

Company No: 05397984

THE COMPANIES ACT 2006
COMPANY LIMITED BY SHARES
RESOLUTIONS IN WRITING

FRIDAY



A58 *A0OSSFK9* #362
23/12/2011
COMPANIES HOUSE

of

GEO THERMAL INTERNATIONAL LIMITED

("Company")

Passed the *2nd* day of *December* 2011

By a written resolution agreed to in accordance with Chapter 2 of Part 13 of the Companies Act 2006 by or on behalf of the required number of the members of the Company who, at the date of circulating the resolution, were entitled to vote on the resolution the following resolutions of the Company was/were duly passed.

RESOLUTIONS

As ordinary resolutions

1. THAT the Directors be and are hereby generally and unconditionally authorised in accordance with section 551 of the Companies Act 2006 (the "**CA 2006**") to exercise all the powers of the Company to allot shares in the Company or to grant rights to subscribe for or to convert any security into shares in the Company provided that:
 - a. the maximum nominal amount of such shares that may be allotted under this authority (within the meaning of such section) is £21,279 50, and
 - b. this authority shall, unless it is (prior to its expiry) duly revoked or varied or is renewed, expire on the date five years from the date this resolution is passed save that the Company may, before such expiry, make an offer or agreement which will or may require such shares to be allotted after such expiry

This authority is in substitution for all previous authorities conferred on the Directors in accordance with section 80 of the Companies Act 1985 (the "**CA 1985**") and/or section 551 of the CA 2006

2. THAT:
 - (a) the existing 40,000 "A" Shares of £0.125 each in the capital of the Company held by SSE Venture Capital Limited be and are hereby re-classified as 40,000 A Ordinary Shares of £0.125 each in the capital of the Company,
 - (b) the existing 102,000 "A" Shares of £0 125 each in the capital of the Company held by Brian Davidson be and are hereby re-classified as

102,000 Ordinary Shares of £0.125 each in the capital of the Company;

- (c) the existing 34,500 "B" Shares of £0.125 each in the capital of the Company be and are hereby re-classified as 34,500 Ordinary Shares of £0.125 each in the capital of the Company;
- (d) the existing 23,500 "C" Shares of £0 125 each in the capital of the Company be and are hereby re-classified as 23,500 Ordinary Shares of £0.125 each in the capital of the Company;
- (e) the existing 5,851 "D" Shares of £0 125 each in the capital of the Company be and are hereby re-classified as 5,851 C Ordinary Shares of £0.125 each in the capital of the Company,

in each case having the rights and being subject to the restrictions set out in the articles of association (the "**New Articles**") adopted pursuant to resolution 6 below.

As special resolutions

- 3. THAT the Directors be and are hereby generally and unconditionally authorised in accordance with section 197 of the CA 2006, and any other provision or requirement of the CA 2006, to exercise all powers of the Company to lend to Karl Drage and Christopher Davidson the sum of £150,000 each, further details of such loans being detailed in the memorandum attached to this written resolution.

- 4 It being noted that

- (a) the Company had previously: (i) authorised and created, or purportedly authorised and created, "D" shares and "E" shares of £0 125 each in the capital of the Company; and (ii) allotted and issued, or purportedly allotted and issued, 5,851 "D" shares of £0.125 each in the capital of the Company, otherwise than in full compliance with the CA 1985 and/or the CA 2006;
- (b) there were defects with the Company's public file maintained at Companies House in respect of certain previous allotments and issues of shares in the capital of the Company,
- (c) the statutory registers of the Company were not complete,

(together the "**Matters**"),

- (i) THAT the Matters and any and all acts or omissions of the Directors in connection with the Matters be and are hereby retrospectively ratified and approved for all purposes under the CA 1985 and/or the CA 2006 including, without limitation, section 239 of the CA 2006, (ii) THAT the Directors are

authorised to do any and all acts to resolve the Matters; and (iii) THAT the 5,851 "D" Shares of £0.125 each in the capital of the Company shall, following the re-classification pursuant to resolution 2(e) above, have the rights and be subject to the restrictions set out in the New Articles adopted pursuant to resolution 6 below

5. THAT any right that Brian Davidson has, or purportedly has, to convert any one of his "A" Shares of £0.125 each in the capital of the Company into any other share in the capital of the Company with enhanced voting rights or a "Golden Share" shall, following the adoption of the New Articles pursuant to resolution 6 below, be removed and cease to have any further effect and THAT the 102,000 "A" Shares of £0.125 each in the capital of the Company held by Brian Davidson shall, following the re-classification pursuant to resolution 2 above, have the rights and be subject to the restrictions set out in the New Articles adopted pursuant to resolution 6 below.
6. THAT the articles of association set out in the document attached to this written resolution be and are hereby approved and adopted as the articles of association of the Company in substitution for and to the exclusion of all existing articles of association of the Company and (for the avoidance of doubt) to the exclusion of, and in substitution for, the relevant provisions of the memorandum of association that would otherwise be treated as provisions of the articles of association under section 28 of the CA 2006
7. THAT, subject to and in accordance with resolution 1 above, the Directors be and are hereby empowered to allot and issue 124,878 Preferred Shares of £0.125 each in the capital of the Company, 40,150 B Ordinary Shares of £0.125 each in the capital of the Company and 5,208 Ordinary Shares of £0.125 each in the capital of the Company (each such class of shares having the rights set out in and being subject to the New Articles adopted pursuant to resolution 6 above) free from the pre-emption provisions of section 561 of the CA 2006 or otherwise (including, for the avoidance of doubt, from the pre-emption provisions in the New Articles).

Signed



Director/Secretary

Dated

02/12/2011

ARTICLES OF ASSOCIATION
of
GEOTHERMAL INTERNATIONAL LIMITED
(Company Number 05397984)

(Adopted by Written Resolution passed on 2 December
2011)

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Company Number: 05397984

THE COMPANIES ACT 2006
PRIVATE COMPANY LIMITED BY SHARES
ARTICLES OF ASSOCIATION
of
GEOHERMAL INTERNATIONAL LIMITED

(Adopted on 2 December 2011)

1 DEFINITIONS AND INTERPRETATION

- 1 1 The model articles for private companies limited by shares contained in Schedule 1 of the Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended prior to the date of adoption of these Articles (the "**Model Articles**") shall apply to the Company save as expressly excluded or modified by the these Articles or as are inconsistent with the provisions contained herein
- 1 2 Model Articles 11, 13, 14, 21, 30(2), 52 and 53 shall be disapplied and Model Article 44(2)(c) shall be amended by replacing "two or more persons" with "any person"
- 1 3 The Company is a private company and no shares or debentures of the Company may be offered to the public
- 1 4 In these Articles, the following definitions apply

"Acting in Concert" has the meaning ascribed to it by the City Code on Takeovers and Mergers as in force and construed at the date of adoption of these Articles

"Additional Investment SPV" means the special purpose vehicle established to invest in the Company and referred to in clause 4 1 of the Subscription and Shareholders' Agreement

"Affiliate" means in relation to a person, any other person that is, directly or indirectly, Controlling, Controlled by or under common Control with that person

"Articles" means these articles of association as originally framed or as from time to time altered and the expression "**Article**" shall be construed accordingly

"A Ordinary Shares" means the A ordinary shares of £0 125 each in the capital of the Company

"Approved Offer" shall have the meaning given to it in Article 16 2(a)

"Asset Sale" means the sale, transfer of disposal of all or substantially all of the assets of the Company and its subsidiaries taken as a whole by way of any single transaction or series of transactions

"Auditors" means the auditors for the time being of the Company

"B Ordinary Shares" means the non-voting B ordinary shares of £0.125 each in the capital of the Company.

"Board" means the board of directors of the Company from time to time

"Business Day(s)" means a day (which for these purposes ends at 5.30pm) on which banks are open for commercial business in the City of London other than a Saturday or Sunday

"Business Plan" shall have the meaning given to it in the Subscription and Shareholders' Agreement

"C Ordinary Shares" means the non-voting C ordinary shares of £0.125 each in the capital of the Company.

"Cessation Date" means

- (a) where a contract of employment, contract for services or directorship is terminated by the employer giving notice to the employee of the termination of the employment, engagement or directorship, the date of that notice (whether or not a payment is made by the employer in lieu of all or part of the notice period required to be given by the employer in respect of such termination),
- (b) where a contract of employment, contract for services or directorship is terminated by the employee by giving notice to the employer of the termination of the employment, the engagement or directorship, the date of that notice,
- (c) where an employer or employee/consultant wrongfully repudiates the contract of employment or contract for services and the other accepts that the contract of employment or contract for services has been terminated, the date of such acceptance,
- (d) where a contract of employment or contract for services is terminated under the doctrine of frustration, the date of the frustrating event, and
- (e) where a contract of employment, contract for services or directorship is terminated for any reason other than in the circumstances set out in paragraphs (a) to (d) above, the date on which the action or event giving rise to the termination occurs

"Companies Acts" has the meaning given by section 2 of the Companies Act 2006 and includes any enactment passed after that Act which may, by virtue of that or any other such enactment, be cited together with that Act as the "Companies Acts" (with or without the addition of an indication of the date of any such enactment)

"Confidential Information" has the meaning given to it in Article 23.5

"Connected Persons" shall have the meaning provided by section 1122 of the Corporation Taxes Act 2010

"Control" means in relation to any undertaking

- (a) the ownership or control (directly or indirectly) of shares or other interests in that undertaking carrying more than fifty per cent of the votes exercisable at general meetings of that undertaking on all, or substantially all, matters, or
- (b) the right to appoint or remove directors (or equivalent officers) of that undertaking having a majority of the voting rights exercisable at meetings of the board of directors (or equivalent officers) of that undertaking on all, or substantially all, matters, or
- (c) the ability of a person to ensure that the activities, business and affairs of that undertaking are conducted in accordance with the wishes of that person to the exclusion of any other person whether as a result of a delegation of authority, contractual arrangement or otherwise, and whether or not such ability is or may be exercised on behalf of some other person(s), and any derivative term or reference to **"Controlling"** and **"Controlled"** shall be construed accordingly

"Controlling Interest" in relation to a person means the ownership by that person and his or its Connected Persons of Shares carrying the right to more than 50 per cent of the total number of votes which may be cast on a poll at a general meeting of the Company

"Conversion Date" shall have the meaning given to it in Article 8 1

"Conversion Notice" shall have the meaning given to it in Article 8 1.

