so far as the Company and Dr Melvin are aware have been effective for those purposes.
- 25.6 There are sufficient technically competent and trained employees employed by the Company to ensure proper handling, operation, monitoring and use of the IT Systems.
- 25.7 The IT Systems have not been used to hold or process data in any manner which contravenes the DPA 1998.

## **26 Data Protection**

- 26.1 The Company has not shared the Personal Data with any organisation competing with the business of the Buyer.
- 26.2 There are no Data Subject access requests outstanding as at Completion in relation to the Personal Data.
- 26.3 The Company may lawfully sell or otherwise transfer the Personal Data to the Buyer and the Buyer may lawfully use all the Personal Data for the purposes of its business and the businesses of the Company.
- 26.4 The consents held from Data Subjects in relation to the Processing of the Personal Data are valid and up-to-date.
- 26.5 There are no outstanding complaints, legal actions, proceedings, assessments, investigations or other queries outstanding from any party including Data Subjects and The Office of the Information Commissioner in respect of the Processing of the Personal Data by the Company.
- 26.6 Neither the Company nor any of its directors, employees or Data Processors (as defined from time to time in DPA 1998) has acted, or omitted to act, in any way which may constitute a breach of DPA 1998.
- 26.7 The Company has not used any party, including related companies, in the capacity of Data Processor without having complied fully with the DPA and, in particular, Principle 7 in schedule 1 DPA 1998.

## **27 Effect of this Agreement**

- 27.1 The execution and delivery of, and compliance with the terms of, this Agreement does not and will not:
  - 27.1.1 conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which the Company is a party or any provision of the Memorandum or Articles of Association of the Company or any lease, contract, order, judgement, award, injunction, regulation or other Encumbrance, restriction or obligation of any kind or character by which or to which the Company or any asset of the Company is bound or subject;
  - 27.1.2 relieve any person from any obligation to the Company (whether contractual or otherwise) or enable any person to determine any such obligation or any right or benefit enjoyed by the Company or to exercise any right whether under an agreement with or otherwise in respect of the Company;
  - 27.1.3 result in the creation, imposition, crystallisation or enforcement of any Encumbrance on any of the Sale Shares or on any of the assets of the Company; or

27.1.4 result in any present or future indebtedness of the Company becoming due or capable of being declared payable prior to its stated maturity.

## **Part 2 – Tax Warranties**

### **1 Returns notices and records**

- 1.1 All accounts, computations notices and returns required to be made or submitted by the Company to any Tax Authority and all notices and information required to be given by the Company to any Tax Authority (including all returns and other documents or information in respect of PAYE and National Insurance) have been properly and duly prepared and punctually made submitted or given by the Company and are up-to-date and correct.
- 1.2 Copies of the corporation tax computations and returns of the Company (together with copies of all assessments and correspondence with the Inland Revenue relating to them) in respect of the period of six years ended on the Accounts Date have been provided to the Buyer.
- 1.3 The Company is not and, in the period of three years ended on the date of this Agreement, has not been in dispute with or subject to enquiry or investigation by any Tax Authority (other than routine enquiries concerning the corporation tax or VAT computations of the Company, all of which have been resolved) and so far as the Company and Dr Melvin are aware there are no facts or circumstances likely to give rise to or be the subject of any such dispute, enquiry or investigation.
- 1.4 All statements and disclosures made to any Tax Authority in connection with any provision of Tax Legislation were when made complete and accurate and the Company has not been concerned in any transaction to which any of the following provisions have been or will be applied:
  - 1.4.1 sections 135 to 137 (inclusive) TCGA 1992;
  - 1.4.2 sections 219 to 229 (inclusive) ICTA 1988;
  - 1.4.3 sections 703 and 704 ICTA 1988;
  - 1.4.4 section 776 ICTA 1988;
  - 1.4.5 sections 779 to 786 (inclusive) ICTA 1988;
  - 1.4.6 section 139 TCGA 1992; and
  - 1.4.7 section 192 TCGA 1992 and sections 213 to 218 (inclusive) ICTA 1988.
- 1.4.8 The Company has (to the extent required by law) preserved and retained in its possession complete and accurate records relating to its Tax affairs (including PAYE and National Insurance records, VAT records and

records relating to transfer pricing) and the Company has sufficient records relating to past events to calculate the profit, gain, loss, balancing charge or balancing allowance (all for Tax purposes) which would arise on any disposal or on the realisation of any assets owned at the Accounts Date or acquired since that date but before Completion.

