

**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)

**2013 Share Incentive Plan**  
**2016 Warrants Plan**  
**2018 Warrants Plan**  
**2020 Warrants Plan**  
**2021 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.**  
**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. ☐

**CALCULATION OF REGISTRATION FEE**

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
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<b>2013 Share Incentive Plan</b>	25,000 ordinary shares	\$	5.92 (2)	\$	148,000.00 (2)	\$	13.72
Ordinary Shares							
no nominal value per share							
<b>2016 Warrants Plan</b>							
Ordinary Shares							
no nominal value per share	52,500 ordinary shares	\$	5.92 (3)	\$	310,800.00 (3)	\$	28.81
<b>2018 Warrants Plan</b>							
Ordinary Shares							
no nominal value per share	50,000 ordinary shares	\$	9.51 (4)	\$	475,500.00 (4)	\$	44.08
<b>2020 Warrants Plan</b>							
Ordinary Shares							
no nominal value per share	490,500 ordinary shares	\$	13.66 (5)	\$	6,700,230.00 (5)	\$	621.11
<b>2021 Warrants Plan</b>							
Ordinary Shares							
no nominal value per share	1,400,000 ordinary shares	\$	25.24 (6)	\$	35,336,000.00 (6)	\$	3,275.65

- (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 that become issuable under the Registrant’s (i) 2013 Share Incentive Plan, (ii) 2016 Warrants Plan, (iii) 2018 Warrants Plan, (iv) 2020 Warrants Plan or (v) 2021 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 \$5.92, which is the subscription price per new share to be granted under the 2013 Share Incentive Plan of €5.17, converted from euros to U.S. dollars at an exchange rate of \$1.1443 per euro, the noon buying rate in The City of New York on November 12, 2021 set forth in the H.10 statistical release of the Federal Reserve Board on November 15, 2021.
- (3) 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 \$5.92, which is the subscription price per new share to be granted under the 2016 Warrants Plan of €5.17, converted from euros to U.S. dollars at an exchange rate of \$1.1443 per euro, the noon buying rate in The City of New York on November 12, 2021 set forth in the H.10 statistical release of the Federal Reserve Board on November 15, 2021.
- (4) 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 \$9.51, which is the weighted average subscription price per new share to be granted under the 2018 Warrants Plan of €8.31, converted from euros to U.S. dollars at an exchange rate of \$1.1443 per euro, the noon buying rate in The City of New York on November 12, 2021 set forth in the H.10 statistical release of the Federal Reserve Board on November 15, 2021.
- (5) 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 \$13.66, which is the subscription price per new share to be granted under the 2020 Warrants Plan of €11.94, converted from euros to U.S. dollars at an exchange rate of \$1.1443 per euro, the noon buying rate in The City of New York on November 12, 2021 set forth in the H.10 statistical release of the Federal Reserve Board on November 15, 2021.
- (6) 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 \$25.24, which is the weighted average subscription price per share underlying warrants that have been granted and the average of the high and the low price of the Registrant’s ordinary shares as reported on Euronext Brussels as of a date (November 16, 2021) within five business days prior to filing this Registration Statement for new shares to be granted under the 2021 Warrants Plan of €22.06, converted from euros to U.S. dollars at an exchange rate of \$1.1443 per euro, the noon buying rate in The City of New York on November 12, 2021 set forth in the H.10 statistical release of the Federal Reserve Board on November 15, 2021.

**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 Commission are incorporated herein by reference:

(a) the Registrant's Prospectus dated July 2, 2021 filed with the Commission on July 6, 2021 pursuant to Rule 424(b) of the Securities Act in connection with the Registrant's Registration Statement on Form F-1 ([No. 333-257000](#)) which contains the Registrant's audited financial statements for the latest fiscal year for which such statements have been filed;

(b) the Registrant's Current Reports on Form 6-K furnished to the Commission on [July 9, 2021](#), [July 20, 2021](#), [August 27, 2021](#), [August 31, 2021](#), [September 2, 2021](#) and [September 15, 2021](#) (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.

