

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM S-8

**REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933**

NYXOAH SA

(Exact name of registrant as specified in its charter)

Belgium

(State or other jurisdiction of incorporation
or organization)

Not Applicable

(I.R.S. Employer Identification No.)

**Rue Edouard Belin 12
1435 Mont-Saint-Guibert, Belgium**
(Address of principal executive offices)

2022 Warrants Plan
(Full title of the plans)

**Corporation Service Company
1090 Vermont Avenue N.W.
Washington D.C. 20005
United States**

Telephone: +1 800 927 9800

(Name, address and telephone number, including area code, of agent for service)

Copies to:

**Jonathan L. Kravetz, Esq
John T. Rudy, Esq.
Jason S. McCaffrey, Esq.
Mintz, Levin, Cohn, Ferris,
Glovksy & Popeo, P.C.
One Financial Center
Boston, MA 02111
(617) 542 6000**

**Philippe Remels
NautaDutilh
BV/SRL
Chaussée de La Hulpe 120
1000 Brussels, Belgium
+32 2 566 80 00**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Non-accelerated filer ☒

Accelerated filer ☐

Smaller reporting company ☒

Emerging growth company ☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

PART I.

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information specified in Part I of Form S-8 is omitted from this Registration Statement in accordance with the provisions of Rule 428 under the Securities Act and the introductory note to Part I of this Registration Statement. The documents containing the information specified in Part I of Form S-8 will be delivered to the participants in the plan covered by this Registration Statement as specified by Rule 428(b)(1) under the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant with the Securities and Exchange Commission (the “Commission”) are incorporated herein by reference:

(a) [the Registrant’s Annual Report on Form 20-F for the year ended December 31, 2021, filed with the Commission on March 24, 2022;](#)

(b) the Registrant’s Current Reports on Form 6-K furnished to the Commission on [March 17, 2022, March 24, 2022, May 6, 2022, May 10, 2022, June 2, 2022, July 11, 2022, July 19, 2022, August 2, 2022, August 8, 2022, October 24, 2022, November 8, 2022, December 22, 2022](#) and [January 9, 2023](#) (other than portions of the foregoing expressly excluded from incorporation by reference) (No. 001-40552); and

(c) [the description of the Registrant’s Ordinary Shares which is contained in the Registrant’s Registration Statement on Form 8-A \(File No. 001-40552\) filed with the Commission on June 28, 2021, including any amendment or report filed for the purpose of updating such description.](#)

All reports and other documents filed by the Registrant after the date hereof pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be part hereof from the date of filing of such reports and documents (the “Incorporated Documents”).

Any statement contained herein or in any Incorporated Document shall be deemed to be modified or superseded for the purposes of this Registration Statement to the extent that a statement contained in any subsequently filed Incorporated Document modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable

Item 6. Indemnification of Directors and Officers.

Under Belgian law, the directors of a company may be liable for damages to the company in case of improper performance of their duties. The Registrant’s directors may be liable to the Registrant and to third parties for infringement of the Registrant’s articles of association or Belgian company law. Under certain circumstances, directors may be criminally liable.

The Registrant maintains liability insurance for the Registrant’s directors and officers, including insurance against liability under the Securities Act.

The New Belgian Companies Code that entered into force on January 1, 2020, includes a cap on liability for directors (including persons in charge of daily management) for any damages they cause due to mismanagement, including breaches of the articles of association and the New Belgian Companies Code. This liability cap applies towards the company and third parties. For the Registrant, the cap amounts to €12,000,000. The cap applies irrespective of the number of claimants or defendants for the same (set of) facts. However, the cap does not apply to repetitive minor misconduct, serious error or cases of fraud. Furthermore, the cap does not apply to directors' liability under the special liability regimes relating to payment of withholding tax, VAT and social security contributions.

Certain of the Registrant's non-executive directors may, through their relationships with their employers or partnerships, be insured and/or indemnified against certain liabilities in their capacity as members of the Registrant's board of directors.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit Number	Exhibit Description	Incorporated by Reference herein from Form or Schedule	Filing Date	SEC File/ Reg. Number
<u>4.1*</u>	<u>Articles of Association, as amended (English Translation)</u>			
<u>5.1*</u>	<u>Opinion of NautaDutilh BV/SRL</u>			
<u>23.1*</u>	<u>Consent of EY Réviseurs d'Entreprises / EY Bedrijfsrevisoren SRL/BV, independent registered public accounting firm</u>			
<u>23.2*</u>	<u>Consent of NautaDutilh BV/SRL (included in Exhibit 5.1)</u>			
<u>24.1*</u>	<u>Power of Attorney (included on the signature page hereto)</u>			
<u>99.1*</u>	<u>Form of 2022 Warrants Plan (English Translation)</u>			
<u>107*</u>	<u>Filing Fee Table</u>			

*Filed herewith

Item 9. Undertakings.

1. The undersigned Registrant hereby undertakes:

(a) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided, however, that paragraphs (a)(i) and (a)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to section 13 or section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(b) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

2. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

3. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Mont-Saint-Guibert, Belgium, on the 25th day of January, 2023.

NYXOAH SA

By: /s/ Olivier Taelman
Olivier Taelman
Chief Executive Officer

SIGNATURES AND POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that each of the directors and officers of Nyxoah SA, whose signature appears below hereby severally constitutes and appoints Olivier Taelman and Loic Moreau, and each of them singly, his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution in each of them singly, for him and in his name, place and stead, and in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement on Form S-8 of Nyxoah SA, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting to said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done in or about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them or their substitute may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Olivier Taelman Olivier Taelman	Chief Executive Officer and Director (<i>principal executive officer</i>)	January 25, 2023
/s/Loic Moreau Loic Moreau	Chief Financial Officer (<i>principal accounting officer and principal financial officer</i>)	January 25, 2023
/s/ Robert Taub Robert Taub	Chairman of the Board of Directors	January 25, 2023
/s/ Kevin Rakin Kevin Rakin	Director	January 25, 2023
/s/ Jürgen Hambrecht Jürgen Hambrecht	Director	January 25, 2023
/s/ Pierre Gianello Pierre Gianello	Director	January 25, 2023
/s/ Rita Johnson-Mills Rita Johnson-Mills	Director	January 25, 2023
/s/ Virginia Kirby Virginia Kirby	Director	January 25, 2023
/s/ Daniel Wildman Daniel Wildman, acting via Wildman Ventures LLC	Director	January 25, 2023

SIGNATURE OF AUTHORIZED U.S. REPRESENTATIVE OF THE REGISTRANT

Pursuant to the requirements of the Securities Act of 1933, as amended, the undersigned, the duly authorized representative in the United States of Nyxoah SA, has signed this registration statement on Form S-8 on January 25, 2023.

NYXOAH, INC.

By: /s/ Olivier Taelman

Name: Olivier Taelman

Title: Chief Executive Officer, President and Secretary

NYXOAH SA
Rue Edouard Belin 12
B-1435 Mont-Saint-Guibert
Register of legal entities of Walloon Brabant
VAT: BE 0817.149.675

CONSOLIDATED VERSION OF THE ARTICLES OF ASSOCIATION
AS PER SEPTEMBER 30, 2022

TITLE I. LEGAL FORM, NAME, REGISTERED OFFICE, OBJECT AND DURATION

Article 1 LEGAL FORM - NAME

The company has the legal form of a public limited liability company (*naamloze vennootschap/société anonyme*).

The name of the company is “**Nyxoah**”. This name shall always be preceded or followed by the words “société anonyme” or the abbreviation “SA” in French.

Article 2 REGISTERED OFFICE, E-MAIL ADDRESS AND WEBSITE

The registered office of the company is located in the Walloon Region.

The board of directors may transfer the company's registered office, provided the transfer does not result in a change to the language of the articles pursuant to the applicable linguistic rules. Such decision does not require an amendment to the articles of association, unless the company's registered office is transferred to another Region. In this case, the board of directors has the power to amend the articles.

If, due to a transfer of the company's registered office, the language of the articles of association must be changed, only the general shareholders' meeting has the power to take the decision, in accordance with the rules applicable to amendment of the articles of association.

The company may establish, by a simple decision of the board of directors, management offices, subsidiaries or branches in Belgium or abroad.

The company's website is the following: www.nyxoah.com

For purposes of communication as referred to in article 2:31 of the Code of Companies and Associations, the company can be contacted on the following e-mail address: corporate@nyxoah.com.

The board of directors may modify the e-mail address and the website of the company in accordance with the provisions of the Code of Companies and Associations.

Article 3 PURPOSE

The purpose of the company is, both in Belgium and abroad, in its own name and for its own account, the research and development, the manufacturing and the sale of medical devices.

For this purpose, the company may, in any manner, collaborate and participate, or take an interest in other companies, directly or indirectly.

The company may guarantee to secure its own obligations or those of third parties by, among other things, granting a mortgage or pledge over its assets, including its own business assets.

The company may generally carry out all commercial, industrial, financial, movable or real estate transactions which directly or indirectly relate to its purpose or which could facilitate the realisation thereof.

Article 4 TERM

The company is established for an unlimited duration.

TITLE II. CAPITAL – SHARES

Article 5 CAPITAL

The capital amounts to four million four hundred forty thousand sixty-nine euro sixteen cent (EUR 4,440,069.16).

It is represented by twenty-five million eight hundred forty-six thousand two hundred seventy-nine (25,846,279) shares, without nominal value, each representing an equal part of the company's capital.

Article 6 NATURE OF THE SHARES - EXERCISE OF RIGHTS ATTACHED TO SHARES

The shares shall be in registered or dematerialized form, at the discretion of their owner or holder (hereinafter, both the “**Holder**”) and within the limits set by applicable law. The Holder may at any time, at its expense, request the conversion of registered shares into a dematerialized form and vice versa.

The register of all registered shares can be held in electronic form. The board of directors can decide to entrust a third party with keeping and the administration of the electronic register.

The shares are indivisible vis-à-vis the company. If a share belongs to different persons, if the rights attached to a share are divided over different persons, or if different persons hold rights in rem to the same shares, the board of directors may suspend the exercise of the rights attached thereto until one single person has been designated as shareholder vis-à-vis the company and notification thereof has been given to the company. All convocations, notifications and other announcements by the company to the different persons entitled to one share are made validly and exclusively to the designated common representative.

The rights attached to shares that are pledged or subject to usufruct shall be exercised by the owner-pledgor and the person having the usufruct, respectively, unless agreed otherwise in an agreement signed by all relevant parties and notified to the company.

Article 7 AUTHORIZED CAPITAL

The board of directors is authorised to increase the capital of the company on one or several occasions in accordance with the Code of Companies and Associations by a maximum aggregate amount of three million six hundred eighty thousand two hundred ninety-seven euro thirty-nine cent (EUR 3,680,297.39).

This authorisation is valid for a period of five years as from the date of publication in the Annexes to the Belgian State Gazette of an extract of the minutes of the extraordinary shareholders' meeting of the company held on 7 September 2020.

