

**NYXOAH SA**

Rue Edouard Belin 12

B-1435 Mont-Saint-Guibert

VAT: BE 0817.149.675

Register of legal entities Brabant Wallon

(hereinafter the "**Company**")

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**MINUTES OF THE ANNUAL SHAREHOLDERS' MEETING HELD ON 14 JUNE 2023**

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These minutes are the report of the decisions taken during the annual shareholders' meeting of the Company held on 14 June 2023 at 2 p.m. CET at Rue Edouard Belin 12, 1435 Mont-Saint-Guibert, Belgium.

**OPENING OF THE MEETING AND COMPOSITION OF THE BUREAU**

The annual shareholders' meeting was opened at 2 p.m. CET by Mr. Olivier Taelman, CEO, who chairs the meeting.

In accordance with the Company's articles of association, the Chairman has designated Mrs. An Moonen, General Counsel of the Company, as secretary and teller of the meeting.

The bureau consists of the Chairman and the secretary/teller.

The Chairman notes that (i) the bureau has been able to identify the persons participating at the annual shareholders' meeting remotely, and (ii) the connection provided through video conferencing enables the remote participants to directly, virtually and in real time take note of the discussions during the shareholders' meeting and to ask questions on all the agenda items on which the annual shareholders' meeting is required to take a decision. It should be noted that the videoconference does not qualify as an electronic communication tool to attend and vote at the shareholders' meeting as referred to in Article 7:137 of the Belgian Code of Companies and Associations, but will be an extra facility for securities holders to follow the annual shareholders' meeting.

There have been no technical problems and incidents that have prevented or disrupted electronic participation in the shareholders' meeting.

## AGENDA OF THE ANNUAL SHAREHOLDERS' MEETING

The Chairman notes that this annual shareholders' meeting was convened with the following agenda:

- 1 Acknowledgement and discussion of:
  - a. the statutory annual accounts for the financial year ended on December 31, 2022;
  - b. the consolidated financial statements for the financial year ended on December 31, 2022;
  - c. the annual report of the board of directors on the statutory annual accounts for the financial year ended on December 31, 2022;
  - d. the annual report of the board of directors on the consolidated financial statements for the financial year ended on December 31, 2022;
  - e. the statutory auditor's report on the statutory annual accounts for the financial year ended on December 31, 2022; and
  - f. the statutory auditor's report on the consolidated financial statements for the financial year ended on December 31, 2022.

- 2 Approval of the statutory annual accounts for the financial year ended on December 31, 2022 and the proposed allocation of the result

Proposed decision: *The shareholders' meeting decides to approve the annual accounts for the financial year ended on December 31, 2022 and the allocation of the result as proposed by the board of directors.*

- 3 Discharge of directors

Proposed decision: *The shareholders' meeting decides to grant discharge to each of the directors who was in office during the financial year ended on December 31, 2022 (including Mr. Donald Deyo, Mr. Jan Janssen and Mr. Raymond Cohen who resigned as directors in 2022) for the performance of their mandate during that financial year.*

- 4 Discharge of the statutory auditor

Proposed decision: *The shareholders' meeting decides to grant discharge to the statutory auditor who was in office during the financial year ended on December 31, 2022 for the performance of his mandate during that financial year.*

- 5 Acknowledgement and approval of the remuneration report

Proposed decision: *The shareholders' meeting decides to approve the remuneration report.*

- 6 Acknowledgement and approval of the amended remuneration policy

Upon the recommendation of the remuneration committee, the board of directors proposes to amend the remuneration policy of the Company to include in the remuneration policy the

justification for deviating from provision 7.12 of the 2020 Belgian Code on Corporate Governance (the “2020 Code”) which requires the board to include, in the contracts with the CEO and other members of executive management, provisions that would enable the Company to recover variable remuneration paid, or withhold the payment of variable remuneration, and specify the circumstances in which it would be appropriate to do so, insofar as enforceable by law.

The board of directors believes that this provision of the 2020 Code is not appropriate and adapted to take into account the realities of companies in the life sciences industry that are still in a development phase nor considers that it is necessary to apply claw-back provisions as (i) the pay-out of the short-term variable remuneration, based on the achievement of one or more individual objectives and one or more Company objectives as set by the board of directors, is paid only upon achievement of those objectives, and (ii) the Company does not apply any other performance-based remuneration or variable compensation.