The underwriting agreement the Registrant has entered into in connection with the offering of ordinary shares registered pursuant to the registration statement on Form F-1, as amended (Reg. No. 333-257000) provides that the underwriters will indemnify, under certain conditions, the Registrant's board of directors and its officers against certain liabilities arising in connection with the offering of the ordinary shares.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Incorporated by Reference herein from Form or Schedule</b>	<b>Filing Date</b>	<b>SEC File/ Reg. Number</b>
<a href="#"><u>4.1</u></a>	<a href="#"><u>Articles of Association, as amended (English Translation)</u></a>	<a href="#"><u>Form 6-K (Exhibit 3.1)</u></a>	<a href="#"><u>July 9, 2021</u></a>	<a href="#"><u>001-40552</u></a>
<a href="#"><u>5.1*</u></a>	<a href="#"><u>Opinion of NautaDutilh BV/SRL</u></a>			
<a href="#"><u>23.1*</u></a>	<a href="#"><u>Consent of EY Réviseurs d'Entreprises / EY Bedrijfsrevisoren SRL/BV, independent registered public accounting firm</u></a>			
<a href="#"><u>23.2*</u></a>	<a href="#"><u>Consent of NautaDutilh BV/SRL (included in Exhibit 5.1)</u></a>			
<a href="#"><u>24.1*</u></a>	<a href="#"><u>Power of Attorney (included on the signature page hereto)</u></a>			
<a href="#"><u>99.1</u></a>	<a href="#"><u>Form of 2013 Share Incentive Plan (English Translation)</u></a>	<a href="#"><u>Form F-1 (Exhibit 10.4)</u></a>	<a href="#"><u>June 10, 2021</u></a>	<a href="#"><u>333-257000</u></a>
<a href="#"><u>99.2</u></a>	<a href="#"><u>Form of 2016 Warrants Plan (English Translation)</u></a>	<a href="#"><u>Form F-1 (Exhibit 10.5)</u></a>	<a href="#"><u>June 10, 2021</u></a>	<a href="#"><u>333-257000</u></a>
<a href="#"><u>99.3</u></a>	<a href="#"><u>Form of 2018 Warrants Plan (English Translation)</u></a>	<a href="#"><u>Form F-1 (Exhibit 10.6)</u></a>	<a href="#"><u>June 10, 2021</u></a>	<a href="#"><u>333-257000</u></a>
<a href="#"><u>99.4</u></a>	<a href="#"><u>Form of 2020 Warrants Plan (English Translation)</u></a>	<a href="#"><u>Form F-1 (Exhibit 10.7)</u></a>	<a href="#"><u>June 10, 2021</u></a>	<a href="#"><u>333-257000</u></a>
<a href="#"><u>99.5*</u></a>	<a href="#"><u>Form of 2021 Warrants Plan (English Translation)</u></a>			

\*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 19<sup>th</sup> day of November, 2021.

### 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 Fabian Suarez Gonzalez, 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
<u>/s/ Olivier Taelman</u> Olivier Taelman	Chief Executive Officer and Director ( <i>principal executive officer</i> )	November 19, 2021
<u>/s/ Fabian Suarez Gonzalez</u> Fabian Suarez Gonzalez, acting via ActuaRisk Consulting SRL	Chief Financial Officer ( <i>principal accounting officer and principal financial officer</i> )	November 19, 2021
<u>/s/ Robert Taub</u> Robert Taub	Chairman of the Board of Directors	November 19, 2021
<u>/s/ Kevin Rakin</u> Kevin Rakin	Director	November 19, 2021
<u>/s/ Donald Deyo</u> Donald Deyo	Director	November 19, 2021
<u>/s/ Pierre Gianello</u> Pierre Gianello	Director	November 19, 2021
<u>/s/ Jan Janssen</u> Jan Janssen	Director	November 19, 2021
<u>/s/ Jürgen Hambrecht</u> Jürgen Hambrecht	Director	November 19, 2021
<u>/s/ Rita Johnson-Mills</u> Rita Johnson-Mills	Director	November 19, 2021

**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 November 19, 2021.

**NYXOAH, INC.**

By: /s/ Olivier Taelman

Name: Olivier Taelman

Title: Chief Executive Officer, President and Secretary



AVOCATS



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

Brussels, 19 November 2021  
75019133 Nyxoah / Stella

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:

- a. up to 25,000 ordinary shares without nominal value of the Company to be issued upon the exercise of outstanding warrants under the share incentive plan 2013 of the Company (the “**2013 Share Incentive Plan**”);
- b. up to 52,500 ordinary shares without nominal value of the Company to be issued upon the exercise of outstanding warrants under the warrant plan 2016 of the Company (the “**2016 Warrants Plan**”);
- c. up to 50,000 ordinary shares without nominal value of the Company to be issued upon the exercise of outstanding warrants under the warrant plan 2018 of the Company (the “**2018 Warrants Plan**”);
- d. up to 490,500 ordinary shares without nominal value of the Company to be issued upon the exercise of outstanding warrants under the warrant plan 2020 of the Company (the “**2020 Warrants Plan**”);
- e. up to 1,400,000 ordinary shares without nominal value of the Company to be issued upon the exercise of outstanding warrants under the warrant plan 2021 of the Company (the “**2021 Warrants Plan**”);<sup>1</sup>

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<sup>1</sup> We have used the amount of warrants existing as of the date hereof, and have not taken into account the warrants existing at the date of the registration statement.

Amsterdam

Brussels

London

Luxemburg

New York

Rotterdam

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

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The 2013 Share Incentive Plan, the 2016 Warrants Plan, the 2018 Warrants Plan, the 2020 Warrants Plan and the 2021 Warrants Plan relating to the warrants (*warrants/droits de souscription*) (the "**Warrants**") are together referred to as the "**Plans**". The aggregate amount of 2,018,000 ordinary shares to be issued under the Plans are together 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.