"Converted Basis" means on the basis of a deemed share capital of the Company where each Preferred Share has converted into 2 483 Ordinary Shares with the other Equity Shares being diluted pro rata

"Deed of Adherence" shall have the meaning given to it in the Subscription and Shareholders' Agreement

"Default Rate" means the higher of (i) 15% per annum and (ii) 4% plus the rate applying at the relevant time in calculating the Preferred Share Coupon per annum

"Deferred Shares" means the deferred shares of £0 125 each in the capital of the Company

"Director" means any director of the Company for the time being

"EBT" means a trust established to enable or facilitate the holding of Shares by or for the benefit of all or most of the bona fide employees of one or more Group Companies

"EEF LP" means Environmental Energies Fund LP, the fund to be established and managed by SEP

"Equity Shares" means the A Ordinary Shares, the B Ordinary Shares, the C Ordinary Shares, the Ordinary Shares and the Preferred Shares any shares derived therefrom whether by conversion, consolidation or subdivision or by way of rights or bonus issue or otherwise for the time being in issue

"ESB Novusmodus" means ESB Novusmodus LP, an Irish limited partnership whose principal place of business is at 27 Lower Fitzwilliam Street, Dublin 2, Dublin, Ireland

"ESB Novusmodus Fund" means any fund in which the Electricity Supply Board, a statutory corporation established under the laws of Ireland, directly or indirectly, is an investor

"ESB Novusmodus Group" means

- (a) ESB Novusmodus,
- (b) any ESB Novusmodus Fund,
- (c) any general partner or investment manager or investment adviser or limited partner of an ESB Novusmodus Fund,
- (d) any fund (and its limited partners) of which Novusmodus LLP or any person referred to in (c) is the general partner, investment manager or investment adviser, and
- (e) any company, partnership or other entity which is an Affiliate of ESB Novusmodus, any ESB Novusmodus Fund or any person referred to in (c)

"Excluded Shares" means any B Ordinary Shares issued to Chris Davidson, Karl Drage, Tom Chadwick or James Patrick Sherriff on exercise of the share options granted to them on the Investment Date under the Geothermal International Limited Employee Share Option Scheme adopted by a resolution of the Board on or around the Investment Date (or in the case of Chris Davidson, on the following Business Day)

"Exit Event" means the earliest to occur of

- (a) the date and time on which a Sale is completed,
- (b) the date and time at which a Listing takes place, or
- (c) the date and time at which a Liquidation takes place

"Financial Year" means a financial year or other period in respect of which the Company prepares its accounts in accordance with the relevant provisions of the Companies Act 2006

"First Business Plan" shall have the meaning given to it in the Subscription and Shareholders' Agreement

"Group" means the Company and its Subsidiaries from time to time and **"Group Company"** means any one of them

"Group Company Interest" has the meaning given to it in Article 23.3

"holder" in relation to Shares, means the member whose name is entered in the Register of Members as the holder of such Shares

"Initial Sale Share Allocation" has the meaning given to it in Article 13.4(a)(ii)

"Investment Date" means 2 December 2011

"Investor Directors" means the NM Investor Director and the SVC Investor Director and **"Investor Director"** shall mean either one of them

"Investor Director Interest" has the meaning given to it in Article 23 4

"Issue Price" means the amount paid up or credited as paid up (including any premium on issue) on a Share

"Leaver" means

- (a) any person who is at the date of adoption of these Articles or who later becomes an employee and/or director or consultant of any Group Company and who subsequently ceases to be so employed or engaged and does not continue in any such capacity for any reason whatsoever (including death, bankruptcy or as a result of a Group Company ceasing to be a Subsidiary of the Company),
- (b) any Member who is the nominee of any person referred to in (a) above in respect of the Share held on behalf of such person,
- (c) any Member who is (or is the nominee of) a Family Member or Family Trust of any person referred to in (a) above, and
- (d) any person who becomes entitled to any Shares
 - (i) following the death of a Member,
 - (ii) following the bankruptcy of a Member

"Leaving Date" means

- (a) in relation to any person who ceases to be an employee and/or director or consultant of any Group Company or a nominee, Family Member or Family Trust of such person, the Cessation Date, and
- (b) in relation to any person who acquires any Shares following the death or bankruptcy of any Member, the date they first acquired any Shares

"Leaver's Shares" means all B Ordinary Shares held by the Leaver, or to which he is entitled, on the Leaving Date and any B Ordinary Shares acquired by the Leaver after the Leaving Date whether on exercise of share options (other than the Excluded Shares) or otherwise

"Liquidation" means the solvent liquidation or winding up of the Company

"Listing" means the unconditional granting of permission for any of the Equity Shares (including any Ordinary Shares arising on conversion) to be dealt in on any recognised investment exchange (as defined in section 285 of the Financial Services and Markets Act 2000)

"Market Value" means the market value of the relevant Shares determined pursuant to Article 14

"Member" means a person for the time being registered in the register of members as the holder of any Shares

"NM Investors" means ESB Novusmodus LP (for as long as it is the legal or beneficial owner of any Shares) and any other person who becomes an NM Investor for the purposes of the Subscription and Shareholders' Agreement

"NM Investor Consent" means the consent of the NM Investors given in accordance with the Subscription and Shareholders' Agreement

"NM Investor Director" means the director appointed pursuant to Article 20 1 as the NM Investor Director

"Offer Notice" has the meaning given to it in Article 13 5

"Ordinary Shares" means the ordinary shares of £0 125 each in the capital of the Company

"Ordinary 1 Shares" means the ordinary 1 shares of £0 125 each in the capital of the Company resulting from the conversion of the Preferred Shares pursuant to Articles 8 2

"Permitted Transfer" means a transfer of Shares permitted by Article 12

"Preferred Share Coupon" means an amount per Preferred Share equal to a coupon accrued daily on the Issue Price of the Preferred Share calculated from the Investment Date to the date of the Exit or the redemption triggering the relevant payment (accruing daily and compounding annually on each anniversary of the Investment Date) where the coupon is calculated in accordance with the formula below

$$\text{Coupon} = (8 + A)\% \text{ per annum}$$

Where A = the number of complete years between the third anniversary of the Investment Date and the Exit or the redemption triggering the relevant payment

"Preferred Shares" means the redeemable participating convertible preferred shares of £0 125 each in the capital of the Company

"Relevant Investor" has the meaning given to it in Article 23 4(a)

"Relevant Majority" means

- (a) on or prior to the third anniversary of the Investment Date the holders of 50% of the Preferred Shares and 50% of the other Equity Shares,
- (b) after the third anniversary of the Investment Date but on or before the fifth anniversary of the Investment Date the holders of not less than 50% of the Preferred Shares and 15% of the other Equity Shares,
- (c) at any time after the fifth anniversary of the Investment Date
 - (i) the holders of not less than 50% of the Preferred Shares, or
 - (ii) the holders of not less than 75% of the Equity Shares

"Relevant Member" has the meaning given to it in Article 13 5.

"Sale" means a sale of the entire issued share capital of the Company to a single buyer or one or more buyers as part of a single transaction

"Sale Price" has the meaning given to it in Article 13 2

"Sale Shares" has the meaning given to it in Article 13 1(b)(i)

"SEP" means Scottish Equity Partners LLP (company number SO301884)

"SEP Fund" means any fund of which SEP is a manager or adviser

"SEP Group" means

- (a) SEP,
- (b) EEF LP,
- (c) any SEP Fund,
- (d) any general partner or investment manager or investment adviser or limited partner of an SEP Fund,
- (e) any fund (and its limited partners) of which any person referred to in (c) is the general partner, investment manager or investment adviser, and
- (f) any company, partnership or other entity which is an Affiliate of SEP, SEP Fund or any person referred to in (c)

"Share(s)" means shares in the capital of the Company of any class from time to time

"Situational Conflict" means a direct or indirect interest of a Director which conflicts or possibly may conflict with the interests of the Company (other than a Transactional Conflict or in circumstances which cannot reasonably be regarded as likely to give rise to a conflict of interest) For these purposes, a conflict of interests shall include a conflict of interest and duty and a conflict of duties

"Subscription and Shareholders' Agreement" means the subscription and shareholders' agreement dated the Investment Date and made between (1) the Company (2) the Managers (as defined therein) (3) SSE Venture Capital Limited, (4) the Other Shareholders (as defined therein), (5) ESB Novusmodus LP and (6) the Bridge Loan Lenders (as defined therein) as the same may be amended or supplemented from time to time

"Subsidiary" means a subsidiary as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsection 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee

"SVC Investors" means SSE Venture Capital Limited (for as long as it is the beneficial owner of any Shares) and any other person who becomes an SVC Investor for the purposes of the Subscription and Shareholders' Agreement

"SVC Investor Consent" means the consent of the SVC Investor given in accordance with the Subscription and Shareholders' Agreement

"SVC Investor Director" means the director appointed pursuant to Article 20 2 as the SVC Investor Director

"Total Transfer Condition" has the meaning given to it in Article 13 1(b)(v)

"Transactional Conflict" means a direct or indirect conflict of interest of a Director which arises in relation to an existing or proposed transaction or arrangement with the Company

"Transfer Notice" means a notice given or deemed to have been given in relation to any Shares as specified in Article 13 1(a)

"Valuers" means the Auditors unless

- (a) a report on Market Value is to be made pursuant to a Deemed Transfer Notice and, within 21 days after the date of the Deemed Transfer Notice, the Vendor notifies the Board in writing that it objects to the Auditors making that report, or
- (b) the Auditors decline an instruction to report on Market Value

when the Valuers for the purpose of that report shall be a firm of chartered accountants agreed between the Vendor and the Board (with NM Investor Consent and SVC Investor Consent) or, in default of agreement within 20 Business Days after the event referred to in (a) or (b) above, appointed by the President of the Institute of Chartered Accountants in England and Wales on the application of the Vendor or the Board

"Vendor" has the meaning given to it in Article 13 1(a)

In these Articles, where the context admits

- (a) words and phrases which are defined or referred to in or for the purposes of the Companies Acts have the same meanings in these Articles unless they are already defined within the Articles or the context otherwise requires,
- (b) references to statutes or statutory provisions and orders or regulations made thereunder include that statute, provision, order or regulation as amended, modified, re-enacted or replaced from time to time before the date hereof and to any previous statute, statutory provision, order or regulation amended, modified, re-enacted or replaced by such statute, provision, order or regulation,
- (c) reference to a gender includes the other gender, and reference to the singular includes the plural and vice versa, and
- (d) headings are for ease of reference only and shall not affect the construction or interpretation of these Articles

2 SHARE CAPITAL

2 1 The share capital of the Company at the date of the adoption of these Articles is £36,646 75 divided into

- (a) 40,000 A Ordinary Shares,
- (b) 5,851 C Ordinary Shares
- (c) 160,000 Ordinary Shares, and
- (d) 87,323 Preferred Shares

2 2 The Ordinary 1 Shares and Ordinary Shares shall have different rights pursuant to Articles 4 and 8 6 but shall otherwise rank pari passu as a single class of Shares All references to Ordinary Shares in these Articles other than in Articles 4 shall be deemed to include reference to the Ordinary 1 Shares