Every capital increase decided upon by the board of directors in the context of authorised capital shall be effected in accordance with the modalities to be determined by the board of directors, and may amongst others be achieved (i) by contributions in cash or in kind, or a combination of both, (ii) by capitalisation of reserves, whether available or unavailable for distribution, and capitalisation of issue premiums, (iii) with or without the issuance of new shares (at, above or below the par value and with or without issue premium), with or without voting rights, that will have the rights as will be determined by the board of directors, or (iv) with issuance of convertible bonds or warrants, bonds with warrants or other securities.

The board of directors is authorized, when exercising its powers within the framework of the authorized capital, to restrict or cancel, in the interest of the company, the preferential subscription rights of each shareholder, and - as far as needed and applicable - of each holder of subscription rights issued by the Company. This restriction or cancellation of the preferential subscription rights can also be done in favor of members of the personnel of the company or of its subsidiaries, or in favor of one or more persons other than members of the personnel of the company or of its subsidiaries.

In the event of a capital increase decided by the board of directors within the framework of the authorised capital, any issue premiums shall be booked on one or more separate reserve accounts "issue premiums".

The board of directors is also expressly authorised to increase the company's capital after having been notified by the FSMA that the company is the subject of a public takeover bid. This authorisation is valid with respect to the public takeover offers of which the FSMA has notified the company no later than three years following 7 September 2020.

The board of directors is also authorized, with the right of substitution, to amend the company's articles of association after each capital increase that has occurred within the framework of the authorised capital, in order to align them with the new situation of the capital and the shares.

Article 8 CALLS FOR PAYMENT

The board of directors independently decides on calls for payment on shares which have not been entirely liberated.

Each payment called is accounted to all of the shares of which the shareholder is the owner.

The board of directors can authorise shareholders to pre-pay uncalled capital on their shares. In this case, the board of directors will fix the terms pursuant to which these prepayments will be permitted. The prepayments will qualify as advances.

Any shareholder who is in default of payments called, automatically has to pay the company interest at the statutory rate increased by two percent, as from the date such payment call was originally due and the voting rights attached to the relevant shares shall be suspended automatically for as long as the relevant payments have not been made.

The board of directors can, if such failure is not remedied within one month of a notice of default (or such other period as the board of directors may decide), cause such shares to be sold on the stock exchange, with or without the assistance of an intermediary, without prejudice to the right to claim from such shareholder any amount that remains outstanding plus such damages and interests as may apply.

Article 9 CAPITAL REDUCTION

The capital of the company can be reduced in accordance with the applicable legal provisions.

Article 10 ACQUISITION, PLEDGE AND DISPOSAL OF OWN SHARES

The company may acquire, pledge and dispose of its own shares in accordance with the applicable legal provisions.

Article 11 OTHER SECURITIES

The company is authorised to issue all securities not prohibited by or pursuant to the law. These securities may be in registered form or dematerialised.

Article 12 DISCLOSURE OF MAJOR SHAREHOLDINGS

Without prejudice to the applicable legal provisions relating to the disclosure of significant shareholdings, every natural person or legal entity that acquires, directly or indirectly, securities of the company granting voting rights, whether they represent the company's capital or not, must notify the board of directors of the company and the FSMA of the number and percentage of existing voting rights he or she holds, whether directly or indirectly, or whether alone or in concert with one or several other persons, as a result of the acquisition, if the voting rights attached to the securities granting voting rights reach or exceed 3%, 5%, 10%, 15%, 20%, or any further multiple of 5% of the total outstanding voting rights. Without prejudice to the applicable legal provisions relating to the disclosure of significant shareholdings, the same notification is required when, as a result of the transfer of securities, the number of voting rights drops below one of the aforementioned thresholds.

TITRE III. MANAGEMENT AND AUDIT

Article 13 COMPOSITION OF THE BOARD OF DIRECTORS

The company is managed by a board of directors composed of at least three members, natural or legal entities, who need not be a shareholder.

Directors are appointed by the general shareholders' meeting. The duration of their mandate may not exceed four years. Directors whose mandate came to an end may be reappointed.

In the event of one or more vacancies, the remaining directors, at a board meeting, shall be empowered to provisionally fill the vacancies, until the next general shareholders' meeting. The first general shareholders' meeting that follows shall decide whether to confirm the appointment of the co-opted director(s).

The general shareholders' meeting may remove a director from office at any time, with immediate effect and without cause.

When a legal entity is appointed as director of the company, such legal entity must appoint a permanent representative in accordance with the applicable legal provisions.

Article 14 CHAIRPERSON OF THE BOARD OF DIRECTORS

The board of directors elects a chairperson from among its members. The chairperson of the board of directors may elect a vice-chairperson. If no chairperson has been appointed or if he or she is absent or hindered, the meeting shall be chaired by the vice-chairperson, if appointed and not absent or hindered, or otherwise by the oldest director.

Article 15 REMUNERATION

The general shareholders' meeting can decide whether or not the mandate of the directors is remunerated by awarding a fixed and/or variable remuneration.

The amount thereof is determined by the general shareholders' meeting and will be borne by the general expenses of the company. The general shareholders' meeting can determine the aggregate amount of the remuneration allocated to the directors, who shall then divide this amount among themselves.

Unless the general shareholders' meeting decides otherwise, the mandate of a director is deemed not to be remunerated.

The board of directors is authorised to award an extraordinary remuneration to directors who are charged with special functions or assignments. This extraordinary remuneration shall be booked as company expense.

The restrictions provided for in Article 7:91 of the Code of Companies and Associations shall not apply to the Company in respect of any persons falling within the scope of these provisions (whether directly, pursuant to Article 7:121 of the Code of Companies and Associations, or otherwise).

Article 16 MEETINGS

The board of directors shall meet as frequently as the interest of the company requires. The board of directors shall meet when convened by the chairperson or, in case he or she is absent or hindered, a vice-chairperson, if any, or, in the absence the latter, by a director appointed by the other directors. A board meeting must be called upon the request of two or more directors.

Unless all directors agree otherwise, convening notices must be given at least four (4) calendar days before the board meeting, except in case of emergency. In case of emergency, the convening notice must be given with not less than two (2) business days' notice, and the reasons for the emergency should be specified in the notice.

Convening notices are valid if delivered by ordinary letter, e-mail or any other means of communication specified in Article 2281 of the Belgian Civil Code. Board meetings are held at the registered office or at the place indicated in the convening notice. Each director can instruct, by means of an ordinary letter, e-mail or any other means of communication or medium bearing his or her signature (including an electronic signature), another director to represent him or her it at a specified board meeting and to vote in his or her place. In that case, the instructing director shall be deemed present. A director can represent multiple members of the board of directors and can, in addition to his or her own vote, cast as many votes for which he or she has a proxy from other directors.

Board meetings can be held by using any telecommunication means permitting a joint discussion, such as telephone conferencing or video conferencing. Directors taking part in a meeting held by telephone conferencing or video conference shall be deemed present at the meeting.

At least half of the directors need to be present or represented to have a quorum. If the quorum is not reached, each director shall be entitled to convene a second meeting that may validly deliberate and decide on the items that were on the agenda of the first meeting regardless of the number of directors present or represented, provided that at least two (2) directors are present. The convening notice for such second board meeting needs to be sent at least seven (7) calendar days prior to the date of the second meeting, unless in case of emergency the reasons of which should then be specified in the convening notice.

The board of directors can only validly deliberate on items that are not mentioned on the agenda, if all directors are present or represented at the board meeting and unanimously consent to do so. This consent is assumed to have been given if no objection is recorded in the minutes.

Board resolutions can also be adopted by unanimous written consent of all directors. This written procedure cannot be used to establish the annual financial statements or to use the authorised capital. Unless specified otherwise, the resolutions adopted by unanimous written consent shall be deemed to have been taken at the seat of the company on the date that they are signed by the last director.

Article 17 DELIBERATIONS AND RESOLUTIONS

Unless otherwise provided in these articles of association, the board resolutions shall be adopted by a simple majority of the votes cast by the directors present or represented at the board meeting, and in case of abstentions, by a simple majority of the votes of the other directors present or represented at the board meeting.

Each director has one (1) vote, but can, in addition to his or her own vote, cast as many votes for which he or she has a proxy from other directors.

In case votes are tied, the person chairing the board meeting shall have a casting vote.

Article 18 CONFLICTS OF INTEREST

In the event that a director has a direct or indirect interest of a proprietary nature that is opposed to that of a transaction on which the board of directors is called upon to pronounce or a decision that the board of directors is called upon to take, the rules and formalities provided by law shall apply. In such case, the conflicted director(s) shall be disregarded for the collation of the quorum and the votes. In case all directors or all but one director have such conflict of interest, the relevant decision or transaction should be submitted to the general meeting of shareholders. In case of approval by the general meeting of shareholders, the decision or transaction can be implemented by the board of directors.

Article 19 POWERS OF THE BOARD OF DIRECTORS – DAILY MANAGEMENT

The board of directors is empowered with the most extensive powers to perform all acts necessary or useful to achieve the company's purpose, with the exception of those reserved by law or the articles of association to the general shareholders' meeting.

The board of directors is authorised to delegate the day-to-day management of the company and the representation as far as such management is concerned to one or more persons, directors or not. In case these persons are directors, they are called “managing directors”. In case the daily management of the company is delegated to more than one person, these persons will form a collegial organ.

Unless the board of directors decides otherwise, the mandate of a person in charge with daily management is deemed not to be remunerated. The restrictions provided for in Article 7:121 juncto 7:91 of the Code of Companies and Associations shall not apply to persons entrusted with daily management, nor to any other leading persons the company in respect of any persons, for all persons falling within the scope of these as meant in Article 3:6 §3 the Code of Companies and Associations.

The board of directors can delegate a part of its powers to one or more persons who need not to be directors. It will determine their powers and remuneration. It can dismiss them and, if necessary, replace them.

The persons in charge of the daily management can give special proxies to any agent within the limits of their own powers.

The board of directors can draw up internal rules.

Article 20 COMMITTEES OF THE BOARD OF DIRECTORS

The board of directors shall have the power and, to the extent required by applicable law, the obligation to establish, one or more advisory committees in its midst and under its responsibility, such as (but not limited to) an audit committee, a nomination committee and a remuneration committee (which can be combined with the nomination committee).

The board of directors determines the composition and the missions of these committees and may draw up their terms of reference.

Article 21 MINUTES

The board resolutions are recorded in minutes, which are kept at the registered office of the company, and are signed by the director that chaired the meeting and the directors that wish to do so..

Copies or extracts of the minutes, to be produced in court or elsewhere, are signed by the chairperson of the board of directors, by two directors, or as the case may be, by any person(s) to whom daily management powers have been delegated, or by a special proxy holder.