## **2 Payment of tax**

- 2.1 The Company has duly and punctually paid all Tax to the extent that it ought to have been paid and has not in the last three years paid or become liable to pay any penalty or interest charged by virtue of the provisions of any Tax Legislation.
- 2.2 Details of quarterly payments of corporation tax made on account have been provided to the Buyer and, so far as each of the Company and Dr Melvin are aware, those payments were when made and remain for the correct amount.

## **3 Accounts**

- 3.1 The provision or reserve for Tax in the Accounts is sufficient to cover all liabilities of the Company for Tax as at the Accounts Date and all Tax for which the Company may after the Accounts Date become or have become liable in respect of or by reference to:
  - 3.1.1 any income profits or gains for any period which ended on or before the Accounts Date;
  - 3.1.2 any distributions made on or before the Accounts Date or provided for in the Accounts; or
  - 3.1.3 any Event occurring on or before the Accounts Date.
- 3.2 Full potential provision has been made and shown (or disclosed by way of note) in the Accounts for deferred taxation.
- 3.3 Formal notice has been duly and properly given of all claims for or (as the case may be) disclaimers elections or surrenders in respect of Reliefs assumed to have been made for the purposes of the Accounts and there are no claims, disclaimers, elections or surrenders the time limit for the making or doing of which expires within three months after the date of this Agreement.

## **4 Events since the accounts date**

- 4.1 None of the following Events has occurred since the Accounts Date:
  - 4.1.1 a deemed (as opposed to an actual) acquisition, disposal or supply of assets, goods, services or business facilities;

- 4.1.2 a disposal or supply of assets, goods, services or business facilities by the Company for a consideration which is treated for the purposes of Tax as greater than the actual consideration;
- 4.1.3 an acquisition by or supply to the Company of assets, goods, services or business facilities for a consideration which is treated for the purposes of Tax as less than the actual consideration;
- 4.1.4 a distribution within the meaning given by Part VI ICTA 1988 (company distributions, tax credits etc.) or within section 418 ICTA 1988 (expenses treated as distributions);
- 4.1.5 an Event which results in the Company being liable for Tax for which it is not primarily liable;
- 4.1.6 an Event in respect of which a Tax Liability arises as a result of a failure by the Company to withhold, deduct or account for Tax;
- 4.1.7 an Event giving rise to a liability under Part XVII ICTA 1988 (tax avoidance); or
- 4.1.8 an Event giving rise to a balancing charge.

4.2 In this paragraph 4 'business facilities' means business facilities of any kind including a loan of money or a letting, hiring or licensing of any tangible or intangible property.

## **5 Concessions**

5.1 The Company has not during the period of three years ending on the date of this Agreement relied on any formal or informal unpublished concession, dispensation or practice (whether general or specific to the Company) which affects the amount of Tax chargeable on the Company or which purports to modify or provide exemption from any obligation to make or submit any computation notice or return to any Tax Authority.

## **6 Continuity of trade**

6.1 As at the Accounts Date the Company has not had any material trading losses or surplus advance corporation tax available for carry forward.

6.2 Within the period of three years ending on the date of this Agreement:

- 6.2.1 the Company has not discontinued any trade or business or made a major change in the nature or conduct of a trade or business carried on by it;
- 6.2.2 the scale of activities in any trade carried on by the Company has not become small or negligible; and
- 6.2.3 no change in ownership of the Company has taken place.