SHARE RIGHTS

3 DIVIDENDS

3 1 Save as provided in Article 7 2, subject to the Board recommending payment and NM Investor Consent and SVC Investor Consent, any profits which the Company may determine to distribute shall be distributed amongst the holders of Equity Shares on a Converted Basis provided that, once all holders of Equity Shares have received (pursuant to this Article) the sum of £1,000,000 per Share, the holders of Deferred Shares shall be entitled to receive an amount equal to the Issue Price of the Deferred Shares

4 CAPITAL

4 1 On a return of capital on Liquidation or capital reduction or otherwise (except in the case of the redemption of Shares of any class or the purchase by the Company of its own Shares), the surplus assets of the Company available for distribution among the Members shall be applied in the following manner and order of prnorty

- (a) firstly, in paying to each Member holding Preferred Shares an amount per Preferred Shares held equal to the Issue Price of the Preferred Share plus the Preferred Share Coupon thereon,
- (b) second, in paying to the holders of the Preferred Shares and Ordinary 1 Shares a percentage ("X") of the remaining balance of such assets where

$$X = \frac{Y}{Z} \times 100$$

and

Y = the number of Preferred Shares and Ordinary 1 Shares in issue at the relevant date

Z = the number of Equity Shares in issue at the relevant date

- (c) thirdly, in paying to each Member holding A Ordinary Shares an amount in pounds Sterling ("A") per A Ordinary Share held where

$$A = \frac{8,000,000}{AS}$$

and

AS = the number of A Ordinary Shares in issue at the relevant date, and

- (d) thereafter, in distributing the balance of such assets amongst the holders of the Equity Shares other than the Preferred Shares (pari passu as if such Shares constituted one class of Share) provided that, once such Shares have received (pursuant to this Article) the sum of £1,000,000 per Share, the Deferred Shares shall be entitled to receive an amount equal to the Issue Price of the Deferred Shares

5 VOTING

- 5 1 Subject to Articles 5 2, 5 3 and 15 2(d), the voting rights attaching to each class of Share shall be as follows

- (a) on a written resolution, every Member holding one or more Equity Share (other than B Ordinary Shares or C Ordinary Shares) on the date on which the resolution is circulated shall (save as otherwise provided in the Companies Acts) have

- (i) one vote for each Ordinary Share or A Ordinary Share held by him, and
- (ii) 2 483 votes for each Preferred Share held by him,

- (b) at a general meeting of the Company, every Member holding one or more Equity Shares (other than B Ordinary Shares or C Ordinary Shares) who (being an individual) is present in person or by proxy or (being a corporation) is present by duly authorised representatives or by proxy shall

- (i) on a show of hands have one vote, and
- (ii) on a poll have
 - (A) one vote for each Ordinary Share or A Ordinary Share held by him, and
 - (B) 2 483 votes for each Preferred Share held by him,

save that, on a resolution under section 168 of the Companies Act 2006 (i) for the removal of the NM Investor Director, for as long as the NM Investors hold, in aggregate at least 2% by number of the issued Equity Shares, the Preferred Shares held by the NM Investors shall have in aggregate twice the number of votes carried by all the other Shares, apportioned *pro rata* as nearly as practicable among the Preferred Shares held by the NM Investors or (ii) for the removal of the SVC Investor Director, for as long as the SVC Investors hold, in aggregate at least 2% by number of the issued Equity Shares, the A Ordinary Shares shall have in aggregate twice the number of votes carried by all the

other Shares, apportioned *pro rata* as nearly as practicable among the A Ordinary Shares

5 2 If at any time the earnings before interest, tax, depreciation and amortisation of the Group as shown in its most recent consolidated management accounts or most recent consolidated audited accounts of the Group for any 12 month period is 50% or less of the amount projected for that period in the First Business Plan (or current Business Plan to the extent the relevant period was not covered by the First Business Plan) then the provisions of Article 5 3 shall apply. The provisions of Article 5 3 shall cease to apply if the consolidated management accounts of the Group for a subsequent 12 month period show earnings before interest, tax, depreciation and amortisation of the Group equal to 75% or more of the amount projected for the relevant period in the First Business Plan (or current Business Plan to the extent the relevant period was not covered by the First Business Plan). The provisions of Article 5 3 shall not apply at any time prior to the first anniversary of the Investment Date.

5 3 At any time while the provisions of this Article apply

- (a) the Preferred Shares held by the NM Investors and the SVC Investors shall have such number of additional votes that the Shares held by the NM Investors and the SVC Investors shall between them carry 75% of the votes at a general meeting of the Company or on a written resolution of the Company (in each case, apportioned *pro rata* between the NM Investors and the SVC Investors according to the number of Preferred Shares held by them), and
- (b) the Preferred Shares held by the NM Investors and the SVC Investors shall entitle the holders to appoint at any time additional Directors such that those Directors, together with the NM Investor Director and the SVC Investor Director, constitute a majority on the Board (such additional appointments shall be split equally between the NM Investors and the SVC Investors save that, where an odd number of additional directors are to be appointed the NM Investors shall appoint one more than the SVC Investors). Any additional directors appointed pursuant to this Article 5 3(b) shall be removed if the provisions of Article 5 3 cease to apply.

5 4 The B Ordinary Shares, C Ordinary Shares and Deferred Shares will not confer the right to receive notice of, attend, speak or vote at any general meeting of the Company nor to vote on any written resolution of the Company.

6 REDEMPTION OF PREFERRED SHARES

6 1 The holders of the Preferred Shares may require the Company, by serving on it a notice at any time after the fifth anniversary of the Investment Date (a "**Redemption Notice**"), to redeem such amount of Preferred Shares then in issue as is specified in the Redemption Notice. The Redemption Notice shall specify the date (a "**Redemption Date**") on which the redemption is to take place (which shall be not less than 20 Business Days nor more than 50 Business Days after the date of the Redemption Notice). A Redemption Notice must be signed by or on behalf of the holders of a majority in number of the Preferred Shares. A Redemption Notice once served may only be revoked with the consent of the Company.

6 2 Where a Redemption Notice has been duly given, the Company shall be obliged, subject to having sufficient distributable reserves with which to redeem the same, to redeem the

Preferred Shares specified in the Redemption Notice on the relevant Redemption Date
On redemption of each Preferred Share, there shall be paid an amount equal to

- (a) the Issue Price thereof, and
- (b) the Preferred Share Coupon thereon

and such aggregate amount shall, subject to the Company having distributable reserves or other monies which may be lawfully applied for such redemption, at that time become a debt due from, and immediately payable by, the Company to the holders of such Preferred Shares. If and to the extent that the debt so constituted is not paid in full on the relevant Redemption Date, the unpaid amount shall carry interest at the Default Rate in respect of the period from and including the relevant Redemption Date down to and including the date of actual payment

- 6.3 If the Company is unable, because of having insufficient distributable reserves, to redeem in full the relevant number of Preferred Shares on the relevant Redemption Date, the Company shall redeem as many of such Preferred Shares as can lawfully and properly be redeemed and the Company shall redeem the balance as soon as it is lawfully and properly able to do so (the date on which it is lawfully able to do so becoming the Redemption Date for the purposes of calculating interest at the Default Rate pursuant to Article 6.2)
- 6.4 If the Company is at any time redeeming less than all the Preferred Shares from time to time in issue, the number of Preferred Shares to be redeemed shall be apportioned between those holders of the Preferred Shares then in issue pro rata according to the number of Preferred Shares held by them respectively at the relevant Redemption Date
- 6.5 On a Redemption Date, each of the holders of the Preferred Shares falling to be redeemed shall be bound to deliver to the Company, at the Company's registered office, the certificate(s) for such Preferred Shares (or an indemnity, in a form reasonably satisfactory to the Board, in respect of any lost certificate) in order that the same may be cancelled. Upon such delivery, the Company shall pay to the holder (or, in the case of any joint holders, to the holder whose name stands first in the Company's register of members in respect of such Shares) the amount due to it in respect of such redemption against delivery of a proper receipt for the redemption monies
- 6.6 If any certificate delivered to the Company pursuant to Article 6.5 includes any Preferred Shares not falling to be redeemed on that Redemption Date, a new certificate in respect of those Preferred Shares shall be issued to the holder(s) thereof as soon as practicable thereafter (and, in any event, within 10 Business Days thereafter)
- 6.7 If the Company fails or is unable to redeem any of the Preferred Shares in full on a Redemption Date for any reason whatsoever, all distributable reserves (or other monies which may lawfully be applied for the purpose of redeeming Shares) shall be applied in towards redeeming Preferred Shares which have not been redeemed on or by the relevant Redemption Date in priority to any other payments to Members under these Articles

7 PROCEEDS OF SALE OR LISTING

- 7.1 In the event of a Sale then, notwithstanding anything to the contrary in the terms of such Sale (unless all the Members immediately prior to the Sale have agreed in writing to the

contrary expressly for the purposes of this provision, whether in the agreements for the Sale or otherwise), the Members shall, immediately prior to such Sale, procure that the purchase consideration whenever received is paid into a designated trustee account and, following the Sale, shall be distributed amongst the selling Members in the manner and order of priority in which the amount of the purchase consideration would have been distributed under Article 4 had a resolution for the winding up of the Company been passed on the date of the Sale and had the amount available for distribution to the Members in such winding up been equal to the amount of such purchase consideration.