Article 22 REPRESENTATION OF THE COMPANY

Notwithstanding the general powers of representation of the board of directors as a collegial body, the company shall be validly represented, for all deeds and acts, including those involving a public or ministerial official as well as before a court, as claimant or defendant:

- by two directors, acting jointly;
- within the scope of the daily management, by any person to whom such daily management has been delegated, and should the daily management be exercised by a collegial organ, by two of its members;
- by any other person acting within the mandate granted to such person by the board of directors or a person in charge of the daily management.

Third parties cannot demand a prior decision of the board of directors as proof of the special powers of representation of these persons.

Article 23 AUDIT

The financial position, the annual financial statements and the compliance of the transactions to be reflected in the annual financial statements, pursuant to the law and the articles of association shall be audited by one or more statutory auditors. The statutory auditors are appointed among the members of the Institute of Certified Auditors (*Institut des Réviseurs d'Entreprises/Instituut der Bedrijfsrevisoren*). The statutory auditors are appointed and remunerated in accordance with the relevant legal provisions.

The general meeting shall determine the number of auditors and fix their emoluments. In case more than one auditor has been appointed, they will act as a collegial body. They may divide their audit duties between them.

The appointment of retiring auditors which have not been re-appointed shall terminate after the closing of the annual shareholders' meeting.

TITLE IV. GENERAL SHAREHOLDERS' MEETING

Article 24 MEETING

The annual shareholders' meeting is held on the second Wednesday of the month of June, at 2:00 p.m. CET. Should this day be a public holiday, even if it is only a public holiday in one of the communities of Belgium, the meeting shall take place on the next working day at the same time, not including Saturday or Sunday.

The annual, special and extraordinary general shareholders' meetings are held at the place and time indicated in the convening notices. They can be held at a different place in Belgium than at the registered office of the company.

One or more shareholders holding at least ten (10) % of the company's capital may, in accordance with the Code of Companies and Associations, request that a general shareholders' meeting be held in order to submit one or more proposals. Notices shall be sent within the time limits and in accordance with the provisions of the Code of Companies and Associations.

One or more shareholders holding at least three (3) % of the company's capital may, in accordance with the Code of Companies and Associations, request the inclusion of items on the agenda of any general shareholders' meeting and submit proposals for resolutions on the items included or to be included on the agenda.

Article 25 CONVENING NOTICES

General shareholders' meetings shall be convened in accordance with the relevant legal provisions. The convening notice shall contain the agenda for the meeting, as well as the information required by applicable law.

The convening notices drafted by the board of directors can be validly signed in its name by a person to whom the daily management of the company has been delegated.

The persons participating in or represented at a general shareholders' meeting are considered to have been validly convened. They can also, before or after the general shareholders' meeting that they did not attend, waive the convening notice, or any irregularity in the convening notice, in writing.

The convening notices are assumed to be given on the day they are sent out.

Article 26 ADMISSION TO THE GENERAL SHAREHOLDERS' MEETING

The right to participate in a general shareholders' meeting and to vote is only granted based on an accounting registration of the shares on the name of the shareholder, on the fourteenth (14th) day before the general shareholders' meeting, at midnight (CET), either by their registration in the register of registered shares of the company, or by their registration on the accounts of a recognized account holder or of a clearing institution, irrespective of the number of shares the shareholder possesses at the day of the general shareholders' meeting.

The day and time referred to in the first paragraph of this article form the record date.

The shareholder notifies the company, or the person appointed by the company for this purpose, ultimately on the sixth (6th) day before the date of the general shareholders' meeting, that he wants to participate in the general shareholders' meeting. The recognized account holder or the clearing institution provides the shareholder with a certificate evidencing the number of dematerialized shares registered in the shareholder's name on his accounts on the record date, for which the shareholder has indicated his desire to participate in the general shareholders' meeting.

In a register designated by the board of directors, the name and address or registered office of each shareholder who has notified the company of its intention to participate in the general shareholders' meeting are noted, as well as the number of shares he or she possessed on the record date and for which he or she has indicated to be participating in the general shareholders' meeting, and the description of the documents demonstrating that he or she was in possession of the shares on said record date.

The holders of profit sharing certificates (*parts bénéficiaires/winstbewijzen*), non-voting shares, bonds, warrants or other securities issued by the company, as well as the holders of certificates issued with the collaboration of the company and representing securities issued by the company (if any such exist), may attend the general shareholders' meeting with advisory vote insofar permitted by law. They may only participate in the vote in the cases determined by law. They are in any event subject to the same formalities as those imposed on the shareholders with respect to notice of attendance and admission, and the form and submission of proxies.

Article 27 REPRESENTATION

Each shareholder who is entitled to participate in the general shareholders' meeting, can be represented at said general shareholders' meeting by a proxy holder who has been granted a written proxy. Such proxies must be granted in accordance with the applicable law and/or as set out (in accordance with the applicable law) in the convening notice, as the case may be.

The holders of a proxy must comply with the relevant legal provisions concerning proxies for general shareholders' meetings, as relevant. In particular, the proxy must be signed by the shareholder and be sent to the company's e-mail address or the e-mail address specifically indicated in the notice of the meeting, at the latest six (6) days before the general shareholders' meeting.

The board of directors can establish a template for the proxies and make them available to the security holders.

Article 28 BUREAU

Each general shareholders' meeting shall be chaired by the chairperson of the board of directors, or, in case he or she is absent or hindered, a vice-chairperson of the board of directors, if any, or, in the absence of the latter, a director appointed by the board of directors or its chairperson, or in the absence of such appointment, by another director present or another person appointed by the directors present.

Unless otherwise decided by the shareholders present and represented at the general shareholders' meeting, the chairperson will appoint a secretary, who does not need to be a shareholder or a proxyholder of a shareholder.

In the event the number of participants in the general shareholders' meeting so requires, the chairperson of the general shareholders' meeting will appoint one or more tellers from among the shareholders or their proxy holders.

The chairperson of the general shareholders' meeting, the secretary and the tellers, if any, together make up the bureau of the general shareholders' meeting.

The chairperson can assemble the bureau prior to the general shareholders' meeting and, as such, the assembled bureau can proceed with the verification of the proxies granted to the participants of the general shareholders' meeting prior to the opening of the meeting.

Article 29 NUMBER OF VOTES

Each share carries one vote, without prejudice to the cases in which the voting rights are suspended pursuant to these articles of association, the Code of Companies and Associations or any other applicable legislation.

Article 30 REMOTE VOTING BEFORE THE GENERAL MEETING

When provided for in the convocation notice to the general meeting, shareholders shall be authorised to vote remotely, by correspondence or via the company's website, using a form prepared and provided by the company. This form must indicate the date and place of the general shareholders' meeting, the shareholder's name, domicile or registered office, the number of votes which the shareholder wishes to cast at the general shareholders' meeting, the type of shares held and the items on the agenda for the meeting (including proposed resolutions) and include a space allowing the shareholder to vote for or against each resolution or to abstain as well as the deadline by which the voting form must reach the company. It shall expressly stipulate that the form must be signed and reach the company no later than the sixth (6th) day prior to the general shareholders' meeting. Digital votes via the company's website can be cast up to the day prior to the general meeting.

Article 31 DELIBERATIONS

The general shareholders' meeting cannot deliberate on items that are not mentioned in the agenda, unless all shareholders are present or represented at the meeting and they unanimously decide to deliberate on these items.

Except when otherwise provided for by legal provisions or by the articles of association, the resolutions are taken by simple majority of the votes cast, irrespective of the number of shares represented at the general shareholders' meeting, except in the cases the law prescribes an attendance quorum. Blank and invalid votes are not taken into account to determine the votes cast.

The articles of association may only be amended by a majority of at least three quarters of the votes cast or, for amendments to the purpose of the company, four fifths of the votes cast, excluding abstentions.

The votes cast during the general shareholders' meeting are taken by raising hands or by calling off names, unless the general shareholders' shareholders' meeting decides otherwise by simple majority of the votes cast.

An attendance list indicating the names of the shareholders and the number of shares held by each shall be signed by each shareholder or his or her proxyholder before entering the general shareholders' meeting.

Article 32 ADJOURNMENTS

Without prejudice to the right to adjourn pursuant to the applicable legal provisions, the board of directors has the right to adjourn the deliberations of each annual general meeting by five (5) weeks, even during the meeting itself.

Article 33 MINUTES

The minutes of the general shareholders' meeting shall be signed by the members of the bureau and by those shareholders who ask to do so.

The minutes of the general shareholders' meeting shall mention for each resolution the number of shares for which votes have been cast validly, the percentage of the capital represented by these shares, the total number of votes validly cast, and the number of votes cast in favour of against each resolution, as well as the number of abstentions, if any. The company shall publish this information on its website within fifteen (15) calendar days after the general shareholders' meeting.

Copies or extracts from the **minutes** are signed by two directors, acting jointly, or by a managing director.

Article 34 REMOTE PARTICIPATION

If so provided in the convening notice for the general shareholders' meeting, each holder of shares, convertible bonds, warrants or certificates issued with the collaboration of the company can participate remotely to the general shareholders' meeting via electronic means of communication made available by the company, unless applicable law does not permit it.

As far as compliance with quorum and majority requirements is concerned, those who participate in this way to the general shareholders' meeting are considered to be present at the place where the meeting is held.

The aforementioned electronic means of communication must enable the company to verify the capacity and identity of the holder of the securities. The modalities to verify the capacity and identity of the person wishing to participate remotely are determined by the board of directors.

The holder of securities that wants to make use of this should at least be able to follow the deliberations directly, simultaneously and continuously during the general shareholders' meeting and shareholders need to be able cast their vote on each item on which the meeting needs to express itself.

TITLE V. ACCOUNTING YEAR – DISTRIBUTIONS OF PROFITS – (INTERIM) DIVIDENDS

Article 35 ACCOUNTING YEAR

The financial year starts on the first (1) of January and ends on the thirty-first (31) of December each year.

At the end of each financial year the board of directors draws up an inventory as well as the annual accounts.

To the extent required by law, the directors also draw up an annual report in which they account for their management. This report contains a comment on the annual accounts in which a true overview is given of the operations and of the position of the company, as well as the information prescribed by the Code of Companies and Associations.

Article 36 DISTRIBUTION OF PROFITS

The net profits of the financial year are distributed in accordance with the applicable legal provisions.

Five (5) percent of the company's net profit is deducted each year to form a legal reserve. Once this legal reserve amounts to one tenth (1/10th) of the capital, such deduction is no longer required.

The general shareholders' meeting allocates the balance of the net profit by a simple majority of the votes upon the proposal of the board of directors.

Article 37 INTERIM DIVIDEND

The board of directors can, at its own responsibility, declare the payment of interim dividends, in the cases and within the time limits provided by law.

Article 38 DIVIDENDS

The dividends will be paid at the times and places as determined by the board of directors. All dividends not claimed within five years are time-barred and remain acquired by the company. They will be allocated to the legal reserve.

TITLE VI. DISSOLUTION AND LIQUIDATION

Article 39 APPOINTMENT AND POWERS OF LIQUIDATORS

If the company is wound up, for any reason and at any time whatsoever, liquidation shall be carried out by a liquidator or liquidators appointed by the general shareholders' meeting.