Furthermore, the ESOP warrant plans set up by the Company contain bad leaver provisions that can result in the unexercised share options, whether vested or not, automatically and immediately becoming null and void if the agreement or other relationship between the holder and the (relevant subsidiary of the) Company is terminated for “cause”. Notwithstanding the Company’s position that warrants are not to be qualified as variable remuneration (when not depending on performance criteria), the board of directors is of the opinion that such bad leaver provisions sufficiently protect the Company’s interests and that it is therefore currently not necessary to provide for additional contractual provisions that give the Company a contractual right to reclaim any (variable) remuneration from the members of the executive management.

For those reasons, there are no contractual provisions in place between the Company and the members of the executive management that give the Company a contractual right to reclaim from said executives any variable remuneration that would be awarded.

Proposed decision: *The shareholders’ meeting decides to approve the amended remuneration policy.*

## 7 Appointment of director

On January 8, 2023, the board of directors decided to appoint Wildman Ventures LLC (permanently represented by Mr. Daniel Wildman) on a provisional basis (“*cooptation*”) as a director in order to replace Mr. Raymond Cohen in accordance with Article 7:88 of the CCA and article 13 of the Company’s articles of association. Based on the information made available by Mr. Daniel Wildman, it was determined that both Wildman Ventures LLC and Mr. Daniel Wildman satisfy the applicable requirements for Wildman Ventures LLC (permanently represented by Mr. Daniel Wildman) to be appointed as an independent director in accordance with Article 7:87 of the CCA and provision 3.5 of the 2020 Belgian Corporate Governance Code. Mr. Daniel Wildman also explicitly declared that neither he nor Wildman Ventures LLC has any connections with the Company or an important shareholder, which would interfere with their independence. The board of directors recommends that the

appointment of Wildman Ventures LLC (permanently represented by Mr. Daniel Wildman) as independent director be confirmed and that Wildman Ventures LLC (permanently represented by Mr. Daniel Wildman) completes Mr. Raymond Cohen's term of office ending at the annual shareholders' meeting to be held in 2024.

Proposed decision: *The shareholders' meeting decides to confirm the appointment of Wildman Ventures LLC, with address at 12520 Sunnydale Drive, Wellington, FL 33414, USA, and permanently represented by Mr. Daniel Wildman, as an independent director of the Company within the meaning of Article 7:87 of the CCA and provision 3.5 of the 2020 Belgian Corporate Governance Code, completing Mr. Raymond Cohen's term of office ending at the annual shareholders' meeting to be held in 2024. The mandate of Wildman Ventures LLC (permanently represented by Mr. Daniel Wildman) is remunerated as provided for the non-executive (independent) members of the board of directors in the Company's remuneration policy as adopted by the shareholders' meeting and as decided by the annual shareholders' meeting of June 8, 2022.*

### **NOTICES**

The Chairman notes that the convening notices of this annual shareholders' meeting containing the agenda were published at least thirty days prior the shareholders' meeting in:

- the Belgian State Gazette (*Belgisch Staatsblad / Moniteur Belge*) on 12 May 2023; and
- l'Echo on 12 May 2023.

Copies of the publications are submitted to the bureau and will be kept in the files of the Company together with the minutes of this meeting.

The Chairman further records that the convening notice to the annual shareholders' meeting including the agenda was sent, at least thirty days before the annual shareholders' meeting, to the holders of registered shares, the holders of subscription rights, the directors and the statutory auditor in accordance with the Belgian Code of companies and associations.

Further, the Chairman records that the convening notice to this annual shareholders' meeting together with its agenda was available, at least thirty days prior to the annual shareholders' meeting on the Company's website (<https://investors.nyxoah.com/shareholder-information>). A proxy form to allow holders of shares issued by the Company to be represented at the annual shareholders' meeting by a proxyholder, a form for voting by mail, and the documents to be submitted to the shareholders' meeting as referred to in the agenda were also made available on the company's website.

The Company has not received any requests, in accordance with the Belgian Code of companies and associations, from shareholders who alone or together with other shareholders hold at least 3% of the share capital to put additional items on the agenda of this annual shareholders' meeting and/or to table draft decisions in relation to items that have been or were to be included in the agenda.

Consequently, the Chairman states that the annual shareholders' meeting was convened in accordance with articles 7:128 *et seq.* of the Belgian Code of Companies and Associations.

## ATTENDANCE

### 1.1 Attendance list

The registration date of this annual shareholders' meeting was Wednesday 31 May 2023, at midnight (12:00 a.m. CET). In accordance with the applicable legislation, only persons owning securities issued by the Company on the aforementioned registration date shall be entitled to participate and, as the case may be, vote at the annual shareholders' meeting.