- 7 2 As soon as practicable following an Asset Sale, the Company shall distribute the proceeds of such Asset Sale to the Members (less any amount the Directors consider necessary to retain to cover actual and contingent liabilities of the Company) Any such distribution shall be made in the order of priority set out in Article 4 1 whether it is made by way of dividend, return of capital on liquidation or otherwise
- 7 3 Immediately prior to and conditionally upon a Listing, the Members shall enter into such reorganisation of the share capital of the Company as they may agree or, in default, in such manner as the Auditors (acting as experts and not arbitrators) shall determine, to ensure that the proceeds of the Listing are allocated between the Members in the same proportions as the preceding provisions of these Articles would provide on a Sale at a price equal to the market capitalisation of the Company on Listing (excluding any Shares issued on the Listing to raise new funds)

8 CONVERSION OF PREFERRED SHARES

- 8 1 The holders of Preferred Shares shall be entitled, by notice in writing to the Company signed by or on behalf of the holders of a majority in number of the Preferred Shares (a **"Conversion Notice"**), to require conversion into Ordinary 1 Shares of all of the Preferred Shares held by them at any time and the relevant Preferred Shares shall convert automatically on the date specified by the holder of those Preferred Shares (the **"Conversion Date"**) The holders of the Preferred Shares may, in a Conversion Notice, state that conversion of the Preferred Shares into Ordinary 1 Shares is conditional upon the occurrence of an Exit Event in which case the conversion shall take place immediately prior to the Exit Event
- 8 2 The holders of the Preferred Shares shall specify in the Conversion Notice whether conversion is to take place in accordance with Article 8 2(a) or 8 2(b) Where the holders of the Preferred Shares have specified in a Conversion Notice that the conversion is to take place in accordance with Article 8 2(a) they may also specify that if, in the reasonable opinion of the Board, the Company has insufficient cash to pay the Issue Price of the Preferred Share plus the Preferred Share Coupon on some or all of the Preferred Shares to be converted the Preferred Shares which cannot be converted pursuant to Article 8 2(a) shall convert in accordance with Article 8 2(b) instead If the holder of the Preferred Shares have not so specified and, in the reasonable opinion of the Board, the Company does not have sufficient cash to effect the full conversion requested under Article 8 2(a), the Company shall notify the holders of the Preferred Shares accordingly in writing and the holders may then elect to convert the relevant Preferred Shares under Article 8 2(b) instead or not convert them at all Where not all Preferred Shares are being converted or are not being converted in the same manner, the Preferred Shares to be converted (in each manner) shall be apportioned between the holders of the Preferred Shares pro-rata to this number of Preferred Shares held by each of them If the holders of the Preferred Shares fail to make specification in the

Conversion Notice, the conversion shall be deemed to take place in accordance with Article 8 2(a) On conversion

- (a) each Preferred Share shall be converted into one Ordinary 1 Share and the Company shall pay to the holder of such Preferred Share a cash amount equal to the Issue Price of the Preferred Share plus the Preferred Share Coupon on the Conversion Date, or
- (b) the Preferred Shares to be converted shall be converted into a number of Ordinary 1 Shares ("N") calculated in accordance with the formula below

$$N = TP + \frac{(APC + AIP) (NS + TP)}{(EV - ACP - AIP)}$$

where

TP is the total number of Preferred Shares in issue at the date of the conversion

APC is the Preferred Share Coupon on all the Preferred Shares in issue at the date of conversion

AIP is the aggregate Issue Price of all the Preferred Shares in issue at the date of conversion

EV is

- (i) where the Preferred Shares are converting on an Exit Event, the Realisation Value as defined in Article 8 7, or
- (ii) in all other circumstances, the valuation of the entire share capital of the Company as agreed between the Company and the holders of the Preferred Shares to be converted or, in the absence of agreement, as determined by the Valuer in accordance with Article 14,

NS is the total number of Shares in issue plus the total number of Shares which are the subject of options to subscribe granted by the Company

- (i) excluding the Preferred Shares being converted, but
- (ii) including any Ordinary 1 Shares resulting from a previous conversion of Preferred Shares pursuant to this Article

- 8 3 Subject to Articles 8 4 and 8 6, on an Exit Event where the NM Investors' Proceeds arising on the Exit Event exceed the Threshold Return a number of the Preferred Shares "NDef" calculated in accordance with the formula below and apportioned between the holders of Preferred Shares pro rata to the number of such Shares held by each of them shall convert into Deferred Shares immediately prior to the Exit Event

$$NDef = TP1 - \frac{AIP1 \times NS1}{27,500,000 + (R - 3)/0.0000000875}$$

where

TP1 is the total number of Preferred Shares issued on the Investment Date or on or before 1 May 2013

AIP1 is the aggregate Issue Price of all the Preferred Shares issued on the Investment Date or on or before 1 May 2013

NS1 is 231,209, being the total number of Shares which were in issue plus the total number of Shares which were the subject of options to subscribe granted by the Company on the Investment Date prior to the issue of the Preferred Shares

R is NM Investors' Proceeds divided by NM Investors' Investment

- 8 4 Where the application of Articles 8 3 would result in the NM Investors' Proceeds falling below the Threshold Return, the number of Preferred Shares to be converted into Deferred Shares shall be reduced such that the NM Investors' Proceeds on the relevant Exit Event equals the Threshold Return
- 8 5 Where there is to be conversions of Preferred Shares pursuant to both Article 8 2 and Article 8 3, the conversion pursuant to Article 8 3 shall take place first
- 8 6 Where the Preferred Shares have been converted into Ordinary 1 Shares pursuant to Article 8 2 prior to an Exit Event if, on a subsequent Exit Event, there would have been a conversion of Preferred Shares pursuant to Article 8 3 but for the prior conversion of the Preferred Shares pursuant to Article 8 2, a number of the Ordinary 1 Shares equal to the number that resulted from the conversion of the Preferred Shares pursuant to Article 8 2 that, had the conversion pursuant to that Articles not taken place, would have been converted into Deferred Shares pursuant to Article 8 3 shall be converted into Deferred Shares
- 8 7 For the purposes of Articles 8 3 and 8 4

"NM Investors' Proceeds" means that amount of the Realisation Value as is attributable to the Preferred Shares held by the NM Investors or, where the Preferred Shares held by the NM Investors are to be converted into Ordinary 1 Shares on the relevant Exit Event, the Ordinary 1 Shares that would result from their conversion on the relevant Exit Event plus repayment of any loans advanced by the NM Investors to the Group (including any interest accrued thereon)

"NM Investors' Investment" means the sum of £8,551,030 (as at the Investment Date) plus any additional amounts invested in or advanced to any member of the Group after the Investment Date by the NM Investors whether by way of share capital, loan, loan capital or otherwise

"Realisation Value" means the value of the issued Equity Shares in the capital of the Company (which shall, where appropriate, include shares deriving therefrom since their date of issue, including shares deriving therefrom following any capital reorganisation effected prior to the realisation) calculated as follows and on the basis that the relevant realisation has been effected in accordance with its terms

- (a) in the event of a Listing, the market value of the Equity Shares subject to the Listing determined by reference to the price per share at which such shares are to be offered for sale, placed or otherwise marketed pursuant to the

arrangements relating to the Listing, all as determined by the merchant bank or, if none, the broker appointed by the Board to advise in connection with the Listing,

(b) in the event of a Sale

- (i) if the Equity Shares are to be sold by private treaty (as distinct from a public offer) and the consideration is a fixed cash sum payable in full on completion of the Sale, the total amount of such cash sum,
- (ii) if a written offer has been made for a cash consideration or, if the Share Sale is pursuant to any other public cash offer or public offer accompanied by a cash alternative, the total cash consideration or cash alternative price for all the shares of the Company for which the offer is made,
- (iii) if the Sale is by private treaty or public offer and the consideration is the issue of securities (not accompanied by a cash alternative)
 - (A) if the securities will rank par passu with a class of securities already admitted to trading on the relevant investment exchange (in the case of a sale by private treaty) the value attributed to such consideration in the related sale agreement setting out the terms of such sale or, (in the case of a Share Sale following a public offer or failing any such attribution in the sale agreement) by reference to the value of such consideration determined by reference to the average middle market quotation of such securities over the period of 5 Business Days ending 3 days prior to the day on which the Sale is completed, or
 - (B) if the securities are not of such a class, the value of the relevant consideration as agreed between the Company and the NM Investor or, in the absence of such agreement prior to the realisation, such value as is reported on by the Valuers,
- (iv) to the extent that the Sale includes an element of consideration which is deferred, contingent and/or unquantified, then no value shall be ascribed thereto, and
- (v) if and to the extent that (i) to (iv) above are not applicable, the value of the relevant consideration as agreed between the Company, the NM Investors and the SVC Investors or, in the absence of such agreement prior to the Exit Event, such value as is reported on by the Auditors,

and, for the avoidance of doubt, Realisation Value shall not include the amount of any dividend or other distribution paid by the Company prior to the relevant Exit Event

"Threshold Return" means an amount equal to three times the NM Investors' Investment

8.8 Any Preferred Share transferred pursuant to Article 13 to a person other than a person who

- (a) is an NM Investor, a member of the ESB Novusmodus Group or an SVC Investor or a member of the SEP Group, or
- (b) on or prior to the relevant transfer, adheres to the Subscription and Shareholders' Agreement as an NM Investor or an SVC Investor, or
- (c) is already a holder of Preferred Shares

shall convert automatically into Ordinary Shares on a one for one basis unless the NM Investors and the SVC Investors give written notice to the Company to the contrary

- 8 9 Within five Business Days after the Conversion Date or, in the case of conversion on an Exit Event, prior to the occurrence of the Exit Event, each holder of Preferred Shares falling to be converted shall deliver the certificate (or an indemnity in a form reasonably satisfactory to the Board in respect of any lost certificate(s) in respect of the shares being converted) for such shares to the Company at its registered office for the time being
- 8 10 The Company shall on the Conversion Date enter the holder of the converted Preferred Shares on the register of Members of the Company as the holder of the appropriate number of Ordinary Shares and Deferred Shares and, subject to the relevant holder delivering its certificate(s) (or indemnity) in respect of the Preferred Shares in accordance with this Article, the Company shall within 10 Business Days of the Conversion Date forward to such holder of Preferred Shares by post to his address shown in the register of Members, free of charge, a definitive certificate for the appropriate number of fully paid Ordinary Shares and Deferred Shares

9 VARIATION OF RIGHTS

- 9 1 Whenever the capital of the Company is divided into different classes of Shares the special rights attached to any class may be varied or abrogated either whilst the Company is a going concern or during or in contemplation of a winding-up with the consent in writing of the holders of more than three quarters of the issued Shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of that class, but not otherwise. To every such separate meeting all the provisions of these Articles relating to general meetings of the Company or to the proceedings thereat shall, mutatis mutandis, apply, except that
 - (a) the necessary quorum shall be Member(s) or person(s) at least holding or representing by proxy one third in nominal value of the issued Shares of the class unless all the Shares of any class are registered in the name of a single corporate shareholder in which case the quorum shall be one person being the duly authorised representative of such shareholder (but so that if at any adjourned meeting of such holders a quorum as above defined is not present those Members who are present shall be a quorum),
 - (b) any holder of Shares of the class present in person or by proxy may demand a poll,
 - (c) at any adjourned meeting of such holders one holder present in person or by proxy (whatever the number of Shares held by him) shall be a quorum, and
 - (d) the holders of Shares of the class shall, on a poll, have one vote in respect of every Share of the class held by them respectively

9 2 Without prejudice to the generality of Article 9 1, the special rights attached to Preferred Shares shall be deemed to be varied by and accordingly the prior consent (in writing or in separate meeting) of the holders of the to Preferred Shares shall be required in accordance with the provisions of Article 9 1 to any of the following