6.3 In this warranty 6 references to 'the Company' include any predecessors to the Company (within the meaning of section 343 ICTA 1988).

## **7 Deductions and withholdings**

7.1 The Company has made all deductions and withholdings in respect of, or on account of, any Tax (including amounts required to be deducted under the PAYE and National Insurance systems) from any payments made by it which it is obliged or entitled to make and (to the extent required to do so) has accounted in full to the relevant Tax Authority for all amounts so deducted or withheld.

## **8 Distributions**

8.1 The Company has not made or agreed to make any repayment of share capital to which section 210(1) ICTA 1988 (bonus issue following repayment of share capital) applies.

8.2 The Company has not issued or agreed to issue any share capital as paid up otherwise than by receipt of new consideration within the meaning of Part VI ICTA 1988 (company distributions, tax credits etc).

8.3 The Company has not in the period of three years ending on the date of this Agreement made (nor is it deemed to have made during that period) any distribution within the meaning of ICTA 1988 except dividends properly authorised and disclosed in its audited accounts.

## **9 Close company**

9.1 The Company is not nor has it at any time been a close company (within the meaning of section 414 ICTA 1988) in respect of any accounting period.

## **10 Capital gains**

10.1 The sum which would be allowed as a deduction from the consideration under section 38 TCGA 1992 (acquisition and disposal costs etc) of each asset of the Company (other than trading stock) if disposed of on the date of this Agreement:

10.1.1 would not be less than (in the case of an asset held on the Accounts Date) the book value of that asset shown or included in the Accounts or (in the case of an asset acquired since the Accounts Date) an amount equal to the consideration given for its acquisition; and in particular

10.1.2 would not be treated or deemed for the purposes of Tax to have been reduced by reason of any claim made under sections 152 (roll-over relief) 153 (assets only partly replaced), 165 (relief for gifts of business assets) or 175 (group rollover) TCGA 1992 or by reason of the operation of section

17 (disposals and acquisitions treated as made at market value), or sections 126 to 140 (re-organisation of share capital, conversion of securities, etc.) TCGA 1992.

- 10.2 No transaction has been entered into by the Company to which the provisions of section 18 TCGA 1992 (transactions between connected persons) has been or could be applied.
- 10.3 The Company does not own any depreciating asset in respect of which a held-over gain may accrue under sections 154(2) and/or 175(3) TCGA 1992.

## **11 Capital allowances**

- 11.1 No balancing charge in respect of any capital allowances claimed or given would arise if any asset of the Company (or, where computations are made for capital allowances purposes for pools of assets, all the assets in that pool) were to be realised for a consideration equal to the amount of their book value as shown or included in the Accounts (or, in the case of any asset acquired since the Accounts Date, for a consideration equal to the consideration given for the acquisition).
- 11.2 So far as each of the Company and Dr Melvin is aware, all necessary conditions for the availability of all capital allowances claimed by the Company have at all material times been satisfied and remain satisfied.

## **12 Secondary liability**

- 12.1 So far as each of the Company and Dr Melvin is aware no Event has occurred in consequence of which the Company is or may be held liable to pay or bear any Tax which is primarily chargeable against or attributable to some person firm or company other than the Company.

## **13 Stamp duties**

- 13.1 The Company has duly paid all stamp duty for which it is or has been or may be made liable and without limitation:
  - 13.1.1 all documents in the enforcement of which the Company is or may be interested have been duly stamped; and
  - 13.1.2 there are no documents outside the United Kingdom which if they were brought into the United Kingdom would give rise to a liability to stamp duty payable by the Company.
- 13.2 The Company has duly paid all stamp duty reserve tax for which it is or has become liable and the Company has not been party to any transfer of chargeable securities (within the meaning of section 99 Finance Act 1986) in respect of which the Company could become liable to pay any stamp duty reserve tax.