If it appears from the report summarising the company's assets and liabilities prepared in accordance with the Code of Companies and Associations that all creditors cannot be satisfied in full, the appointment of the liquidator(s) in the articles of association or by the general shareholders' meeting must be submitted to the president of the business court, unless it appears from this summary that the company only has debts to its shareholders and all shareholders who are creditors of the company confirm in writing their agreement with the appointment.

In the absence of the appointment of a liquidator or liquidators, the members of the board of directors shall be considered, by operation of law, as liquidators with regard to third parties, without however possessing the powers which the law and the articles of association grant to the liquidator appointed in the articles, by law or by the court, with respect to liquidation transactions.

The general shareholders' meeting shall determine the liquidators' fees, where appropriate.

The company's liquidation shall be concluded in accordance with the provisions of the Code of Companies and Associations.

Article 40 ALLOCATION OF THE LIQUIDATION PROCEEDS

Following settlement of all debts, charges and costs of the liquidation, the net assets are first used to pay back, in cash or in kind, the fully paid-up and not yet paid back amount of the shares.

The balance, as the case may be, is divided in equal parts among all shares.

If the net proceeds are not sufficient to pay back all shares, the liquidators will first pay back these shares that are paid-up to a higher extent until they are at a level equal to the shares that are paid-up to a lesser extent, or they call for an additional paying-up of capital for the latter shares.

TITLE VII. GENERAL PROVISIONS

Article 41 ELECTION OF DOMICILE

Any holder of registered securities domiciled abroad shall be required to elect domicile in Belgium for all matters relating to the execution of these articles of association. In the absence of such an election of domicile, he or she is deemed to have elected domicile at the registered office of the company, where all notifications, notices and summonses and convocations can be validly served upon them.

Holders of registered shares must notify the company of any change of domicile. In the absence of such a notification, all communications, convocations or notifications will be validly made at their last known address.

The directors, the persons in charge of the daily management, the auditors and the liquidators, domiciled abroad, shall be deemed, throughout their term of office, to have elected domicile at the registered office of the company at which all judicial acts are validly sent to them.

Each director, person in charge of the daily management, auditor or liquidator may elect domicile at the registered office of the company for all matters relating to the exercise of their mandate. This election of domicile is enforceable against third parties in accordance with the legal provisions.

Article 42 CHOICE OF FORUM

All disputes relating to corporate matters and the implementation of these articles of association between the company, its shareholders, holders of bonds, holders of warrants, or holders of other securities or certificates issued by or with the cooperation of the company, its directors, statutory auditors, or liquidators, shall be subject to the exclusive jurisdiction of the courts of the jurisdiction of the registered office of the company, unless otherwise determined by the applicable law.

Article 43 COMMON LAW

Any provisions of these articles of association that are contrary to any other applicable legislation shall be considered null and void. The invalidity of an article or part of an article in these articles of association shall have no effect on the validity of the remaining provisions (or parts thereof).

Article 44 APPLICABLE LAW

For all matters that are not expressly regulated in these articles of association, or for the legal provisions from which would not be deviated validly in these articles of association, the provisions of the Code of Companies and Associations and the other provisions of Belgian law apply.

AVOCATS

Chaussée de La Hulpe 120
1000 Brussels
T +32 2 566 8000
F +32 2 566 8001



Brussels, 25 January 2023

Nyxoah SA
Rue Edouard Belin 1
1435 Mont-Saint-Guibert
Belgium

(the “Addressee”)

Ladies and Gentlemen,

We have acted as Belgian legal counsel to Nyxoah SA, a limited liability company organized and existing under the laws of the Kingdom of Belgium, with its statutory seat at rue Edouard Belin 12, 1435 Mont-Saint-Guibert, and registered under company number 0817.149.675 (the “**Company**”), on certain legal matters of Belgian law in connection with the Company's Registration Statement on Form S-8 (the “**Registration Statement**”) filed on the date hereof with the Securities and Exchange Commission (the “**SEC**”) under the Securities Act of 1933, as amended (the “**Securities Act**”), in respect of up to 700,000 ordinary shares without nominal value of the Company to be issued upon the exercise of outstanding warrants under the warrant plan 2022 of the Company (the “**Plan**”). The amount of 700,000 ordinary shares to be issued under the Plan are referred to as the “**Shares**”.

This opinion letter is solely given for the information of the Addressee. It may only be relied upon in connection with the Registration Statement by the Addressee. This opinion letter is strictly limited to the matters stated in it and may not be read as extending by implication to any matters not specifically referred to in it. Nothing in this opinion letter should be taken as expressing an opinion in respect of any representations or warranties, or other information, contained in any document.

The section headings used in this opinion letter are for convenience or reference only and are not to affect its construction or be taken into consideration in its interpretation.

This opinion letter sets out our opinion on certain matters of Belgian law as at today's date and the opinions and statements expressed in this opinion letter are limited in all respects to and are to be construed and interpreted in accordance with, Belgian law.

Unless otherwise specifically stated herein, we do not express any opinion on tax law, on public international law or on the rules promulgated under or by any treaty organisation, except insofar as such rules are directly applicable in Belgium, nor do we express any opinion on Belgian or European competition law. No undertaking is assumed on our part to revise, update or amend this opinion letter in connection with or to notify or inform you of, any developments and/or changes under Belgian law subsequent to today's date.

Amsterdam
Brussels
London
Luxemburg
New York
Rotterdam

NautaDutilh, société civile sous la forme d'une SRL, RPM Bruxelles - TVA: BE 0479.249.878.

As Belgian lawyers we are not qualified or able to assess the true meaning and purport of the terms of the Registration Statement under any applicable law other than Belgian law and the obligations of the parties thereto, and we have made no investigation of such meaning and purport. Our review of the Registration Statement has therefore been limited to the terms of such documents as they appear to us on their face.

In this opinion letter, legal concepts are expressed in English terms. The Belgian legal concepts concerned may not be identical in meaning to the concepts described by the English terms as they exist under the law of other jurisdictions. In the event of a conflict or inconsistency, the relevant expression shall be deemed to refer only to the Belgian legal concepts described by the English terms. As far as the word "non-assessable" used in this opinion letter is concerned, this word has no legal meaning under the laws of Belgium and is used in this opinion letter only to mean that, with respect to the issuance of the Shares of the Company, subject to the terms and conditions of the Plan and the terms of issuance of the Shares, (i) the initial beneficiary of the Warrants will have no obligation to pay to the Company any additional amount in excess of the exercise price and (ii) the holders of the Shares will not be liable, solely because of their status as a holder of the Shares, for additional calls of funds on the Shares by the Company or its creditors.

In rendering the opinions expressed herein, we have exclusively reviewed and relied upon the documents set out in Exhibit A to this opinion letter (the "**Documents**"), together with such other publicly available documents as we have considered it necessary or desirable. We have not investigated or verified any factual matter disclosed to us in the course of our review, nor do we opine on the accuracy of representations and warranties contained in documents reviewed by us. For certain matters of fact, we have relied, without independent verification, on a certificate of the secretary of the Company.

The opinions expressed in this opinion letter are to be construed and interpreted in accordance with Belgian law. The competent courts at Brussels, Belgium have exclusive jurisdiction to settle any issues of interpretation or liability arising out of or in connection with this opinion letter and all matters related to the legal relationship between yourself and NautaDutilh BV/SRL, including the above submission to jurisdiction, are governed by Belgian law and the general terms and conditions of NautaDutilh BV/SRL¹

¹ The applicable general terms and conditions of NautaDutilh BV/SRL can be found at all times at www.nau-tadutilh.com.

ASSUMPTIONS

For the purposes of this opinion letter, we have assumed that:

- a. all documents reviewed by us as originals are complete and authentic and the signatures thereon are the genuine signatures of the persons purporting to have signed the same; all documents reviewed by us as drafts of documents or as fax, photo or electronic copies of originals are in conformity with the originals thereof (which have been or will be executed) and such originals are complete and authentic and the signatures thereon are the genuine signatures of the persons purporting to have signed the same;
 - b. the Registration Statement will be filed with the SEC and will become effective, in the form referred to in this opinion letter;
 - c. the Company's board of directors (or its proxyholders) has duly authorized the Plan;
 - d. the Company's board of directors (or its proxyholders in accordance with the terms of the Plan) has duly granted all Warrants under the Plan relating to the Shares and the beneficiaries have accepted the Warrants granted to them in accordance with the terms of the Plan;
 - e. the Plan is and will remain effective upon each granting of Warrants and upon each issue of Shares pursuant to the exercise of Warrants and in accordance with the Board Report;
 - f. the Plan has been, and will at all times be, operated in accordance with its terms;
 - g. the exercise of the Warrants (including, but not limited to the exercise price, the exercise notices, vesting periods and maximum duration of warrants) complies with the terms of the Plan, the applicable Belgian law and the Articles of Association (as defined in Exhibit A);
-

- h. the statements of facts contained in the Documents are accurate and complete;
- i. the Resolutions (as defined in Exhibit A) are in full force and effect and correctly reflect the resolutions taken by the board of directors (or its proxy holders), on their respective dates and were adopted at properly convened meetings;
- j. publication of the deed recording the resolutions taken by the board of directors of the Company or its proxy holders has taken or will take place in accordance with all applicable regulations;
- k. the Shares will be issued, delivered and paid for as set forth in the Plan;
- l. the opinion in this opinion letter will not be affected by any foreign law.

OPINION

Based upon and subject to the foregoing and subject to any matters, documents or events not disclosed to us, we express the following opinion:

- the Shares to be issued upon exercise of any outstanding Warrants granted under the Plan, to the extent that they will be issued by the Company in compliance with the then applicable provisions of the Articles of Association, the laws of Belgium, the terms of such Warrants and the Plan, and that the Company will have received in full all amounts payable by the participants under the Plan in respect of such Shares, will be validly issued, fully paid-up and non-assessable.

This opinion is addressed to, and is solely for the benefit of, the Company and, except with our prior written consent, is not to be transmitted or disclosed to or used or relied upon by any other person. We however hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not concede that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the SEC hereunder.

Yours faithfully,

/s/ NautaDutilh BV/SRL

NautaDutilh BV/SRL

EXHIBIT A**LIST OF DOCUMENTS**

1. a copy of the Form S-8 Registration Statement under the Securities Act of 1933, dated January 25, 2023 (the "**Registration Statement**");
 2. a copy of the French version of the co-ordinated articles of association of the Company dated September 30, 2022 (the "**Articles of Association**");
 3. a copy of the rules of the 2022 Warrants Plan;
 4. a copy of the notarial deed recording the resolutions taken by the Company's board of directors held on December 28, 2022 (the "**Resolutions**");
 5. a copy of the special report of the board of directors of the Company (the "**Board Report**") dated 20 December 2022 issued pursuant to Articles 7:180 *juncto* 7:179 and 7:191 BCCA submitted to the board of directors with regard to the Plan, and
 6. a certificate of the Company's secretary dated January 25, 2023.
-



EY Bedrijfsrevisoren
EY Réviseurs d'Entreprises
De Kleetlaan 2
B - 1831 Diegem

Tel: +32 (0) 2 774 91 11
ey.com

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement on Form S-8 pertaining to the Employees' 2022 Warrants Plan of Nyxoah SA of our report dated March 24, 2022, with respect to the consolidated financial statements of Nyxoah SA for the year ended December 31, 2021 and 2020, included in its Annual Report on Form 20-F for the year ended 31 December 2021.