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.

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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 Plans 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/SRL.<sup>2</sup>

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<sup>2</sup> The applicable general terms and conditions of NautaDutilh BV/SRL can be found at all times at [www.nautadutilh.com](http://www.nautadutilh.com).

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## 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 shareholders' meeting or, as the case may be, the Company's board of directors (or its proxyholders) has duly authorized the Plans;
  - d. the Company's board of directors (or its proxyholders in accordance with the terms of the Plans) has duly granted all Warrants under the Plans relating to the Shares and the beneficiaries have accepted the Warrants granted to them in accordance with the terms of the Plans;
  - e. the Plans are 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 Reports;
  - f. the Plans have been, and will at all times be, operated in accordance with their 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 Plans, 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) or the general shareholders' meeting of the Company, on their respective dates and were adopted at properly convened meetings;
  - j. publication of the deeds 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 Plans;
  - l. the opinion in this opinion letter will not be affected by any foreign law.
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## 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 Plans, 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 Plans, and that the Company will have received in full all amounts payable by the participants under the Plans 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.

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Yours faithfully,

/s/ NautaDutilh BV/SRL

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NautaDutilh BV/SRL

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## EXHIBIT A

### LIST OF DOCUMENTS

1. a copy of the Form S-8 Registration Statement under the Securities Act of 1933, dated November 19, 2021 (the "**Registration Statement**");
  2. a copy of the French version of the co-ordinated articles of association of the Company dated September 10, 2021 (the "**Articles of Association**");
  3. a copy of the rules of the 2013 Share Incentive Plan incorporated as an exhibit to the Registration Statement by reference to exhibit 10.4 to the Company's registration statement on Form F-1 (File n° 333-257000);
  4. a copy of the rules of the 2016 Warrants Plan incorporated as an exhibit to the Registration Statement by reference to exhibit 10.5 to the Company's registration statement on Form F-1 (File n° 333-257000);
  5. a copy of the rules of the 2018 Warrants Plan incorporated as an exhibit to the Registration Statement by reference to exhibit 10.6 to the Company's registration statement on Form F-1 (File n° 333-257000);
  6. a copy of the rules of the 2020 Warrants Plan incorporated as an exhibit to the Registration Statement by reference to exhibit 10.7 to the Company's registration statement on Form F-1 (File n° 333-257000);
  7. a copy of the rules of the 2021 Warrants Plan;
  8. a copy of the notarial deed recording the resolutions taken by the Company's board of directors held on September 8, 2021 (the "**Board Resolutions**");
  9. a copy of the notarial deeds recording the resolutions taken by the Company's extraordinary general meetings held on May 3, 2013 and November 3, 2016, December 12, 2018 and February 21, 2020;  
  
(the Board Resolutions and the resolutions recorded in the document referred to under 9 are herein referred to as the "**Resolutions**")
  10. a copy of the special reports of the board of directors of the Company (the "**Board Reports**") dated May 21, 2013 and September 16, 2016, November 9, 2018, February 14, 2020 and August 27, 2021 issued pursuant to Articles 595, 598 and/or 583 of the (former) Belgian Companies Code or Articles 7:180 *juncto* 7:179 and 7:191 of the Belgian Code of Companies and Associations ("**BCCA**") as well as a copy of the special reports of the statutory auditor of the Company dated May 21, 2013 and September 16, 2016, November 12, 2018, February 18, 2020 and September 21, 2021 issued pursuant to Articles issued pursuant to Articles 595, 598 and/or 583 of the (former) Belgian Companies Code or Articles 7:180 *juncto* 7:179 and 7:191 BCCA submitted to the board of directors with regard to the Plans, and
  11. a certificate of the Company's secretary dated November 19, 2021.
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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' 2013 Share Incentive Plan, 2016 Warrants Plan, 2018 Warrants Plan, 2020 Warrants Plan, 2021 Warrants Plan of Nyxoah SA of our report dated April 16, 2021, with respect to the consolidated financial statements of Nyxoah SA for the year ended December 31, 2020 and 2019, included in its Statement on Form F-1 (No. 333-257000).

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

Diegem, Belgium

November 19, 2021

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*English translation – for information purposes only*

**Nyxoah SA**

**Rue Edouard Belin 12**

**1435 Mont-Saint-Guibert**

**Register of Legal Entities Brabant wallon**

**VAT: BE 0817.149.675**

**(the “Company”)**

## **2021 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 2021 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 one million four hundred thousand (1,400,000) Warrants can be issued. Consequently, the Company can issue up to one million four hundred thousand (1,400,000) 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 3 months after the End of Mandate and all Warrants that are not exercised prior to the expiry of such 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 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](mailto: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](mailto: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 27 August 2021.

On behalf of the Board of Directors:

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Robert Taub

Director

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Olivier Taelman

Director