- (a) create, allot or issue any shares or securities of the Company or grant any right to require the allotment or issue of any such shares or securities (other than the creation, allotment or issue or the grant of any right to require the allotment or issue of any shares or securities pursuant to these Articles),
- (b) redeem or purchase any share capital of the Company otherwise than in accordance with these Articles,
- (c) alter or vary any of the rights attaching to any of the shares for the time being in the capital of the Company,
- (d) alter any of the provisions of the articles of association of the Company,
- (e) take any steps in connection with the winding up of or the appointment of a receiver or administrator of the Company or any Group Company or any similar insolvency or rescue procedures,
- (f) the making of any material change (including cessation) in the general nature of the business of the Group

9 3 Any purported variation of the rights of the Preferred Shares otherwise than in accordance with this Article 9 shall be void and have no effect

10 ISSUE OF SHARES

10 1 Subject to Articles 10 2, 10 3 and 10 8, any new Shares to be issued from time to time shall be offered first to the holders of the Equity Shares in proportion (as nearly as may be) to their holdings of the Equity Shares on a Converted Basis The offer shall

- (a) be made by notice specifying the number and class of Shares offered (subject to Article 10 3), the price per Share and a time (not being less than 10 Business Days or greater than 15 Business Days) within which the offer if not accepted will be deemed to be declined, and
- (b) if required by the Board, will be conditional on the other holders of Equity Shares subscribing for other securities in the Company or any other Group Company (including, for the avoidance of doubt loan notes or other debt instruments) on the same terms as the new investors and on the same basis as the subscription for Shares set out in this Article

After the expiration of the time for accepting the offer, or on the receipt of an indication from the person(s) to whom the offer is made that he/they decline(s) to accept the Shares offered or any of them, the Board shall offer the Shares declined in the like manner (save that the minimum period for acceptance may be 5 Business Days and the maximum 10 Business Days) to the other holders of Equity Shares who have agreed to invest in all the Shares offered to them in proportion (as nearly as may be) to the nominal amount of their existing holdings of Shares (of whatever class) If the Shares comprised in such further offer are declined or deemed to be declined the further offer shall be withdrawn

10 2 If all or any of the Shares to which Article 10 1 applies are not taken up in accordance with the provisions of Article 10 1, the Board may offer such Shares to a third party and subject to these Articles and the provisions of sections 549 and 551 of the Companies Act 2006 such Shares shall be at the disposal of the Board who may allot, grant options over or otherwise dispose of them to such persons at such times and generally on such terms and conditions as they think proper, provided that

- (a) no Shares shall be issued at a discount,
- (b) no Shares to which Article 10 1 applies shall be issued more than 60 Business Days after the expiry of the period for acceptance to the last offer of such Shares made under Article 10 1 unless the procedure set out in Article 10 1 is repeated in respect of such Shares, and
- (c) no Shares shall be issued at a price less than that at which they were offered to the Members in accordance with Article 10 1 and so that (if the Board are proposing to issue such Shares wholly or partly for non-cash consideration) the cash value of such consideration for the purposes of this Article 10 2(c) shall be as reasonably determined by the Auditors whose determination shall be final and binding on the Company and each of the Members

10 3 Any Shares issued pursuant to Article 10 1 other than Shares issued to a holder of Preferred Shares in respect of his existing holding of Preferred Shares shall be Ordinary Shares

10 4 The provisions of Articles 10 1 and 10 2 shall apply *mutatis mutandis* to all equity securities (as defined in section 560(1) of the Companies Act 2006) of the Company from time to time created

10 5 Save as provided in Article 10 8, if the Company issues any further Shares at a price per Share of less than the Issue Price of the Preferred Shares issued on the Investment Date which, in the event that

- (a) the Shares are issued on conversion or exercise of a security convertible into or exchangeable for Shares shall include both the consideration received by the Company for the issue of any such security and the consideration received on conversion or exchange of such security, or
- (b) the further Shares are not issued for cash shall be an amount certified by the Auditors acting as experts and not as arbitrators as being in their opinion the current cash value of the non-cash consideration for the allotment of the further Shares

then the Company shall, unless and to the extent that any of the holders of Preferred Shares shall have specifically waived their rights under this Article in writing, offer (such offer, unless waived, to remain open for acceptance for not less than 15 Business Days) to each holder of Preferred Shares the right to receive such number of new Preferred Shares (of the same class as the Preferred Shares giving rise to the right pursuant to this Article) by applying the following formula (and rounding the product, A, down to the nearest whole share), subject to adjustment as certified in accordance with Article 10 7 (the "Anti-Dilution Shares")

$$A = (B/C) - D - E$$

Where -

“B” is the total amount subscribed by the relevant holder of Preferred Shares for the Preferred Shares issued to them on or after the Investment Date (including any issue under this Article 10 5 on any previous Share issue),

“C” is the Issue Price at which the Company is proposing to issue new Shares at any time after the Investment Date,

“D” is the number of Preferred Shares issued to the relevant holder of Preferred Shares on the Investment Date, and

“E” is the number of Preferred Shares issued to the relevant holder of Preferred Shares under this Article 10 5 on any previous issue of such Shares

10 6 The Anti-Dilution Shares shall

- (a) be paid up by the automatic capitalisation of available reserves of the Company, unless and to the extent that the same shall be impossible or unlawful or the NM Investors and the SVC Investors shall agree otherwise, in which event the NM Investors and the SVC Investors shall be entitled to subscribe for the Anti-Dilution Shares in cash at par. In the event of any dispute between the Company, the NM Investor and/or and the SVC Investors as to the effect of Article 10 5, the matter shall be referred (at the cost of the Company) to the Auditors for certification of the number of Anti-Dilution Shares to be issued. The Auditors' certification of the matter shall in the absence of manifest error be final and binding on the Company and each of its Members, and
- (b) subject to the payment of any cash payable pursuant to Article 10 6(a) (if applicable), be issued, credited fully paid up in cash and shall rank pari passu in all respects with the existing Preferred Shares of the relevant class, within 5 Business Days of the expiry of the offer being made by the Company pursuant to Article 10 5 (or determination under Article 10 6(a) if later)

10 7 In the event of any reorganisation of the share capital of the Company, the original Issue Price of the Preferred Shares shall be subject to adjustment on such basis as may be agreed by the Company with the NM Investors and the SVC Investors within 10 Business Days after any such reorganisation. If the Company, the NM Investors and the SVC Investors cannot agree such adjustment it shall be referred to the Auditors whose determination shall, in the absence of manifest error, be final and binding on the Company and each of its Members. The costs of the Auditors shall be borne by the Company

10 8 The provisions of Articles 10 1, 10 2 and 10 5 shall not apply to

- (a) the issue of Ordinary Shares on conversion of Preferred Shares pursuant to Article 8,
- (b) the issue of up to 40,150 B Ordinary Shares to employees and/or directors of the Group pursuant to management incentive schemes in place at the Investment Date or subsequently approved by the Board, the NM Investor and the SVC Investor,

- (c) the issue of up to 5,208 Ordinary Shares to Tom Smith as part of the consideration for the acquisition by the Company of Endurant Energy LLC, or
- (d) the issue of Deferred Shares on conversion of any Preferred or Ordinary Shares pursuant to Article 8

The provisions of Articles 10 1 and 10 2 shall not apply to any issue of Shares pursuant to Article 10 5

- 10 9 Section 561(1) and sections 562(1) to (5) of the Companies Act 2006 shall not apply to the Company

TRANSFER OF SHARES

11 GENERAL PROVISIONS

- 11 1 Notwithstanding any other provision in these Articles, the Board shall refuse to register the transfer of any Shares
- (a) being Shares which are not fully paid, to a person of whom they do not approve,
 - (b) on which the Company has a lien,
 - (c) to a person who is (or whom the Board reasonably believes to be) under 18 years of age or a person who does not have (or whom the Board reasonably believes does not have) the legal capacity freely to dispose of any Shares without let, hindrance or court order,
 - (d) purported to be made otherwise than in accordance with or as permitted by these Articles,
 - (e) the transfer is prohibited under clause 12 2 of the Subscription and Shareholders' Agreement,
 - (f) unless the proposed transferee has entered into a Deed of Adherence (other than on a Sale or if NM Investor Consent and SVC Investor Consent is given to the contrary),
 - (g) to any person who, in the opinion of the Board, the NM Investor Director or the SVC Investor Director (in each case acting reasonably), is carrying on business directly or indirectly in competition with the Company or any Group Company save that this restriction shall not apply to any transfer of Shares pursuant to Articles 16 (Tag Along Rights) and 17 (Drag Along Rights)
- 11 2 The transferor of any Shares shall remain the holder of the Shares concerned until the name of the transferee is entered into the Register of Members in respect thereof
- 11 3 Save for Permitted Transfers, no B Ordinary Shares may be transferred without NM Investor Consent and SVC Investor Consent
- 11 4 For the purpose of these Articles the following shall be deemed (but without limitation) to be a transfer by a Member of Shares

- (a) any direction (by way of renunciation or otherwise) by a Member entitled to an allotment or transfer of Shares that a Share be allotted or issued or transferred to some person other than himself, and
- (b) any sale or any other disposition of any legal or equitable interest in a Share or the granting of any mortgage or charge or any other security interest over any Share and whether or not for consideration or otherwise and whether or not effected by an instrument in writing

11 5 Notwithstanding Article 11 4(b), any transfer by any partner, unitholder, shareholder or other participant in, or operator, manager or custodian of, any shareholder which is a Fund (a **"Fund Participant"**) (or by any trustee or nominee for any such Fund Participant) of any interest in such Fund to any person who is, or as a result of the transfer becomes, a Fund Participant, shall not, and shall not be deemed to, be a transfer of Shares for any purpose under these Articles. For the purposes of this Article **"Fund"** means any bank, company, unit trust, investment trust, investment company, limited general or other partnership, industrial provident or friendly society, any collective investment scheme (as defined by the Financial Services and Markets Act 2000), any investment professional (as defined in article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion Order) 2005 (the **"FPO"**)), any high net worth company, unincorporated association or partnership (as defined in article 49(2) of the FPO) or any high value trust (as defined in article 49(6) of the FPO), any pension fund or insurance company or any person who is an authorised person under the Financial Services and Markets Act 2000

11 6 For the purpose of ensuring that

- (a) a transfer of Shares is duly authorised hereunder,
- (b) no circumstances have arisen whereby a Transfer Notice is required to be given hereunder, or
- (c) no circumstances have arisen whereby the tag along provisions are required to be or ought to have been triggered pursuant to Article 16

the Board may from time to time require any Member or the legal personal representatives of any deceased Member or any person named as transferee in any transfer lodged for registration to furnish to the Company such information and evidence as the Board (acting reasonably) may think fit regarding any matter which they deem relevant to such purpose including (but not limited to) the names and addresses and interests of all persons respectively having interests in the Shares from time to time registered in the Member's name. Failing such information or evidence being furnished to the satisfaction of the Board (acting reasonably) within 20 Business Days after request the Board shall refuse to register the transfer in question or (in case no transfer is in question) to require by notice in writing that a Transfer Notice be given in respect of the Shares concerned. If such information or evidence discloses that a Transfer Notice ought to have been given in respect of any Shares the Board may by notice in writing require that a Transfer Notice be given in respect of the Shares concerned. Any such notice shall be binding upon the Members concerned who shall be bound to give a Transfer Notice in respect of the Shares concerned forthwith upon receipt of the said notice from the Board.