13.3 The Company is not liable to any penalty in respect of any stamp duty or stamp duty reserve tax nor so far as the Company or Dr Melvin is aware are there any circumstances or transactions in which the Company is or has been a party which may result in the Company becoming liable to any such penalty.

#### **14 Anti-avoidance**

- 14.1 The Company has not in the period of three years ending on the date of this Agreement been party to any non-arms length transaction.
- 14.2 The Company has not in the period of three years ending on the date of this Agreement been party to or otherwise involved in any scheme or arrangement the main purpose or one of the main purposes of which was to avoid Tax.

#### **15 Value Added Tax**

- 15.1 The Company is registered for VAT in the United Kingdom under Schedule 1 VATA 1994 and has not at any time in the last six years been treated as (nor applied to be) a member of a group of companies for VAT purposes.
- 15.2 The Company is not registered (nor required to be registered) for local VAT or its equivalent in any state other than the United Kingdom.
- 15.3 The Company is a taxable person for VAT purposes, has complied with all the requirements of VATA 1994 and all applicable regulations and orders, and has fully maintained complete, correct and up-to-date records, invoices and other necessary documents.
- 15.4 The Company has not in the last three years been:
  - 15.4.1 subject to any penalty or liability under any of sections 60 to 63 (inclusive), 65 or 67 to 69 (inclusive) VATA 1994;
  - 15.4.2 subject to any penalty or liability nor been given any penalty liability notice within section 64 VATA 1994 (repeated misdeclarations);
  - 15.4.3 given any surcharge liability notice within sections 59 or 59A VATA 1994;
  - 15.4.4 given a notice within section 66 VATA 1994;
  - 15.4.5 given a warning within section 76(2) VATA 1994; or
  - 15.4.6 required by H M Commissioners of Customs and Excise to give any security.
- 15.5 No circumstances exist whereby the Company would or might become liable for value added tax under the provisions of sections 47 (agents etc) or 48 (tax representatives) VATA 1994.

- 15.6 The Company has made any exempt supplies in consequence of which it is or will be unable to obtain credit for all input tax paid by it during any value added tax quarter ending after the Accounts Date.
- 15.7 The Company has not made nor is it otherwise bound by any election made under paragraph 2 of schedule 10 VATA 1994.
- 15.8 The Company has not been party to a transaction to which Article 5 of the Value Added Tax (Special Provisions) Order 1995 (transfer of business as a going concern) has (or has purported to have been) applied.
- 15.9 No asset of the Company is a capital item, the input tax on which could be subject to adjustment in accordance with the provisions of Part XV of the Value Added Tax Regulations 1995.
- 15.10 The Company has not been engaged in any transaction which has resulted or could result in the Company being treated as making any supply to itself for value added tax purposes.

## **16 Duties**

- 16.1 All value added tax payable on the importation of goods and all customs and excise duties payable to H M Customs & Excise in respect of any assets (including trading stock) imported or owned by the Company have been paid in full.

## **17 Groups**

- 17.1 The Company is not liable (nor will after Completion become liable under arrangements entered into before Completion) to make:
  - 17.1.1 any payment for group relief (within the meaning of section 402(6) ICTA 1988) or any payment for advance corporation tax (as mentioned in section 240(8) ICTA 1988) or any payment for a tax refund (as mentioned in section 102(7) Finance Act 1989); or
  - 17.1.2 any refund (in whole or in part) of any such payment received by the Company before Completion.
- 17.2 The Company has not at any time within the period of three years ending on the date of this Agreement acquired any asset other than as trading stock from any other company which at the time of the acquisition was a member of the same group of companies as the Company (as defined in section 170 TCGA 1992 (groups of companies: definitions)) and no member of any group of companies of which the Company has at any material time been the principal company (as defined in that section) has so acquired any asset.
- 17.3 The Company has not carried out or participated in any depreciatory transaction relating to any shares or securities of a company which are in its beneficial ownership.

17.4 The Company has not nor has it had at any time in the last three years any associated company within the meaning of section 13 ICTA 1988.