An attendance list has been prepared, mentioning (a) the name of all shareholders and holders of subscription rights (remotely) participating in the annual shareholders' meeting in person or by proxy or having voted by mail, (b) where applicable, the identity of the proxyholder, (c) the number of shares and subscription rights with which the relevant shareholders and holders of subscription rights participate in the meeting, (d) whether the relevant shareholder submitted its votes by mail in accordance with the Belgian Code of companies and associations and the articles of association of the Company and as set out in the convening notice for this annual shareholders' meeting, and (e) the documents which indicate that the relevant shareholders and holders of subscription rights owned the shares or subscription rights on the registration date. The attendance list also indicates the directors who are present at the meeting and whether or not the statutory auditor is present. The attendance list has been signed by each shareholder or holder of subscription rights (or their proxyholder) attending the meeting in person (and not participating remotely).

The attendance list is submitted to the bureau, and is subsequently closed, initialed and signed by the members of the bureau. The attendance list, as well as the votes by mail, the certificates with respect to dematerialized shares, the letters with respect to registered shares and the proxy forms that have been validly filed with the Company will be kept in the files of the Company together with the minutes of this meeting.

All holders of securities issued by the Company who are represented at the meeting, included in the aforementioned lists, have complied with the formalities in order to participate in the annual shareholders' meeting in accordance with the Company's articles of association and the Belgian Code of companies and associations and as set out in the convening notice.

### 1.2 Attendance

The Company's share capital amounts to EUR 4,923,807.45, and is represented by 28,661,985 shares, without nominal value, each representing the same fraction of the Company's share capital. The Chairman states that based on the aforementioned attendance list and the verification of the admission to the annual shareholders' meeting, it appears that 17,323,976 shares in total or 60% of the outstanding and existing shares, are present or represented at the meeting.

### 1.3 Quorum and voting

According to the Belgian Code of companies and associations and the Company's articles of association, there is no quorum requirement for the deliberation and voting on the items referred to in the aforementioned agenda of this annual shareholders' meeting. Each of the proposed resolutions

under the respective items included in the aforementioned agenda shall be passed if it is approved by a simple majority of the votes validly cast.

Each share is entitled to one vote.

#### **VERIFICATION OF THE CONVENING AND COMPOSITION OF THE MEETING**

The annual shareholders' meeting acknowledges the aforementioned statements by the Chairman as accurate and therefore determines and confirms that it has been validly convened, is validly constituted, and is authorized to deliberate and vote on the item on the agenda of the meeting.

#### **DELIBERATIONS AND VOTING**

Upon proposal by the secretary, the meeting begins with the deliberation on the items on the agenda.

#### **Submission of Documentation**

The secretary of the meeting submits to the meeting the following documentation that has been mentioned in the first items on the agenda of the meeting:

- the statutory annual accounts for the financial year ended on December 31, 2022;
- the consolidated financial statements for the financial year ended on December 31, 2022;
- the annual report of the board of directors on the statutory annual accounts for the financial year ended on December 31, 2022;
- the annual report of the board of directors on the consolidated financial statements for the financial year ended on December 31, 2022;
- the statutory auditor's report on the statutory annual accounts for the financial year ended on December 31, 2022; and
- the statutory auditor's report on the consolidated financial statements for the financial year ended on December 31, 2022.

The secretary states that these documents have been sent to the directors, the statutory auditor and the holders of securities issued by the Company where required pursuant to the Belgian Code of companies and associations and that they also have been made available to the holders of securities issued by the Company and the public on the Company's website. The documents concerned will be kept in the files of the Company together with the minutes of this meeting.

The meeting takes note of the fact that this documentation has been submitted. The meeting releases the secretary from reading the documentation that has been submitted.

#### **Questions**

The holders of securities of the Company had the right to ask written questions related to items on the agenda of the general shareholders' meeting until the sixth day before the meeting. No written questions were received by any holders of securities of the Company.

## Deliberations and Voting

Subsequently, upon proposal of the secretary, the annual shareholders' meeting proceeds with the deliberation and voting with respect to the respective items on the agenda. The items on the agenda are separately deliberated upon.