- 11 7 A Transfer Notice shall be deemed to be given (if not actually given) at the expiry of five Business Days after the Board has required the same to be given pursuant to Article 11 6 and the provisions of these Articles relating to Transfer Notices shall take effect accordingly
- 11 8 A Transfer Notice given or deemed to be given pursuant to this Article or Article 15 shall not be capable of revocation (except with the written approval of the Board) nor may it specify that unless all relevant Shares are sold by the Company pursuant to the Transfer Notice, none shall be so sold Subject as provided to the contrary in this Article or Article 15, the provisions of Article 13 shall apply to any Transfer Notice given or deemed to be given under or pursuant to this Article or Article 15
- 11 9 In any case where a Member (or his personal representatives) has or have been required to give or has or have been deemed to have given a Transfer Notice pursuant to the provisions of this Article or Article 15 and subsequently becomes the holder of further Shares by virtue of the holding of any Shares comprised in such Transfer Notice (whether by way of rights or bonus issue conversion, transfer or otherwise howsoever) the Board may at any time thereafter determine in its absolute discretion that he (or his personal representatives) as appropriate shall be deemed to have served a Transfer Notice pursuant to this Article or Article 15 (as appropriate) in respect of such further Shares

12 PERMITTED TRANSFERS

12 1 Definitions

For the purposes of this Article and Articles 13 and 15

- (a) **"Family Member"** means, in relation to any Member, any of his spouse (or widow or widower), children and grandchildren (including step and adopted children and grandchildren),
- (b) **"Family Trust"** means, in relation to a Member, a trust which does not permit any of the settled property or the income from it to be applied otherwise than for the benefit of that Member or any of his Family Members and under which no power of control over the voting powers conferred by any Shares the subject of the trust is capable of being exercised by, or being subject to the consent of, any person other than the trustees or such Member or any of his Family Members,
- (c) **"Fund Manager"** means, in relation to an Investment Fund, a person whose principal business is to make, manage or advise upon investments in securities and who manages or advises the business of that Investment Fund,
- (d) **"Fund Permitted Transferee"** means
 - (i) in relation to any Investment Fund and any Fund Permitted Transferee which is an Investment Fund, any Member of the same Fund Group,
 - (ii) (in relation to any Fund Permitted Transferee which is an undertaking (as defined in section 1161(1) of the Companies Act 2006), any Member of the same Group,

- (e) **"Investment Fund"** means a fund, partnership, company, syndicate or other entity whose business is managed by a Fund Manager,
- (f) **"Member of the same Fund Group"** means, as regards an Investment Fund
 - (i) any participant or partner in, or member of, such Investment Fund or the holders of any unit trust which is a participant or partner in, or member of, that Investment Fund (but only in connection with the dissolution of the Investment Fund or any distribution of assets of the Investment Fund pursuant to the operation of the Investment Fund in the ordinary course of business),
 - (ii) any Investment Fund managed by the Fund Manager,
 - (iii) any parent undertaking or subsidiary undertaking (in each case as defined in the Companies Act 2006) of the Fund Manager, or any subsidiary undertaking of any parent undertaking of the Fund Manager, or
 - (iv) any trustee, nominee or custodian for the Investment Fund
- (g) **"a Member of the same Group"** means, in relation to a body corporate, any other body corporate which is for the time being a holding company of that body corporate or a Subsidiary of that body corporate or a Subsidiary of any holding company of which that body corporate is also a Subsidiary

12 2 Transfers to Family Members and Family Trusts

- (a) Subject to Articles 12 2(b) to 12 2(e), any Member who is an individual may at any time transfer Shares to a person shown to the reasonable satisfaction of the Board (with the approval of the NM Investor Director and SVC Investor Director not to be unreasonably withheld or delayed) to be
 - (i) a Family Member of his, or
 - (ii) trustees to be held under a Family Trust for that Member or any of his Family Members
- (b) Subject to Article 12 2(d), no Shares shall be transferred under Article 12 2(a) by any person who previously acquired those Shares by way of transfer under Article 12 2(a) other than to the original Member
- (c) No transfer of Shares shall be made by a Member under Article 12 2(a)(ii), unless the Board acting reasonably (with the approval of the NM Investor Director and SVC Investor Director not to be unreasonably withheld or delayed) has confirmed it is satisfied
 - (i) with the terms of the instrument constituting the relevant Family Trust and in particular with the powers of the trustees,
 - (ii) with the identity of the trustees and the procedures for the appointment and removal of trustees,

- (iii) with the restrictions on changes in the terms of the trust instrument and on distributions by the trustees,
 - (iv) with the ability and willingness of the trustees to give appropriate warranties and indemnities on a Sale or Listing or a guarantee in terms acceptable to the Board from the relevant transferring Member in lieu thereof, and
 - (v) that none of the costs incurred in establishing or maintaining the relevant Family Trust will be payable by any Group Company
- (d) Where Shares are held by trustees under a Family Trust
- (i) those Shares may, on any change of trustees, be transferred by those trustees to any new trustee of that Family Trust whose identity has been approved by the Board such approval not to be unreasonably withheld or delayed (with the approval of the NM Investor Director and SVC Investor Director not to be unreasonably withheld or delayed),
 - (ii) those Shares may at any time be transferred by those trustees to the settlor of that trust or any other Family Member to whom that settlor could have transferred them under this Article 12.2 if he had remained the holder of them, and
 - (iii) if any of those Shares cease to be held under a Family Trust for any other reason, the trustees shall give a Transfer Notice within 10 Business Days in respect of all the Shares then held by those trustees
- (e) If
- (i) any person has acquired Shares as a Family Member of a Member by way of one or more permitted transfers, and
 - (ii) that person ceases to be a Family Member of that Member

that person shall forthwith transfer all the Shares then held by that person back to that Member, for such consideration as they agree, within 10 Business Days of the cessation, or, failing such transfer within that period, shall during the remainder of the 15 Business Day period after the cessation, give a Transfer Notice in respect of all of the Shares then held by that person

12.3 Transfer by EBT

- (a) Any Member who is the trustee of an EBT may at any time transfer any Shares which it holds in that capacity to
 - (i) the new or remaining trustee(s) of the EBT on any change of trustee(s), and
 - (ii) any beneficiary of the EBT approved by the Board

12 4 Transfers within groups of companies

- (a) Any Member which is a body corporate may at any time transfer any Shares held by it to a member of the same group
- (b) Where Shares have been transferred under Article 12 4(a) (whether directly or by a series of such transfers) from a Member ("**Transferor**", which expression shall not include a second or subsequent transferor in such a series of transfers) to a member of the same group as the Transferor ("**Transferee**") and subsequently the Transferee ceases to be a member of the same group as the Transferor, the Transferee shall forthwith transfer all the Shares held by it to the Transferor, for such consideration as they agree, within 10 Business Days of the cessation, or, failing such transfer within that period, shall during the remainder of the 15 Business Day period after the cessation, give a Transfer notice in respect of all of the Shares then held by the Transferee

12 5 Transfers by the NM Investors

- (a) Any Shares held by any NM Investor may be transferred to any member of the ESB Novusmodus Group
- (b) Any Shares held by any NM Investor may be transferred to the Additional Investment SPV

12 6 Transfers by SVC

Any Shares held by SSE Venture Capital Limited may be transferred to EEF LLP provided the transfer takes place within 6 months of the Investment Date

12 7 Transfers by Investment Funds

- (a) Any Shares held by an Investment Fund may be transferred to a Fund Permitted Transferee of that Investment Fund
- (b) Any Shares held as a result of any transfer pursuant to Article 12 7(a) may be transferred to another Fund Permitted Transferee of the original Investment Fund

12 8 Transfers amongst Members

Any Member holding Shares as a result of a transfer made after the Investment Date by a person in relation to whom such Member was a permitted transferee under the provisions of this Article 12 may at any time transfer any Share to the person who originally transferred such Shares (or to any other permitted transferee of such original transferor)

12 9 Transfers with consent

A Member may transfer Shares to any person at any time with the prior written consent of Members holding 75 per cent or more of the Preferred Shares and 75% or more of the other Equity Shares

13 VOLUNTARY TRANSFERS

13 1 Transfer Notice

- (a) Any Member who wishes to sell or transfer Shares or any beneficial interest therein (the "**Vendor**") other than
 - (i) by means of a Permitted Transfer,
 - (ii) as a result of the operation of Article 15 (Compulsory Transfers), or
 - (iii) where a Relevant Majority is proposing to accept an Approved Offer and Article 17 (Change of Control – Drag Along Rights) appliesshall give a written notice (a "**Transfer Notice**") to the Company
- (b) A Transfer Notice shall specify
 - (i) the number of Shares which he wishes to sell or transfer (the "**Sale Shares**"),
 - (ii) the name of any third party to whom he proposes to sell or transfer the Sale Shares (if any),
 - (iii) the price per Share at which he wishes to sell or transfer the Sale Shares,
 - (iv) any other terms relating to the transfer of the Sale Shares which are not prohibited by these Articles including the date from which dividends on the Sale Shares shall accrue to the purchaser of such Sale Shares, and
 - (v) whether or not it is conditional upon all and not part only of the Sale Shares comprised in the Transfer Notice being sold or offered (a "**Total Transfer Condition**") and in the absence of such stipulation it shall be deemed not to be so conditional
- (c) Each Transfer Notice shall
 - (i) relate to one class of Shares only,
 - (ii) constitute the Company as the agent of the Vendor for the sale of the Sale Shares on the terms of this Article 13,
 - (iii) save as provided in Article 13 3, be irrevocable, and
 - (iv) be deemed not to contain a Total Transfer Condition unless the Transfer Notice expressly states otherwise

13 2 Sale Price

The price per share ("**Sale Price**") at which the Sale Shares shall be offered for purchase in accordance with this Article 13 shall be the price stated in the Transfer Notice

13.3 Revocation of Transfer Notice

A Transfer Notice once given shall not be capable of withdrawal unless such withdrawal is approved by the Board and by NM Investor Consent and SVC Investor Consent in each case acting reasonably