## **18 Deductions**

18.1 The Company has not in the last three years made any payment or incurred any liability to make any payment of a revenue nature which could be disallowed as a deduction in computing the taxable profits of the Company or as a charge on the Company's income.

## **19 Inheritance tax**

19.1 So far as each of the Company and Dr Melvin is aware the Company is not nor will it become liable to be assessed to inheritance tax as donor or donee of any gift or as transferor or transferee of value (actual or deemed) nor as a result of any disposition chargeable transfer or transfer of value (actual or deemed) made by or deemed to be made by any other person.

19.2 There is no unsatisfied liability to capital transfer tax or inheritance tax attached or attributable to the assets of the Company or the shares of the Company and neither such assets nor such shares are subject to an Inland Revenue charge.

19.3 So far as each of the Company and Dr Melvin is aware, no person has the power under section 212 Inheritance Tax Act 1984 (powers to raise tax) to raise any inheritance tax by sale or mortgage of or by a terminable charge on any of the Company's assets or shares.

## **20 Foreign connections**

20.1 No transaction described in section 765 (1) ICTA 1988 (migration, etc of companies) or 765A ICTA 1988 (movements of capital between residents of member States) has been carried out or proposed by or in relation to the Company.

20.2 The Company has never been resident outside the United Kingdom for the purposes of any Tax Legislation.

20.3 The Company has no (and in the period of three years ending on the date of this Agreement has not had any) branch, agent or permanent establishment (within the meaning of the OECD Model Double Taxation Agreement) outside the United Kingdom.

20.4 Other than in Zycos Inc., the Company has no and has not in the last seven years had any interest in:

20.4.1 a controlled foreign company within the meaning of section 747 ICTA 1988 (imputation of chargeable profits and creditable tax of controlled foreign companies); or

- 20.4.2 a material interest in an offshore fund within the meaning of Chapter V of Part XVII ICTA 1988.
- 20.5 The Company has not been (nor is it liable to be) assessed to Tax as the agent or representative of any person not resident in the United Kingdom.
- 20.6 The Company has not entered into any transaction to which the provisions of Schedule 28AA ICTA 1988 (provision not at arm's length) could apply.

## **21 Share and bonus schemes**

- 21.1 The Company has not established (nor is it a participant in) any bonus, share option, profit related pay or other scheme or arrangement, whether or not approved by the Inland Revenue, for the benefit of its current or former officers or employees or any of them.

## SCHEDULE 5

### Provisions for the protection of Dr Melvin

#### 1 Introduction and purpose

1.1 This Schedule 5 contains provisions intended to limit the liability of Dr Melvin under the Warranties and, where referred to, the Tax Covenant. The provisions of this Schedule 5 are incorporated into and form part of this Agreement and are accordingly binding on the parties in accordance with their terms.

1.2 In this schedule 5:

‘Claim’	means any claim which would (but for the provisions of this Schedule 5) be capable of being made against Dr Melvin in respect of any liability under this Agreement (except the Tax Covenant);
‘Relevant Assets’	means any premises, chattels, accounts, documents and records which are relevant to a Claim and are within the power, possession or control of the Buyer and/or the Company.

#### 2 Exclusion of certain claims

2.1 No Claim shall be made by the Buyer against Dr Melvin and Dr Melvin shall not have any liability to the Buyer under this Agreement (including the Warranties but excluding the Tax Covenant) in respect of any matter or liability:

- 2.1.1 disclosed in this Agreement or done as a condition precedent to Completion or in the execution and performance of this Agreement or solely by reason or in consequence of the execution and performance of this Agreement; or
- 2.1.2 if it would not have arisen but for an act or omission of the Buyer or any of its directors, employees or agents.

#### 3 Financial limitations

3.1 Dr Melvin shall not be liable in respect of any Claim unless the amount of that Claim exceeds £30,000.

3.2 The maximum aggregate liability of Dr Melvin in respect of all Claims shall not exceed the greater of:

- 3.2.1 £50,000; and

3.2.2 the aggregate value of Dr Melvin's Consideration Shares when sold or otherwise disposed of by the Buyer's stockbrokers.