/s/ EY Réviseurs d'Entreprises/ EY Bedrijfsrevisoren SRL/BV

Diegem, Belgium
January 25, 2023

Besloten vennootschap
Société à responsabilité limitée
RPR Brussel - RPM Bruxelles - BTW-TVA BE0446.334.711-IBAN N° BE71 2100 9059 0069
*handelend in naam van een vennootschap/agissant au nom d'une société

A member firm of Ernst & Young Global Limited

NYXOAH SA
 Rue Edouard Belin 12
 B-1435 Mont-Saint-Guibert
 VAT: BE 0817.149.675
 Register of legal entities of Walloon Brabant

(hereinafter the "**Company**")

2022 WARRANTS PLAN

1 DEFINITIONS

For the purposes of this Plan, the following terms shall have the following meaning:

“Articles of Association” means the articles of association of the Company.

“Beneficiary” means a person duly designated by a Holder who is a physical person, be it his/her spouse or his/her legal heirs, to exercise the rights of the Holder under this Plan after the decease of the Holder. Designation, revocation and re-designation of a Beneficiary shall be done in writing. In the absence of any valid designation, the heirs of the Holder will, in accordance with the applicable laws of inheritance, be deemed to be the Beneficiary. In case there are several heirs, all heirs acting jointly, or a person designated by all heirs acting jointly, will be deemed to be the Beneficiary.

“Board of Directors” means the board of directors of the Company.

“Change of Control” means any change of Control of the Person concerned, including (i) the loss of the exclusive Control, (ii) the loss of one or more of the (three) criteria used in the definition of Control, (iii) in case of common Control, the loss of common Control or the modification of the shareholders of the common Control, including the replacement of any Person holding the common Control, (iv) in case of succession of a Person being a physical person, the change of Control from such Person to the heirs thereof, (v) in case of nomination of a guardian, provisional administrator or similar act on a Person, being a physical person, the change of Control from such Person to the guardian or administrator thereof; provided, however, that a Change of Control does not include a change of Control resulting from a person acquiring securities which are quoted on an internationally recognised stock exchange.

“Company” means Nyxoah SA, a company limited by shares subject to Belgian law (*“société anonyme”*), with registered office at Rue Edouard Belin 12, 1435 Mont-Saint-Guibert, Belgium and registered with the Register of Legal Entities (Brabant wallon) under number 0817.149.675.

“Company Secretary” means the person who has been designated as company secretary by the Board of Directors from time to time.

“Control” and any derivation thereof, means with respect to any Person, the holding by any other Person, directly or indirectly, of (i) the majority of the outstanding voting interests in the Person concerned, (ii) the power, by contract or otherwise, to exercise, legally or factually, a determining influence on the appointment or dismissal of the majority of the directors, trustees, general partners or other governing body as applicable, in the Person, or (iii) the power, by contract or otherwise, to exercise, legally or factually, a determining influence on the orientation of the Person's management.

“**Controller**” has the meaning as set out in Clause 8.1.

“**Controlling Shareholder**” has the meaning as set out in Clause 7.

“**Deemed Liquidation Event**” means (i) sale, lease transfer, exclusive license or other disposition of all or substantially all of the Company’s assets (including for the avoidance of doubt the material intellectual property rights of the Company and its Subsidiaries (if any)) or Shares, in a single transaction or series of related transactions, (ii) transaction or series of transactions resulting in a Change of Control over the shareholding of the Company (meaning a transaction as a result of which a third party acquires the exclusive Control over the Company), or (iii) merger, reverse merger or consolidation (with or into another entity) in which outstanding Shares of the Company or another Group Company are exchanged for securities or other consideration issued, or caused to be issued, by the acquiring company or a Subsidiary of the acquiring company and in which the shareholders of the Company immediately prior to the transaction do not own a majority of the shares of the surviving entity.

“**Eligible Warrants**” has the meaning as set out in Clause 7.

“**End of Mandate**” means the effective date of the termination, for whatsoever reason, of (i) the employment contract between the concerned Holder and any Group Company, (ii) the director’s mandate exercised by the concerned Holder in any Group Company, or (iii) the services or other collaboration agreement between the concerned Holder and any Group Company. Such termination will not imply the “End of Mandate”, however, if the termination of the relationship with the concerned Group Company is accompanied by the simultaneous entering into of an employment agreement with another Group Company, by the simultaneous appointment as a director of another Group Company, or by the simultaneous entering into of a services or other collaboration agreement with another Group Company.

“**Exercise Period**” means any of the periods during which, in accordance with Clause 6.2 of this Plan, the Holder can exercise Warrants granted to him/her so as to obtain Shares.

“**Final Exercise Date**” means the last day of the last Exercise Period of the relevant Warrants.

“**Group Companies**” means the Company and its Subsidiaries from time to time and “**Group Company**” means any of them.

“**Holder**” means a physical person or a legal entity to whom the Company has granted Warrants and who/that has completely or partially accepted these Warrants.

“**Israeli Participant**” has the meaning as set out in Clause 7.

“**ITA**” has the meaning as set out in Clause 7.

“**Liquidation Event**” means a liquidation, dissolution, winding up or bankruptcy of the Company.

“**Ordinance**” has the meaning as set out in Clause 7.

“**Person**” means any physical person, corporation, general partnership, limited partnership, limited liability company, proprietorship, investment fund, other business organisation, trust, union or association.

“**Personal Data**” has the meaning as set out in Clause 8.2.

“**Plan**” means this 2022 Warrants Plan regarding warrants issued by the Company.

“**Processor**” has the meaning as set out in Clause 8.4.

“**Rules**” has the meaning as set out in Clause 7.

“**Share**” means any common share in the Company.

“**Subsidiary**” has the meaning as set out in Article 1:15 of the Code of Companies and Associations.

“**Trustee**” has the meaning as set out in Clause 7.

“**Warrant**” means a subscription right regarding a newly to be issued Share, issued and granted on the basis of this Plan.

2 OBJECT AND PURPOSE OF THE PLAN

Each Warrant shall entitle its Holder to subscribe for one (1) Share upon exercise of the Warrant, under the terms and conditions set out in this Plan.

In the framework of this Plan no more than seven hundred thousand (700,000) Warrants can be issued. Consequently, the Company can issue up to seven hundred thousand (700,000) Shares as a result of the exercise of the Warrants.

The purpose of this Plan is to advance the interests of the Company and its shareholders by enhancing the Group Companies’ ability to attract, retain and motivate persons who make (or are expected to make) important contributions to the Company or any other Group Company by providing such persons with equity ownership opportunities and performance-based incentives and thereby better aligning the interests of such persons with those of the Company and its shareholders.

3 GRANTING AND ACCEPTANCE OF THE WARRANTS

The Warrants can be granted to employees, officers, directors, consultants and advisors of any Group Company and any persons who have accepted an offer for employment or to provide professional services to a Group Company. The Warrants are granted by the Board of Directors, except for grants of Warrants to directors of the Company as remuneration for their mandate as director which must be approved by the shareholders’ meeting.

The total number of Holders shall, in any event, be lower than one hundred fifty (150).

Each Holder has the possibility to accept or to refuse the individual grant of Warrants. The acceptance of Warrants needs to be done in writing by checking the option acceptance, mentioning the number of accepted Warrants, on the answer form prepared for these purposes. The answer form must be completed and signed by the Holder and be delivered to the Company within sixty (60) days after the date of the grant, or prior to any earlier date stated therein. If the Holder does not accept in writing the offer of Warrants prior to the ultimate date stated in the answer form, he/she is deemed to have refused the offer of Warrants.

Notwithstanding the foregoing, the offering and acceptance of Warrants may also be included in a specific warrant agreement, or inserted in another agreement signed by the Company and the Holder.

Warrants that have been granted but that are refused by the Holder or that are not timely accepted in writing, shall not be null and void and can be offered again.

4 TERMS AND CONDITIONS OF THE WARRANTS

4.1 Warrant price

The Warrants shall be granted by the Company free of charge.

4.2 Vesting

- 4.2.1 When granting the Warrants, the Board of Directors (or the shareholders' meeting of the Company for grants of Warrants to directors of the Company) may freely decide if, when and to which extent the attributed Warrants will effectively vest for the Holders.
- 4.2.2 Except as explicitly provided otherwise in this Plan and unless the Board of Directors (or the shareholders' meeting of the Company for grants of Warrants to directors of the Company) decides otherwise at the time of the relevant grant of the Warrants and subject to the End of Mandate (i) one fourth of the Warrants granted to and accepted by a Holder (whereby fractions of Warrants shall be rounded down) shall be deemed definitively vested on the date of the granting of the Warrants, (ii) one fourth of the Warrants granted to and accepted by a Holder (whereby fractions of Warrants shall be rounded down) shall be deemed definitively vested on the first anniversary of the date of the relevant grant of the relevant Warrants, (iii) one fourth of the Warrants granted to and accepted by a Holder (whereby fractions of Warrants shall be rounded down) shall be deemed definitively vested on the second anniversary of the date of the relevant grant of the relevant Warrants, and (iv) the remainder of the Warrants granted to and accepted by a Holder shall be deemed definitively vested on the third anniversary of the date of the relevant grant of the relevant Warrants.
- 4.2.3 The Board of Directors (subject to the approval by the shareholders' meeting of the Company regarding any Warrants granted to directors of the Company) can also decide to modify the vesting conditions after the granting of Warrants, provided that the rights of the Holder may not be restricted without the latter's consent. Prior to the End of Mandate, the Board of Directors will, for example, in mutual agreement with the Holder, be able to allow that all or a part of the Warrants that have not yet definitively vested at the End of Mandate, are definitively vested.

4.3 Exercise price

- 4.3.1 Unless the Board of Directors (or the shareholders' meeting of the Company for grants of Warrants to directors of the Company) at the time of the grant of the Warrant determines a higher exercise price, the exercise price of a Warrant will be equal to the lowest of the following prices:
- (i) the (counter value in euro of the) last closing price of the Company's Share, on the stock exchange where the Company's shares are (first) listed, prior to the date on which the Warrant is offered; or
 - (ii) the (counter value in euro of the) average closing price of the Company's Share, on the stock exchange where the Company's shares are (first) listed, over the thirty (30) day period preceding the date on which the Warrant is offered.
- 4.3.2 The exercise price may never be below the par value of the existing Shares at the date on which the Warrants were issued.