13.4 Initial Offer

- (a) The following provisions of this Article 13.4 will apply to any transfer of any Sale Shares by any Member
 - (i) where the Sale Shares are being offered for sale by a Leaver, within 10 Business Days after the last to occur of
 - (A) the receipt by the Company of a Transfer Notice, and
 - (B) the determination of the Sale Price, andthe Board (with NM Investor Consent and SVC Investor Consent) may determine that the Company (in its capacity as agent for the Vendor) shall immediately offer at the Sale Price such number of Sale Shares as they may determine to
 - (A) the Company pursuant to the provisions of Parts 17 and 18 of the Companies Act 2006, and/or
 - (B) any person who will hold the Sale Shares for the benefit of existing or future employees, including (without limitation) the trustees of an EBT, to hold the Sale Shares upon the terms of a discretionary trust for the benefit of the class of beneficiaries which includes employees or directors of any Group Company, and/or
 - (C) any current or prospective employee or director of the Group (other than the NM Director and the SVC Director) selected by the Board with NM Investor Consent and SVC Investor Consent
 - (ii) If any offeree of the Sale Shares pursuant to this Article 13.4 applies for any of them within 10 Business Days after the date of the offer, the Company will allocate to such offeree the number of Sale Shares applied for (the "Initial Sale Share Allocation") on the later of
 - (A) the fifteenth Business Day following receipt by the Company of the Transfer Notice, and
 - (B) the date on which the Sale Price is determined
 - (iii) If all of the Sale Shares are so allocated, the provisions of Article 13.5 will not apply. If none or some only of the Sale Shares are so allocated, the provisions of Article 13.5 will have effect as if reference to Sale Shares was to those not allocated in accordance with this Article 13.4

13.5 Offer Notice

- (a) Where Article 13.4 applies, not later than 10 Business Days after the first to occur of
 - (i) the expiry of the 10 Business Day period referred to in Article 13.4(a)(i), without a Board determination being made in accordance with Article 13.4,
 - (ii) the expiry of the 10 Business Day period referred to in the Article 13.4(a)(ii) without any applications having been received for Shares offered pursuant to Article 13.4,
 - (iii) the allocation of Shares in accordance with Article 13.4(a)(ii),

or, where Article 13.4 does not apply, within 10 Business Days after receipt by the Company of a Transfer Notice the Company shall give notice (an **"Offer Notice"**) in writing to each of the Members who are on the Register of Members at the close of business on the date that the Transfer Notice is received by the Company (other than the Vendor or any other Member who has served or who is deemed to have served a Transfer Notice which is still outstanding) (a **"Relevant Member"**) informing them that the Sale Shares are available and of the Sale Price and shall invite him to state in writing within 20 Business Days from the date of the said notice (which date shall be specified therein) whether he is willing to purchase any and, if so, how many of the Sale Shares

- (b) An Offer Notice shall
 - (i) specify the Sale Price,
 - (ii) expire 20 Business Days after its service,
 - (iii) contain the other details included in the Transfer Notice, and
 - (iv) invite the relevant Members to apply in writing, before expiry of the Offer Notice, to purchase Sale Shares
- (c) After the expiry date of the Offer Notice, the Board shall allocate the Sale Shares in accordance with the applications received, subject to the other provisions of these Articles, save that
 - (i) if there are applications from Members for more than the total number of Sale Shares available, they shall be allocated to those applicants in proportion (as nearly as possible but without allocating to any Member more Sale Shares than the maximum number applied for by him) to the number of Shares that would be held by them respectively on a Converted Basis,
 - (ii) if it is not possible to allocate Sale Shares without involving fractions, those fractions shall be aggregated and allocated amongst the applicants of the relevant class in such manner as the Board thinks fit,

- (iii) if the Transfer Notice contained a Total Transfer Condition, no allocation of Sale Shares shall be made unless all the Sale Shares are allocated

13.6 Transfer of Sale Shares

- (a) The Board shall, within 5 Business Days after (in the case of Article 13.4) the Initial Sale Shares Allocation or (in the case of Article 13.5) the expiry date of the Offer Notice, give notice in writing (a **"Sale Notice"**) to the Vendor and to each person to whom Sale Shares have been allocated (each a **"Purchaser"**) specifying the name and address of each Purchaser, the number of Sale Shares allocated to him, the aggregate price payable for them, and the time for completion of each sale and purchase
- (b) Completion of a sale and purchase of Sale Shares pursuant to a Sale Notice shall take place at the registered office of the Company at the time specified in the Sale Notice (being not less than 5 Business Days nor more than 20 Business Days after (in the case of Article 13.4) the Initial Sale Shares Allocation or (in the case of Article 13.5) the expiry date of the Offer Notice, unless agreed otherwise in relation to any sale and purchase by both the Vendor and the Purchaser concerned) when the Vendor shall, upon payment to him by a Purchaser of the Sale Price in respect of the Sale Shares allocated to that Purchaser, transfer those Sale Shares and deliver the relevant share certificates to that Purchaser
- (c) The Vendor may, during the period falling between 5 Business Days and 20 Business Days after the expiry date of the Offer Notice, sell any Sale Shares for which a Sale Notice has not been given by way of bona fide sale to the proposed transferee (if any) named in the Transfer Notice at any price per Sale Share which is not less than the Sale Price, without any deduction, rebate or allowance to the proposed transferee and otherwise on terms that are no more favourable than those set out in the Transfer Notice, provided that
 - (i) the Board shall refuse registration of the proposed transferee if he falls within a category to whom transfers are not permitted under Article 11.1(g), and
 - (ii) if the Transfer Notice contained a Total Transfer Condition, the Vendor shall not be entitled to sell only some of the Sale Shares under this Article 13, unless such sale is approved by the Board and by NM Investor Consent and SVC Investor Consent
- (d) If a Vendor fails to transfer any Sale Shares when required pursuant to this Article 13, the Board may authorise any person (who shall be deemed to be the attorney of the Vendor for the purpose) to execute the necessary transfer of such Sale Shares and deliver it on the Vendor's behalf. The Company may receive the purchase money for the Sale Shares from the Purchaser and shall, upon receipt of the duly stamped transfer, register the Purchaser as the holder of those Sale Shares. The Company shall hold the purchase money in a separate bank account on trust for the Vendor but shall not be bound to earn or pay interest on any money so held. The Company's receipt for the purchase money shall be a good discharge to the Purchaser (who shall not be concerned to see to the application of it). After the name of the Purchaser has been entered in the Register of Members in purported exercise of the power conferred by this Article 13, the validity of that exercise shall not be questioned by any person

14 MARKET VALUE

14 1 In the event that it is necessary to establish the Market Value of Equity Shares, the following provisions shall apply

- (a) The Market Value shall be determined on the application of the Board (with NM Investor Consent and SVC Investor Consent) by the Valuers acting as experts and not as arbitrators and their determination shall be final and binding (save in the case of manifest error or fraud)
- (b) The costs of the Valuers shall be payable by the Company unless, in the case of a transfer pursuant to Article 15, the Board (with NM Investor Consent and SVC Investor Consent) has offered a price for the Shares which has not been accepted by the Vendor and the Market Value is determined to be equal to or less than that price, in which case, the costs of the Valuers shall be borne by the Vendor
- (c) The Market Value shall be determined by the Valuers first valuing the share capital of the Company as a whole
 - (i) assuming, if the Company is then carrying on business as a going concern, that it will continue to do so,
 - (ii) assuming that the entire issued share capital of the Company is being sold as between willing buyer and willing seller by arm's length private treaty for cash payable in full on completion,
 - (iii) taking account of the amounts outstanding under the bank loans, shareholder loans and any other indebtedness of the Group,
 - (iv) taking account of any bona fide offer for the Company received from an unconnected third party within six months of the Transfer Notice being served or deemed to have been served, and
 - (v) recognising that in any other circumstances the Shares are not freely marketable
- (d) Having valued the share capital of the Company as a whole, the Valuers shall determine the Market Value of the Shares concerned by allocating that value between the Shares in the order of priority that would be applicable on a return of capital under Article 4 and also
 - (i) taking account of any Shares which may be allotted pursuant to options which have been issued by the Company and which are still outstanding; and
 - (ii) without having regard to whether the Shares constitute a majority or minority or to the fact that their transferability is restricted by these Articles

15 COMPULSORY TRANSFERS

15 1 The provisions of this Article shall apply to any Leaver and any Leaver's Shares

15 2 Upon a person becoming a Leaver

(a) unless the Board (with NM Investor Consent and SVC Investor Consent) otherwise resolves, any Transfer Notice previously issued or deemed issued in relation to the Leaver's Shares shall immediately be cancelled (unless all the Shares subject to it have already been sold) and no further Transfer Notice shall be issued or deemed to be issued in respect of the Leaver's Shares (except under Article 15 2(b) below),

(b) unless the Board (with NM Investor Consent and SVC Investor Consent) otherwise resolves, the Leaver shall be deemed to issue a Transfer Notice in respect of all the Leaver's Shares on the earlier of

(i) the date following the Leaving Date specified by the Company to the Leaver, and

(ii) the first anniversary of the Leaving Date,

in which case the provisions of Article 13 will apply save as provided in this Article,

(c) the right to receive offers pursuant to Articles 10 and 13 shall be suspended, and

(d) unless the Board (with NM Investor Consent and SVC Investor Consent) shall have passed a resolution referred to in Article 15 2(b) above, none of the relevant Leaver's Shares shall, until transferred in accordance with this Article 15, entitle the transferor of such Shares to vote on written resolutions of the Company or receive notice of, attend or vote at any general meeting of the Company or meeting of the holders of Shares of the same class and such Shares shall not be counted in determining the total number of votes which may be cast at any such meeting or for the purposes of a written resolution of any Members or class of Members provided that all Shares so disenfranchised shall on a transfer in accordance with this Article be re-enfranchised

15 3 In respect of a deemed Transfer Notice under Article 15 2(b) above, Sale Price for the Leaver's Shares shall be determined as follows

(a) if the Leaver is a Good Leaver, the Sale Price shall be Market Value, and

(b) if the Leaver is a Bad Leaver, the Sale Price shall be the lower of Issue Price and Market Value

The Market Value shall be calculated as at the Leaving Date. In any particular case, the Board (with NM Investor Consent and SVC Investor Consent) may agree with the transferor a price other than the Market Value or the Issue Price

15 4 In this Article

(a) a "Good Leaver" is a Leaver where

- (i) they are a Leaver by reason of death, permanent incapacity or ill health,
 - (ii) they retire at the retirement age set out in their contract of employment,
 - (iii) they cease to be an employee of a Company because they are dismissed in circumstances which a court or employment tribunal (from which there is no right of appeal or where the time that for such appeal has expired) has determined to constitute unfair dismissal on substantive not procedural grounds, or
 - (iv) the Board (with NM Investor Consent and SVC Investor Consent) resolves that such person is to be categorised as a Good Leaver,
- (b) a **"Bad Leaver"** is a Leaver who is not classified as a Good Leaver