3.3 Notwithstanding clause 5.4 of this Agreement, in the event of a Claim:

3.3.1 exceeding £30,000 but being less than £50,000, Dr Melvin shall be entitled but not obliged to appoint the Buyer's stockbrokers to value and sell Dr Melvin's Consideration Shares, or such proportion of them as is required to meet the Claim;

3.3.2 exceeding £50,000, Dr Melvin shall immediately appoint the Buyer's stockbrokers to value Dr Melvin's Consideration Shares and, if such value is greater than £50,000, sell such number of Dr Melvin's Consideration Shares as is required to meet the Claim.

#### **4 Mitigation, quantification of loss and over-provisions**

4.1 Nothing contained in this Agreement shall have the effect of relieving the Buyer from any common law duty to mitigate any loss or damage suffered by it.

4.2 Dr Melvin shall not be liable more than once in respect of any loss, damage or liability.

#### **5 Remedies**

5.1 Where the matter or default giving rise to a breach of any Warranty is capable of remedy, the breach shall not entitle the Buyer to damages or other compensation unless written notice of the breach is given to Dr Melvin and the matter or default is not remedied to the reasonable satisfaction of the Buyer within 30 days after the date on which that notice is served.

#### **6 Time limits**

6.1 No Claim shall be brought by the Buyer or the Company unless notice in writing of that Claim (specifying in reasonable detail with supporting evidence the event, matter or default which gave rise to the Claim and an estimate of the amount claimed) has been given to Dr Melvin:

6.1.1 in the case of a Claim under any of the Tax Warranties, within seven years after Completion; or

6.1.2 in any other case, within six months after Completion.

6.2 Any such Claim which has been made shall (if it has not been previously satisfied, settled or withdrawn) be deemed to have been waived or withdrawn six months after the date it was made unless court proceedings in respect of it have then been commenced against Dr Melvin, or Dr Melvin and the Buyer have agreed in writing to

extend that six month period, in which case this paragraph 6.2 shall apply to that Claim with the substitution of that extended period (and for this purpose court proceedings shall not be deemed to have been commenced unless they have been both issued and served on Dr Melvin).

- 6.3 Nothing in this Schedule 5 shall prevent the Buyer from amending or amplifying any claim at any time after its initial notification in accordance with this paragraph 6 in the light of further information obtained or received by or on behalf of the Buyer.

## SCHEDULE 6

### Completion Provisions

#### Part 1 – Completion Obligations

##### 1 Sellers' obligations

1.1 On Completion, in accordance with clause 4, the Sellers shall:

- 1.1.1 deliver to the Buyer (to the extent not previously delivered or provided):
  - (a) transfers in respect of the Sale Shares duly executed and completed in favour of the Buyer or as the Buyer may direct;
  - (b) duly executed powers of attorney or other authorities under which any of the above transfers have been executed;
  - (c) all share certificates in respect of the Sale Shares (or an indemnity in a form approved by the Buyer in respect of any missing share certificate);
  - (d) any other documents required to give a good title to, and to enable the Buyer or the Buyer's nominees to become the registered holders of, the Sale Shares; and
- 1.1.2 cause all stock transfers executed in accordance with paragraph 1.1.1 above to be resolved to be registered (subject only to their being duly stamped) notwithstanding any provision to the contrary in the Articles of Association of the Company; and
- 1.1.3 cause Ian Hayes to be validly appointed as a director on the board of the Company.