- 4.3.3 Upon exercise, the portion of the exercise price up to the par value of the existing Shares needs to be recorded as capital. The portion of the exercise price exceeding the par value of the existing Shares needs to be recorded on a separate account unavailable for distribution called “Issuance premiums”.

4.4 Duration of the Warrants

- 4.4.1 The Warrants have a duration of ten (10) years as from the date of the meeting of the Board of Directors deciding on the issuance of the Warrants.
- 4.4.2 Any Warrant shall immediately become automatically null and void if not exercised in accordance with the modalities provided for in this Plan (i) within ten (10) years after the date of the issuance of the Warrant, (ii) prior to a bankruptcy of the Company, (iii) in case of a Liquidation Event other than bankruptcy, prior to the effective date of such Liquidation Event, or (iv) in case of a Deemed Liquidation Event, prior to the completion of such Deemed Liquidation Event, unless the Board of Directors (or the shareholders’ meeting of the Company for grants of Warrants to directors of the Company) decides otherwise at the time of the relevant grant of the Warrants.

4.5 Nature

The Warrants are and will remain registered. They will be recorded in the register of warrant holders, which will be kept by the Company at the registered office, mentioning the identity of each Holder and the number of Warrants held by such Holder.

4.6 Adjustments

- 4.6.1 Modification of the Company’s capital structure

Contrary to Article 7:71 of the Code of Companies and Associations and without prejudice to the exceptions provided for by law, the Company shall retain the right to take decisions and close transactions that could have an influence on its capital, the distribution of profit or the liquidation bonuses, or that could possibly have another influence on the Holders’ rights, except if such decisions or transactions only are aimed at diminishing the Holders’ benefits.

In case the rights of the Holder are affected by such decision or transaction, the Holder will not be entitled to a modification of the exercise price or the exercise conditions, nor to any other form of financial or other compensation. The Board of Directors may, however, at its own discretion, make amendments to the number of Shares to which one Warrant relates and/or to the exercise price to compensate any such adverse effect for the Holder in full or in part. As soon as reasonably possible, the Company will inform the Holder of any such amendment by way of a written notification.

- 4.6.2 Reorganizations of Shares

In the event that the Company shall (i) sub-divide its Shares into a larger number of Shares, (ii) combine its Shares into a smaller number of Shares, (iii) increase or decrease the number of Shares by a reclassification of Shares (without an increase or decrease of the Company’s share capital), then the number of Shares to be issued upon exercise of the Warrant after the occurrence of one of such events shall be adjusted (if and to the extent required) so that, after giving effect to such adjustment, the Holder of the Warrant shall be entitled to receive the number of Shares upon exercise of the Warrant that such Holder would have owned or have been entitled to receive had this Warrant been exercised immediately prior to the occurrence of the event concerned. An adjustment made pursuant to this Clause 4.6.2 shall become effective immediately after the effective date of the event concerned. The Company shall inform the Holders of such adjustment by means of a notice as soon as practicable after the effective date of the event concerned.

4.6.3 Mergers, de-mergers

In the event that there shall be (i) a merger (“*fusion*”) of the Company with or into another person or entity whereby the Company is not the surviving entity, or (ii) a de-merger (“*scission*”) of the Company, whereby in both (i) and (ii) the Shares of the Company are exchanged into shares, other securities, cash or other property of one or more other persons, then the Shares to be issued upon exercise of the Warrant after the occurrence of one of such events shall be adjusted (if and to the extent required) so that, after giving effect to such adjustment, the Holder of the Warrant shall upon exercise of the Warrant be entitled to receive the number of shares, other securities, cash or other property of the successor or acquiring persons that such Holder would have owned or have been entitled to receive had this Warrant been exercised immediately prior to the occurrence of the event concerned. An adjustment made pursuant to this Clause 4.6.3 shall become effective immediately after the effective date of the event concerned. The Company shall inform the Holders of such adjustment by means of a notice as soon as practicable after the effective date of the event concerned.

5 END OF MANDATE - TRANSFER OF THE WARRANTS - ADJUSTMENTS

5.1 End of Mandate

- 5.1.1 Unless the Board of Directors (or the shareholders’ meeting of the Company for grants of Warrants to directors of the Company) decides otherwise upon granting of the Warrants, at the End of Mandate of a Holder:
- (i) all Warrants that have been granted to such Holder but have not yet vested in accordance with this Plan, shall become automatically null and void, unless, prior to the End of Mandate, it is expressly agreed otherwise in writing between the Company and the Holder in accordance with Clause 4.2.3 of this Plan; and
 - (ii) all Warrants that have been granted to such Holder and have vested in accordance with this Plan, shall remain with such Holder for a period of three (3) months after the End of Mandate and all Warrants that are not exercised prior to the expiry of such three (3) months’ period shall become automatically null and void, unless, prior to the End of Mandate, it is expressly agreed otherwise in writing between the Company and the Holder (subject to the approval by the shareholders’ meeting of the Company regarding any Warrants granted to directors of the Company).
- 5.1.2 Notwithstanding Clause 5.1.1 of this Plan, if the agreement or other relationship between the Holder and a Group Company is terminated for “cause”, all unexercised Warrants (even those already vested) that have been granted to such Holder shall become automatically null and void at the End of Mandate of such Holder. For the purposes of this Clause 5.1.2, “cause” means wilful misconduct by the Holder or wilful failure by the Holder to perform his/her responsibilities to the Group Company (including, without limitation, breach by the Holder of any provision of any employment, consulting, advisory, non-disclosure, non-competition or other similar agreement between the Holder and the Group Company) as determined by the Company, which determination shall be conclusive. The Holder shall be considered to have been discharged for “cause” if the Company determines, within ninety (90) days after the Holder’s resignation, that discharge for cause was warranted.

5.2 Member of the group

Unless the Board of Directors decides otherwise, all Warrants that have not yet vested in accordance with Clause 4.2 of this Plan shall become automatically null and void in case the company (other than the Company) of which the Holder is an employee, officer, director, consultant or advisor, is no longer Controlled by the Company.

5.3 Disability

5.3.1 If a Holder becomes fully disabled prior to the Final Exercise Date, all Warrants of the disabled Holder that have vested already in accordance with Clause 4.2 of this Plan prior to the date on which he/she became fully disabled shall immediately become exercisable until the first anniversary of the date on which the relevant Holder became fully disabled, unless the Board of Directors decides that such restriction shall not apply or decides a longer period (subject to the approval by the shareholders' meeting of the Company regarding any Warrants granted to directors of the Company). Unless the Board of Directors has decided to lift such restriction, all such Warrants that have not been exercised (or could not yet be exercised) in accordance with the modalities defined in this Plan prior to the first anniversary of the date on which the relevant Holder became fully disabled (or such later date as the Board of Directors has decided, as the case may be) shall become automatically null and void.

5.3.2 Unless the Board of Directors decides otherwise (subject to the approval by the shareholders' meeting of the Company regarding any Warrants granted to directors of the Company), all Warrants that have not yet vested in accordance with Clause 4.2 of this Plan prior to the date on which the relevant Holder became fully disabled shall become automatically null and void.

5.4 Decease

5.4.1 If a Holder deceases prior to the Final Exercise Date, all Warrants of the deceased Holder that have vested already in accordance with Clause 4.2 of this Plan at the time of his/her decease, are transferred to the Beneficiaries of the Holder, and they shall immediately become exercisable until the first anniversary of the decease of the relevant Holder, unless the Board of Directors decides that such restriction shall not apply or decides a longer period (subject to the approval by the shareholders' meeting of the Company regarding any Warrants granted to directors of the Company). Unless the Board of Directors has decided to lift such restriction, all such Warrants that have not been exercised (or could not yet be exercised) in accordance with the modalities defined in this Plan prior to the first anniversary of the decease of the relevant Holder (or such later date as the Board of Directors has decided, as the case may be) shall become automatically null and void.

- 5.4.2 Unless the Board of Directors decides otherwise (subject to the approval by the shareholders' meeting of the Company regarding any Warrants granted to directors of the Company), all Warrants that have not yet vested in accordance with Clause 4.2 of this Plan at the time of the decease of the Holder shall become automatically null and void.

5.5 Transferability

- 5.5.1 Unless the Board of Directors decides otherwise, the Warrants are not transferable *inter vivos* once they have been granted to a Holder, and may not be pledged or encumbered with any security, pledge or other right in rem in any other way, either voluntarily, by operation of law or otherwise.
- 5.5.2 Unless the Board of Directors decides otherwise, Warrants that have been pledged or encumbered in violation of the preceding, shall become automatically null and void.

6 EXERCISE OF THE WARRANTS

6.1 General

- 6.1.1 The Warrants can only be exercised by the Holder if they have effectively vested pursuant to Clause 4.2 of this Plan and in accordance with any additional exercise restrictions (e.g., making the exercisability of the Warrants subject to specific conditions or limiting the duration during which the Warrants can be exercised) decided by the Board of Directors (or the shareholders' meeting of the Company for grants of Warrants to directors of the Company) upon the grant of the Warrants. The Warrants that have become exercisable can only be exercised in accordance with the exercise modalities provided for in this Plan.
- 6.1.2 In deviation of Article 7:71 of the Code of Companies and Associations, the Warrants cannot be exercised prematurely in case of a capital increase by way of contribution in cash, unless the Board of Directors (or the shareholders' meeting of the Company for grants of Warrants to directors of the Company) decides otherwise at the time of grant.
- 6.1.3 In case the Warrants, that are not yet exercisable in accordance with the terms and conditions of the Plan, become prematurely exercisable in accordance with Article 7:71 of the Code of Companies and Associations (if so decided pursuant to Clause 6.1.2) and are effectively exercised in accordance with such Article, the Shares that are issued as a result of such exercise will not be transferable until the moment that the Warrants would have been exercisable pursuant to the terms and conditions of the Plan, unless express approval is obtained from the Company and without prejudice to any other applicable share transfer restrictions (including, but not limited to, those set out in the Articles of Association, as the case may be).
- 6.1.4 In case Warrants that are effectively vested would not be exercised on the Final Exercise Date, such Warrants shall become automatically null and void.

6.2 Warrant Exercise Period

6.2.1 Without prejudice to Clause 6.1.1 of this Plan,

(i) Warrants may be exercised during the following periods:

- from 1 March until 30 June; and
- from 1 September until 30 November,

of each year during which they are valid and exercisable; and

(ii) in the event of the End of Mandate of a Holder, such Holder can exercise his/her Warrants during a period of 3 months immediately following the End of Mandate, unless agreed otherwise between the Company and the relevant Holder pursuant to Clause 5.1.1(ii).

Within the legal boundaries, the Board of Directors can decide, at its discretion, to amend the Exercise Periods, however, without being able to shorten them. For example, in order to avoid insider trading, the Board of Directors can decide to introduce closed periods, during which the Warrants cannot be exercised. If such closed periods would fall within the aforementioned Exercise Periods, the Board of Directors can determine one or more additional Exercise Periods as compensation and communicate the new Exercise Periods in writing to the Holders.