### **1 Acknowledgement and discussion of:**

- a. the statutory annual accounts for the financial year ended on December 31, 2022;
- b. the consolidated financial statements for the financial year ended on December 31, 2022;
- c. the annual report of the board of directors on the statutory annual accounts for the financial year ended on December 31, 2022;
- d. the annual report of the board of directors on the consolidated financial statements for the financial year ended on December 31, 2022;
- e. the statutory auditor's report on the statutory annual accounts for the financial year ended on December 31, 2022; and
- f. the statutory auditor's report on the consolidated financial statements for the financial year ended on December 31, 2022.

This agenda item does not require a decision.

### **2 Approval of the statutory annual accounts for the financial year ended on December 31, 2022 and the proposed allocation of the result**

After deliberation, the shareholders' meeting decides to approve the annual accounts for the financial year ended on December 31, 2022 and the allocation of the result as proposed by the board of directors.

#### **The resolution was adopted as follows:**

- Number of shares for which a vote was validly cast: 17,323,976
- Number of votes validly cast: 17,323,976
- Proportion of share capital represented by these votes: 60.44%

of which:

<b>Votes in favour</b>	16,725,476
<b>Votes against</b>	0
<b>Abstentions</b>	598,500

### **3 Discharge of directors**

After deliberation, the shareholders' meeting decides to grant discharge to each of the directors who was in office during the financial year ended on December 31, 2022 (including Mr. Donald Deyo, Mr. Jan Janssen and Mr. Raymond Cohen who resigned as directors in 2022) for the performance of their mandate during that financial year.

**The resolution was adopted as follows:**

- Number of shares for which a vote was validly cast: 17,323,976
- Number of votes validly cast: 17,323,976
- Proportion of share capital represented by these votes: 60.44%

of which:

<b>Votes in favour</b>	16,648,641
<b>Votes against</b>	0
<b>Abstentions</b>	675,335

**4 Discharge of the statutory auditor**

After deliberation, the shareholders' meeting decides to grant discharge to the statutory auditor who was in office during the financial year ended on December 31, 2022 for the performance of his mandate during that financial year.

**The resolution was adopted as follows:**

- Number of shares for which a vote was validly cast: 17,323,976
- Number of votes validly cast: 17,323,976
- Proportion of share capital represented by these votes: 60.44%

of which:

<b>Votes in favour</b>	16,725,466
<b>Votes against</b>	0
<b>Abstentions</b>	598,510

**5 Acknowledgement and approval of the remuneration report**

After deliberation, the shareholders' meeting decides to approve the remuneration report.

**The resolution was adopted as follows:**

- Number of shares for which a vote was validly cast: 17,323,976
- Number of votes validly cast: 17,323,976
- Proportion of share capital represented by these votes: 60.44%

of which:

<b>Votes in favour</b>	15,958,388
<b>Votes against</b>	1,365,588
<b>Abstentions</b>	0

**6 Acknowledgement and approval of the amended remuneration policy**

After deliberation, the shareholders' meeting decides to approve the amended remuneration policy.



**The resolution was adopted as follows:**

- Number of shares for which a vote was validly cast: 17,323,976
- Number of votes validly cast: 17,323,976
- Proportion of share capital represented by these votes: 60.44%

of which:

<b>Votes in favour</b>	15,881,563
<b>Votes against</b>	1,442,413
<b>Abstentions</b>	0

**7 Appointment of director**

After deliberation, the shareholders' meeting decides to confirm the appointment of Wildman Ventures LLC, with address at 12520 Sunnysdale Drive, Wellington, FL 33414, USA, and permanently represented by Mr. Daniel Wildman, as an independent director of the Company within the meaning of Article 7:87 of the CCA and provision 3.5 of the 2020 Belgian Corporate Governance Code, completing Mr. Raymond Cohen's term of office ending at the annual shareholders' meeting to be held in 2024. The mandate of Wildman Ventures LLC (permanently represented by Mr. Daniel Wildman) is remunerated as provided for the non-executive (independent) members of the board of directors in the Company's remuneration policy as adopted by the shareholders' meeting and as decided by the annual shareholders' meeting of June 8, 2022.

**The resolution was adopted as follows:**

- Number of shares for which a vote was validly cast: 17,323,976
- Number of votes validly cast: 17,323,976
- Proportion of share capital represented by these votes: 60.44%

of which:

<b>Votes in favour</b>	16,629,849
<b>Votes against</b>	694,117
<b>Abstentions</b>	10

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There being no further business and since no further items were raised, the meeting is adjourned by the Chairman at 2.40 p.m. CET.

These minutes are signed by the Chairman of the meeting and the other members of the bureau.

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An Moonen  
Secretary

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Olivier Taelman  
Chairman