##### 2 Buyer's obligations

2.1 The Buyer shall on Completion:

- 2.1.1 (to the extent not previously provided) provide evidence of the satisfaction of the Conditions in form and substance reasonably satisfactory to the Sellers and shall duly execute and deliver to the Sellers those of the Agreed Documents requiring to be so executed and delivered; and
- 2.1.2 convene a meeting of the board of directors of the Buyer to resolve to allot and issue to the Sellers the Consideration Shares to which the Sellers are entitled on Completion and to irrevocably instruct the Buyer's registrars to:

- (a) register the name of the Sellers as the holders of the Consideration Shares (in the respective proportions) in the register of members on Completion; and
- (b) either credit the Consideration Shares to the CREST stock account of the Sellers (if details of those account have been provided to the Buyer before Completion) or issue to the Sellers a definitive share certificate for the Consideration Shares (endorsed with a docket noting the restriction set out in clause 5.5) as soon as reasonably practicable following Completion.

### **3      Joint obligations**

3.1    The parties shall join in procuring that at or before Completion:

3.1.1    Grant Thornton UK LLC shall be appointed auditors of the Company.

## SCHEDULE 7

### The Property

Description	Date of Lease	Parties to Lease	Term and rent	Occupier(s)	Present Use
Unit 4, Crombie Lodge Science Park Balgownie Drive Bridge of Don Aberdeen Grampian AB22 8GU	21/11/02 occupied from June '03	Scottish Enterprise (the Landlord) and the Company	Term: annual breaks falling on 11 November Rent: £17,825 per annum, payable quarterly in advance, plus service charge (was £5,440 for 2003)	The Company	Laboratory
Unit 1, Crombie Lodge Science Park Balgownie Drive Bridge of Don Aberdeen Grampian AB22 8GU	19/01/04 occupied from June '03	Scottish Enterprise (the Landlord) and the Company	Term: until 15 May 2007 ("Rent Review Date") Rent: £19,000 per annum, payable quarterly in advance, plus service charge (was £5,440 for 2003)	The Company	Office accommodation

EXECUTED as a DEED and DELIVERED )  
By **EIRX THERAPEUTICS PLC** )  
acting by: )

Director *Elan Murphy* *Finbarr Murphy*

Director/Secretary

EXECUTED as a DEED and DELIVERED )  
By **DR WILLIAM THOMAS MELVIN** )  
in the presence of: )

*Witness*

Signature:

Full name:

Address:

Occupation:

EXECUTED as a DEED and DELIVERED )  
By **DONALD ALEXANDER GRANT** )  
in the presence of: )

*Witness*

Signature:

Full name:

Address:

Occupation:

EXECUTED as a DEED and DELIVERED )

By EIRX THERAPEUTICS PLC )

acting by: )

Director *Elan Murphy* *Finbarr Murphy*

Director/Secretary *J. H. M.*

IAN M HAYES CEO

EXECUTED as a DEED and DELIVERED )

By DR WILLIAM THOMAS MELVIN )

in the presence of: )

*Witness*

Signature:

Full name:

Address:

Occupation:

EXECUTED as a DEED and DELIVERED )

By DONALD ALEXANDER GRANT )

in the presence of: )

*Witness*

Signature:

Full name:

Address:

Occupation:

EXECUTED as a DEED and DELIVERED )  
By EIRX THERAPEUTICS PLC )  
acting by: )

Director

Director/Secretary

EXECUTED as a DEED and DELIVERED )  
By DR WILLIAM THOMAS MELVIN ) *William T. Melvin*  
in the presence of: )  
Witness *C. P. D.*

Signature:

Full name: COLIN MATHIESON TELFER

Address: 122 LAMOND PLACE  
ABERDEEN AB25 3UT

Occupation: BUSINESS DEVELOPMENT MANAGER  
AVIATION LTD.

EXECUTED as a DEED and DELIVERED )  
By DONALD ALEXANDER GRANT ) *D. Grant.*  
in the presence of: )

Witness

Signature: *C. P. D.*

Full name: COLIN MATHIESON TELFER

Address: 122 LAMOND PLACE  
ABERDEEN AB25 3UT

Occupation: BUSINESS DEVELOPMENT MANAGER,  
AVIATION LTD.