Warrants cannot be exercised and/or the Shares cannot be traded in the event that the Holder has inside information. In accordance with article 7, paragraph 1, a) of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse, “inside information” means information of a precise nature, which has not been made public, relating, directly or indirectly, to the Company or to one or more financial instruments issued by the Company, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

Holders whose exercise rights are limited as a consequence of the conditions of this Plan or of any “Dealing Code” of the Company, are never entitled to any indemnification or compensation from the Company.

The exercise of the Warrants at the exercise price is unconditional.

6.2.2 Liquidation Event or Deemed Liquidation Event

Notwithstanding Clauses 4.2, 6.1.1 and 6.2.1 of this Plan, and unless the Board of Directors (or the shareholders’ meeting of the Company for grants of Warrants to directors of the Company) decides otherwise at the time of the relevant grant of the Warrants, the Warrants will immediately vest and be exercisable during at least ten (10) business days (i) prior to the effective date of a Liquidation Event other than bankruptcy, and (ii) prior to the completion of a Deemed Liquidation Event, it being understood that such vesting and exercise of the Warrants shall be conditional upon the effectiveness of such Liquidation Event or Deemed Liquidation Event. As the case may be, the provisions in the Articles of Association regarding pre-emption, tag-along and drag along rights shall apply.

6.3 Exercise restriction

The Board of Directors (or the shareholders' meeting of the Company for grants of Warrants to directors of the Company) may impose additional restrictions and conditions to the exercisability of the Warrants at the time of grant of the Warrants.

6.4 Exercise modalities

In order to exercise a Warrant, at the latest on the Final Exercise Date, the Company needs to receive a written notice of exercise of the Warrants from the Holder (or, if applicable, his/her Beneficiaries). The notification shall take place by registered mail, against receipt confirmation, or by personal delivery or by email to the Board of Directors or the Company Secretary at the registered office of the Company. The notice must explicitly state the number of Warrants being exercised and the number of Shares consequently being subscribed to. If the Warrants are exercised by one or more Beneficiaries, the notice of exercise needs to be accompanied by an appropriate proof of the right of this person or these persons to exercise the Warrants.

The full amount of the exercise price of the exercised Warrants needs to be paid in cash and deposited by wire transfer on a blocked account of the Company of which the bank account number is communicated by the Board of Directors, the Company Secretary, or a delegate. Unless agreed otherwise by the Company, this payment shall take place within ten (10) business days after having received the aforementioned communication of the bank account number, or within ten (10) business days after the date of the notice of exercise in the event that the bank account number concerned has already previously been communicated by the Board of Directors.

6.5 Issuance of Shares

- 6.5.1 The Company will only be obliged to issue Shares as a result of the exercise of Warrants if such Shares are fully paid up and the other conditions set out in this Plan have been fulfilled.
- 6.5.2 The Shares will be issued as soon as reasonably possible, taking into account administrative formalities, after the end of the Exercise Period during which the concerned Warrant was validly exercised or sooner if so decided by the Company. To this effect, the Board of Directors or one of the directors will acknowledge before a notary public that the capital was increased in accordance with Article 7:187 of the Code of Companies and Associations.
- 6.5.3 The Shares that are issued as a result of the exercise of the Warrants will be common shares in the Company and will be fully profit sharing as from the beginning of the business year during which the Shares are issued and the following financial years.
- 6.5.4 At the option of the Company, and to the extent legally and practically possible, the Shares shall be delivered as registered shares, or in dematerialised form. In case the Holder (or, as the case may be, the Holder's Beneficiary) explicitly indicates in his/her/its notice of exercise the form in which he/she/it wants to see the Shares delivered, the Company will deliver the Shares in the form requested to the extent legally and practically possible and to the extent that this would be in accordance with the Articles of Association. The Company will inform the concerned Holder (or, as the case may be, the Holder's Beneficiary) of the form of delivery in due time.

- 6.5.5 After the issuance of the Shares in registered form, which are subscribed for through the exercise of Warrants, one or more directors of the Company or the Company Secretary will, as attorney-in-fact, register the Shares in the name of the subscriber in the Company's share register.

6.6 Rights as shareholders

The Holder or, as the case may be, the Holder's Beneficiary does not have any rights and privileges of a shareholder regarding the Shares, object of this Plan, until the date these Shares are effectively issued by the Company to the Holder or, as the case may be, the Holder's Beneficiary. Once the Shares have been issued by the Company to the Holder, the latter enjoys, in his capacity as shareholder, the same rights as the other shareholders in the Company, and such Shares shall be subject to the provisions of the Articles of Association (including but not limited to the share transfer restrictions).

7 PROVISIONS REGARDING ISRAELI HOLDERS

- 7.1 Notwithstanding anything stipulated in the Plan, the following conditions shall take precedence over any provision of the Plan in relation to Holders who are employees, officers, directors, consultants and/or advisors ("**Nosei Misra**" - as such term is defined in the Israeli Companies Law) of a Group Company residing and exercising their employment, mandate or function in Israel (hereinafter the "**Israeli Participant**").
- 7.2 Warrants granted under the Plan to an Israeli Participant may contain such terms as will allow the Warrants and the Shares acquired pursuant to the exercise of such Warrants to be recognized (hereinafter "**Eligible Warrants**") pursuant to Section 102 of the Israel Income Tax Ordinance (New Version), as amended (the "**Ordinance**") and to comply with the Ordinance and its regulations and the Income Tax Rules (Tax Benefits in Share Issuances to Employees) 5363-2003 (the "**Rules**").
- 7.3 Eligible Warrants, Warrants and/or Shares, as the case may be, shall be held in escrow for the benefit of such Israeli Participant by an Israeli trustee appointed by the Company to hold in trust, the Eligible Warrants, Warrants and/or the (underlying) Shares issued upon exercise of such Warrants, on behalf of Israeli Participant(s) (the "**Trustee**").
- 7.4 **Application of section 102 of the Ordinance:**
- 7.4.1 Warrants and/or Shares, as the case may be, granted to Israeli Participants who are deemed to be a "**Controlling Shareholder**", as such term is defined in Section 32(i) of the Ordinance, or any Israeli resident serving as a consultant of the Company or an Israeli resident affiliate of the Company, and who is not entitled to receive stock options under Section 102 of the Ordinance, shall be subject to Section 3(i) of the Ordinance, as shall apply from time to time. The Board of Directors shall have the absolute discretion to decide whether Warrants and/or Shares granted pursuant to Section 3(i) of the Ordinance shall be held with the Trustee.
- 7.4.2 Warrants and/or Shares, as the case may be, may be granted under Section 102 of the Ordinance to an Israeli tax resident who is an employee or a director of the Company or an Israeli affiliate of the Company, on behalf of whom a stock option is granted under Section 102 of the Ordinance.
- 7.4.3 The Trustee and each Israeli Participant in the Plan shall comply with the Ordinance and Rules and with the trust agreement entered into between the Company and the Trustee.

- 7.4.4 Without derogating from the aforementioned, the Board of Directors shall have the authority to determine the specific procedures and conditions of the trusteeship with the Trustee in a separate agreement between the Company and the Trustee.
- 7.4.5 The Eligible Warrants, Warrants and/or Shares, as the case may be, and any underlying rights, shall be issued to and held by the Trustee for the benefit of the Israeli Participant in accordance with the provisions of Section 102 of the Ordinance (under the tax route chosen by the Company) and the provisions of the Rules at least for the period required by the Ordinance and the Rules, or such other period as may be required by the Israeli Tax Authority (“ITA”). All rights accruing out of and/or resulting from the Eligible Warrants, Warrants and/or Shares, as the case may, including, but not limited to bonus shares, shall be vested with the Trustee until the end of the holding period, if and to the extent prescribed by the Ordinance and/or the Rules.
- 7.4.6 After the required holding period and subject to any further period included in this Plan, or the warrant agreement with the Israeli Participant, the Trustee may release the Eligible Warrants, Warrants and/or Shares, as the case may be to the Israeli Participant only after the receipt by the Trustee of an acknowledgment from the ITA that the Israeli Participant has paid or will pay any applicable tax due pursuant to the Ordinance and Rules.
- 7.4.7 The validity of any order given to the Trustee by the Israeli Participant shall be subject to the approval of the Company. The Company shall render its decision regarding whether to approve orders given by any Israeli Participant to the Trustee within a reasonable period of time. The Company shall not be required to approve any order which is incomplete, is not in accordance with the provisions of this Plan and the relevant warrant agreement or which the Company believes should not be executed for any reasonable reason. The Company shall notify the Israeli Participant of the reason for not approving his order. Approval by the Company of any order given to the Trustee by an Israeli Participant shall not constitute proof of the Company’s recognition of any right of such Trustee or such Israeli Participant.
- 7.4.8 In the event a stock dividend and/or bonus shares are declared on the Eligible Warrants, Warrants and/or Shares, such dividend shares shall be subject to the provisions of this Plan and the holding period for such dividend shares shall be measured from the commencement of the holding period for the Eligible Warrants, Warrants and/or Shares, as the case may be, from which the dividend was declared.
- 7.4.9 According to today’s laws, the exemption under Section 102 of the Ordinance shall be forfeited and the Israeli Participant shall be required to pay any applicable tax promptly at such time as (i) the Company or the Israeli Participant fail to comply with one or more of the conditions for the exemption as required by the Ordinance, Rules or ITA; or (ii) the ITA withdraws or cancels the exemption for the Plan or for the particular Israeli Participant. Notwithstanding the loss of an exemption, the Trustee shall continue to hold the Eligible Warrants, Warrants and/or Shares, as the case may be (to the extent the Warrant remains exercisable following termination of employment) for the remainder of the applicable holding period under Section 102 of the Ordinance.
- 7.4.10 Notwithstanding the aforesaid, an Israeli Participant shall not be entitled to the issuance or exercise of the Eligible Warrants, Warrants and/or Shares, including, but not limited to declared dividends and/or bonus shares, as the case may be, prior to the end of the holding period by the Trustee, in accordance with the tax route elected by the Company.

- 7.5** All tax, duties and levies liabilities regarding the issue and/or exercise and/or the transfer, waiver, or expiration and/or the disposal of the Eligible Warrants, Warrants and/or Shares, including, but not limited to declared dividends and/or bonus shares, as the case may be, shall be borne by the Israeli Participant and in the event of death of such Israeli Participant, by his/her Beneficiaries, all in accordance with the tax route elected by the Company.
- 7.6** Neither the Company nor any of its Subsidiaries nor the Trustee shall be required to bear the aforementioned taxes, duties and/or levies liabilities, directly or indirectly, nor shall they be required to gross up such taxes, duties and/or levies liabilities in the Israeli Participant's salaries or remuneration. The applicable taxes, duties and/or levies liabilities shall be deducted from the proceeds of disposal of the Eligible Warrants, Warrants and/or Shares or shall be paid to the Trustee or to the Company, as the case may be, by the Israeli Participant. The Company is also entitled to withhold taxes, duties and/or levies liabilities in accordance with relevant law, rules and regulations.
- 7.7** Without derogating from the above, the Eligible Warrants, Warrants and/or Shares which are granted to Israeli Participants shall be subject to the provisions of Section 102 of the Ordinance, as shall apply from time to time, and the Rules promulgated thereunder. The Board of Directors shall have the absolute discretion to choose between any available tax routes to the Israeli Participant under Section 102 of the Ordinance, subject to the provisions of the Ordinance.
- 7.8** The Israeli Participant shall agree and undertake to indemnify the Trustee and the Company and its Subsidiaries and hold each of them harmless against and from any taxes, duties and/or levies liability, including interest and/or fines of any type and/or linkage differentials in respect of such taxes, duties and/or levies liability and/or withheld tax and penalties thereon, which may be incurred as a result of the granting or exercise of an Eligible Warrant or the issuance of Shares pursuant to such Warrants.
- 7.9** The Company's obligation to deliver Shares upon the exercise of Warrants is subject to payment (or provision of payment satisfactory to the Board of Directors) by the Israeli Participant of all taxes, duties and/or levies liability due under any applicable law.
- 7.10** The ramifications of any future modification of any applicable law regarding the taxation of Eligible Warrants, Warrants and/or Shares granted to Israeli Participants shall apply to the Israeli Participants accordingly and such Israeli Participants shall bear the full cost thereof, unless such modified laws expressly provide otherwise. For the avoidance of doubt, should the applicability of such taxing arrangements to this Plan or to securities issued in the framework thereof be conditioned on an application by the Company or by the Trustee that same shall apply, the Company shall be entitled to decide, at its absolute discretion, whether to apply such taxing arrangements and to instruct the Trustee to act accordingly.
- 7.11** During the required holding period, the Israeli Participant shall not release from trust or sell, assign, transfer or give as collateral, the Shares issuable upon the exercise or (if applicable) vesting of a 102 trustee award and/or any securities issued or distributed with respect thereto, until the expiration of the required holding period. Notwithstanding the above, if any such sale, release or other action occurs during the required holding period it may result in adverse tax consequences to the Israeli Participant under Section 102 of the Ordinance and the Rules, which shall apply to and shall be borne solely by such Israeli Participant.

8 PRIVACY AND PROCESSING OF PERSONAL DATA

To enable the proper set-up and management of the Plan and the (electronic) register of warrant holders and the (electronic) share register of the Company, information about each Holder will need to be collected and used. For Holders who are physical persons, this Clause 8 sets out the obligations of the Company and the rights of each of the Holders regarding this collection and use, and provides the legally required information in this respect.

8.1 Identity of the person responsible for Holders' Personal Data

The Company is the so-called “**Controller**”, i.e. the person responsible for the collection and use of Personal Data as is necessary for the setting-up, implementation, administration and management of the Plan, the (electronic) register of warrant holders and the (electronic) share register of the Company.

8.2 Nature of the Personal Data

The following items of information relating to each of the Holders will be collected and used:

- (i) identification data (e.g. name, contact details);
- (ii) electronic identification data;
- (iii) personal characteristics (e.g. date of birth, gender, nationality);
- (iv) employer's or contractor's identity;
- (v) preferred language;
- (vi) financial data (e.g. bank account); and
- (vii) details of all Warrants, underlying Shares and all other entitlement awarded, cancelled, purchased, vested, unvested or outstanding,

together the “**Personal Data**”.

8.3 Why and how Personal Data is collected and used

The Personal Data collected by way of the Company's HR systems, any Warrant agreement or acceptance form will be used exclusively for the purposes of the setting-up, implementation, administration and management of the Plan and the maintenance of the (electronic) register of warrant holders and (electronic) share register of the Company.

8.4 Other persons having access to the Personal Data and purpose thereof

The Controller can transfer the Personal Data to the following categories of recipients:

- (i) any service provider designated by the Controller to collect or use Personal Data on behalf of the Controller in accordance with this Clause 8 for the purposes of implementing, administrating and managing the Plan and, if applicable, the (electronic) register of warrant holders and (electronic) share register of the Company (the “**Processors**”); and
- (ii) regulatory authorities for complying with legal obligations in connection with the Plan.

Such recipients may be located in jurisdictions outside the European Economic Area that offer an adequate level of personal data protection, in particular Israel. For the avoidance of doubt, Israel has been recognised by the European Commission as a country located outside the European Economic Area that does offer an adequate level of personal data protection.

8.5 Legal basis allowing the Company to collect and use Personal Data

With respect to the setting-up, implementation, administration and management of the Plan and the (electronic) register of warrant holders and (electronic) share register of the Company, the collection, processing and use of the Personal Data is necessary to perform the Company's contractual obligations towards the Holders. If the Personal Data of a Holder cannot be collected, processed or used, this Holder cannot participate in the Plan.

8.6 Rights of the Holders

The Holders can exercise their right to request access to and rectification or erasure of their Personal Data or restriction of processing concerning the Holders or to object to processing as well as the right to data portability by sending a written and signed request to the Company's registered office at Rue Edouard Belin 12, 1453 Mont-Saint-Guibert, Belgium, for the attention of the Company's Data Protection Officer or by email to privacy@nyxoah.com.

Finally, if Holders are not satisfied with how the Company processes their Personal Data, they can contact the Company's Data Protection Officer at Rue Edouard Belin 12, 1453 Mont-Saint-Guibert, Belgium, by email to privacy@nyxoah.com.

Holders also always have the right to make a complaint to the competent data protection authority in the EU Member State of their habitual residence, their place of work or of an alleged infringement of the applicable data protection rules.

8.7 Storage period of the Personal Data

Personal Data will be stored for a period of ten (10) years following the later of (i) the termination of the Plan or (ii) the end of a Holder's participation in the Plan.

9 MISCELLANEOUS

9.1 Amendments, suspension and termination of this Plan

Without prejudice to the provisions of this Plan explicitly authorising the Board of Directors to deviate from or amend certain terms and conditions of this Plan, the terms and conditions set out in this Plan may entirely or partially be amended, modified, suspended or terminated by the shareholders' meeting at any time. The amendment, suspension or termination of this Plan may not modify or limit the rights and obligations under a granted Warrant without the consent of the concerned Holder. No Warrant can be granted when this Plan is suspended or after the termination of this Plan.

9.2 National legislation

Notwithstanding any provision of the Plan, the Board of Directors may modify or extend the provisions of the Plan and the conditions of the Warrants to the extent that it considers this to be necessary or preferable to take into account, to limit the disadvantageous consequences of, or to be in compliance with foreign legislation, including, but not limited to, tax and financial legislation applicable to the Holder, to the extent that the terms and conditions of the Warrants granted to such Holder are not more advantageous than the terms and conditions of the Warrants granted to the other Holders.

9.3 Costs and taxes

The costs regarding the issuance of the Warrants and the capital increase relating to the issuance and exercise of the Warrants are borne by the Company.

Holders (or, if applicable, his/her Beneficiaries) will have to bear any taxes (including but not limited to seal rights, income taxes, capital gains taxes and stock exchange taxes) and employee or self-employed social security contributions due in connection with (a) the grant, exercise, and or transfer of the Warrants and (b) the delivery and ownership of the new Shares, in accordance with applicable tax and social security legislation.

The Company or a Subsidiary shall, upon granting of the Warrants pursuant to this Plan, levy any withholding tax provided for in the relevant applicable tax and/or social security laws, as provided for therein.

9.4 Investment risk

An investment in Warrants or Shares involves substantial risks.

Before making an investment decision with respect to the acceptance and/or exercise of the Warrants, the Beneficiary / Holder should consider the risks and uncertainties with which the Company is or might be confronted (including but not limited to those mentioned in the annual reports of the Company) and read the annual accounts and annual reports of the Company. Past performances of the Company give no guarantees for the future.

It cannot be excluded that the market value of a Share during the entire duration of the Warrants will be lower than the applicable exercise price of a Warrant. The taxes and social security contributions that may be due in connection with the granting of the Warrants cannot be recovered, even if the Warrants expire without having been exercised. It can also not be excluded that the value of the Shares after exercise of Warrants will decrease and that the Holder loses all or part of his investment in Shares.

9.5 Employment conditions

No provision of this Plan can be construed as creating an obligation of employment (either by way of an employment agreement, an appointment as director or a services agreement) between a Group Company and a Holder or an obligation for the Board of Directors to offer Warrants. Upon termination of the employment, the Holder shall in no event be entitled to demand damages within the framework of this Plan. The foregoing also applies, but is not limited to, the application of the tax legislation.

9.6 Nullity of a provision

The nullity or unenforceability of any provision of this Plan does not in any way affect the validity or enforceability of the remaining provisions of this Plan. In this case, the invalid or unenforceable provision will be replaced by an equivalent valid and enforceable provision having a similar economic effect for the parties concerned.

9.7 Applicable law

This Plan and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with Belgian law.

9.8 Competent courts

The courts of Brussels (Belgium) have exclusive jurisdiction to settle any dispute arising out of or in connection with this Plan (including a dispute relating to non-contractual obligations arising out of or in connection with this Plan).

9.9 Notices

Any notice to the Holders (and, if applicable, his/her Beneficiaries) shall be validly made to the address mentioned in the register of warrant holders.

Any notice to the Company, shall be validly made to the attention of the Board of Directors or the Company Secretary at the address of the registered office of the Company.

Address modifications must be notified immediately by the Holders (and, if applicable, his/her Beneficiaries) to the Company in accordance with this provision.

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Adopted by the Board of Directors on 20 December 2022.

On behalf of the Board of Directors:

Olivier Taelman

Director

Calculation of Filing Fee Tables

Form S-8

(Form Type)

Nyxoah SA

(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered (1)	Proposed Maximum Offering Price Per Share (2)	Maximum Aggregate Offering Price (2)	Fee Rate	Amount of Registration Fee
Equity	Ordinary Shares, no nominal value per share	Other	700,000	\$ 5.77	\$ 4,039,000.00	\$ 0.0001102	\$ 445.10
Total Offering Amounts					<u>\$ 4,039,000.00</u>		<u>\$ 445.10</u>
Total Fees Previously Paid							<u>--</u>
Total Fee Offsets							<u>--</u>
Net Fee Due							<u>\$ 445.10</u>

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional ordinary shares, no nominal value per share (the “Ordinary Shares”), of the Registrant that become issuable under the Registrant’s 2022 Warrants Plan by reason of any stock dividend, stock split or other similar transaction.
- (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) promulgated under the Securities Act. The offering price per share and the aggregate offering price are based upon a price per share of \$5.77, which is the average of the high and the low price of the Registrant’s Ordinary Shares as reported on Euronext Brussels as of a date (January 19, 2023) within five business days prior to filing this Registration Statement for new shares to be granted under the 2022 Warrants Plan of €5.335, converted from euros to U.S. dollars at an exchange rate of \$1.0811 per euro, the noon buying rate in The City of New York on January 13, 2023 set forth in the H.10 statistical release of the Federal Reserve Board on January 17, 2023.