16 CHANGE OF CONTROL – TAG ALONG RIGHTS

16 1 With the exception of transfers of Shares pursuant to Article 12 (Permitted Transfers), no transfer of Shares which would result, if made and registered, in a person or persons Acting in Concert obtaining a Controlling Interest, will be made or registered unless

- (a) an Approved Offer is made by the proposed transferee(s) (**"Buyer"**), and
- (b) the Buyer complies in all respects with the terms of the Approved Offer at the time of completion of the sale and purchase of Shares pursuant to it

16 2 For the purposes of this Article 16 and Article 17

- (a) **"Approved Offer"** means an offer in writing served on all Members holding Equity Shares (including the proposing transferor), offering to purchase all the Equity Shares held by such Members (including any Equity Shares which may be allotted pursuant to the exercise or conversion of options, rights to subscribe for or securities convertible into Equity Shares in existence at the date of such offer) which
 - (i) is stipulated to be open for acceptance for at least 15 Business Days,
 - (ii) apportions the offer consideration between the classes of Equity Shares in accordance with Article 4.1 and offers the same or equivalent consideration for each Share of any given class of Equity Share (whether in cash, securities or otherwise in any combination),
 - (iii) includes an undertaking by or on behalf of the Buyer that no other consideration (whether in cash or otherwise) is to be received or receivable by any Member which, having regard to the substance of the transaction as a whole, can reasonably be regarded as an addition to the price paid or payable for the Equity Shares to be sold by such Member, and that neither the Buyer nor any person acting by agreement or understanding with it has otherwise entered into more favourable terms or has agreed more favourable terms with any other Member for the purchase of Equity Shares, and

- (iv) is on terms that the sale and purchase of all Shares in respect of which the offer is accepted will be completed at the same time

17 CHANGE OF CONTROL – DRAG ALONG RIGHTS

- 17 1 Whenever an Approved Offer is made, a Relevant Majority shall have the right ("**Drag Along Right**") to require (in the manner set out in Article 17 2) all of the other holders of Equity Shares ("**Other Shareholders**") to accept the Approved Offer in full. Article 13 shall not apply in circumstances where the Drag Along Right is being exercised
- 17 2 The Drag Along Right may be exercised by the service of notice to that effect on the Other Shareholders at the same time as, or within 5 Business Days following, the making of the Approved Offer. Such notice will be accompanied by all documents required to be executed by the Other Shareholders to give effect to the relevant transfer
- 17 3 On the exercise of the Drag Along Right, each of the Other Shareholders will be bound to accept the Approved Offer in respect of its entire holding of Equity Shares and to comply with the obligations assumed by virtue of such acceptance
- 17 4 If any of the Other Shareholders fails to accept the Approved Offer or, having accepted such offer, fails to complete the sale of any of its Equity Shares pursuant to the Approved Offer, or otherwise fails to take any action required of it under the terms of the Approved Offer, any persons so authorised by the Board (who shall be deemed to be the attorney of such other Shareholders for this purpose) may accept the offer on behalf of the Other Shareholders in question, or undertake any action required under the terms of the Approved Offer on the part of the Other Shareholders in question. In particular, such person may execute the necessary transfer(s) on that Other Shareholder's behalf and against
- (a) receipt by the Company (on trust for such Other Shareholder) of the consideration payable for the relevant Shares (the receipt being a good discharge to the Buyer, who will not be bound to see to the application of it), and
 - (b) compliance by the Buyer and, where relevant, the Company with all other terms of the Approved Offer,

deliver such transfer(s) to the Buyer (or its nominee). The Board will then authorise registration of the transfer(s) and of the Buyer (or its nominee) as the holder of the Shares so transferred. After registration, the title of the Buyer (or its nominee) as registered holder of such Shares will not be affected by any irregularity in, or invalidity of such proceedings, which will not be questioned by any person. That Other Shareholder will in such a case be bound to deliver up its certificate for its Shares to the Company, or a statutory declaration of loss (as appropriate) whereupon that Other Shareholder will be entitled to receive the purchase price for such Shares

GENERAL PROVISIONS

18 GENERAL MEETINGS

- 18 1 No business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. One person, being a Member present in person or by proxy or a duly authorised representative of a corporation shall be a quorum at any general meeting. Notwithstanding the foregoing

and so long as there are any Preferred E Shares in issue, there shall be no quorum unless the NM Investors and the SVC Investors shall be present in person, by proxy or by a duly authorised representative. If no such quorum is so present then the meeting shall stand adjourned for a period of not less than 5 Business Days to such time and place as the Board shall agree and notify to the Members. If no such Member is so present at the adjourned meeting then subject to the foregoing provisions of this Article the Members then present in person or by proxy or by duly authorised representatives shall constitute a quorum.

18.2 With respect to any resolution in writing, in the case of a corporation which holds any Shares, the signature of any director or the company secretary thereof shall be deemed to be a signature of the corporation which holds Shares.

18.3 The instrument appointing the proxy shall be effective if such appointment is brought to the attention of the chairman of the meeting at any time prior to the taking of any vote (whether on a show of hands or on a poll) (including after the commencement of the meeting).

18.4 The chairman shall not be entitled to exercise any second or casting vote.

18.5 A Director shall not be required to hold any share qualification, but nevertheless shall be entitled to attend and speak at any general meeting of the Company and at any separate general meeting of the holders of any class of shares in the capital of the Company.

19 NUMBER OF DIRECTORS

The minimum number of directors shall be one. The number of Directors shall not be subject to any maximum.

20 INVESTOR DIRECTORS AND CHAIRMAN

20.1 The NM Investors may at any time appoint one person to be the NM Investor Director and at any time remove the NM Investor Director from office and appoint a replacement.

20.2 The SVC Investors may at any time appoint one person to be the SVC Investor Director and at any time remove the SVC Investor Director from office and appoint a replacement.

20.3 Any appointment or removal of an NM Investor Director or SVC Investor Director shall be in writing served on the Company signed by the relevant Member(s) and shall take effect at the time it is served on the Company or produced to a meeting of the Board, whichever is earlier. Any such appointment or removal by a corporation may be signed on its behalf by its duly authorised representative.

20.4 Notice of meetings of the Board shall be served on any NM Investor Director or SVC Investor Director who is absent from the United Kingdom at the address for service of notice on the appointing Member under the Subscription and Shareholders' Agreement.

20.5 Upon written request by the relevant appointing Member the Company shall procure that such NM Investor Director or SVC Investor Director is forthwith appointed as a director of any other Group Company.

21 ALTERNATE DIRECTORS

21 1 Any Director may appoint as an alternate any other Director, or

- (a) in the case of an NM Investor Director or SVC Investor Director, any other person, and
- (b) in the case of any Director other than an NM Investor Director or SVC Investor Director, any other person approved by resolution of the Directors (acting reasonably),

to exercise that Director's powers and carry out that Director's responsibilities in relation to the taking of decisions by the Directors in the absence of the alternate's appointor

21 2 Any appointment or removal of an alternate must be effected by notice in writing to the Company signed by the appointor and must identify the proposed alternate and, in the case of a notice of appointment, contain a statement signed by the proposed alternate that he is willing to act as the alternate of the Director giving the notice

21 3 An alternate director has the same rights in relation to any Directors' meeting or Directors' written resolutions as the alternate's appointor

21 4 An alternate director's appointment as an alternate terminates

- (a) on the date (if any) specified in the notice given to the Company pursuant to Article 21 2,
- (b) when the alternate's appointor revokes the appointment by written notice to the Company on the date specified in that notice,
- (c) on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a Director,
- (d) on the death of the alternate's appointor, or
- (e) where the alternate's appointor's appointment as a director terminates

21 5 A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum

21 6 If an alternate director is himself a Director or attends any meeting as an alternate director for more than one Director, his voting rights shall be cumulative but he shall only be counted once in deciding whether a quorum is present

22 PROCEEDINGS OF DIRECTORS

22 1 Subject to Article 22 2, the quorum for the transaction of business of the Board shall be three Directors

- (a) one of whom shall be the NM Investor Director provided that one is appointed unless the NM Investor Director has previously agreed otherwise in writing expressly for that purpose, and

- (b) one of whom shall be the SVC Investor Director provided that one is appointed unless the SVC Investor Director has previously agreed otherwise in writing expressly for that purpose
- 22 2 If there is no quorum participating in any meeting of the Board within one hour after the time fixed for the meeting, the meeting shall be adjourned to such time (not being earlier than five Business Days after the date of the original meeting) as the Director or Directors participating in the meeting shall determine. If there is no quorum participating within one hour after the time fixed for the adjourned meeting, the meeting shall be further adjourned as aforesaid. If there is no quorum participating within one hour after the time fixed for the further adjourned meeting the Director or Directors participating, whatever their number and their designations, shall constitute a quorum.
- 22 3 Any Director or his alternate may validly participate in a meeting of the Board by conference telephone or other form of communication equipment if all persons participating in the meeting are able to hear and speak to each other throughout the meeting. A person so participating shall be deemed to be present in person at the meeting and shall accordingly be counted in a quorum and be entitled to vote. Such a meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no group which is larger than any other group, where the chairman of the meeting then is.
- 22 4 Save with NM Investor Consent and SVC Investor Consent
 - (a) the Board shall not delegate any of its powers to a committee, and
 - (b) meetings of the Board shall not be held outside the United Kingdom
- 22 5 The Chairman shall not have a second or casting vote at a meeting of the Board

23 DIRECTOR'S INTERESTS

Directors' conflicts of interest – Board approval for Situational Conflicts

- 23 1 If a situation arises or exists in which a Director has or could have a Situational Conflict, without prejudice to the provisions of Articles 23 3 to 23 8, the Director concerned, or any other Director, may propose to the Board that such Situational Conflicts be authorised, such proposal to be made in writing and delivered to the other Directors or made orally at a meeting of the Board, in each case setting out particulars of the Situational Conflict in question. Subject to the Companies Acts, the Directors may authorise such Situational Conflict and the continuing performance by the relevant Director of his duties as a Director of the Company on such terms as they may think fit.
- 23 2 The relevant Director shall not continue in the quorum at the relevant meeting of the Directors to authorise such Situational Conflict nor be entitled to vote on the resolution authorising it. If the relevant Director is the sole Investor Director, for the purposes of any part of the meeting of the Directors at which a resolution authorising the relevant Situational Conflict pursuant to section 175(4)(b) of the Companies Act 2006 is to be considered, the quorum requirement for such part of the meeting shall be any two Directors, neither of whom have any interest for such Investor Director to be present during such part of the meeting for the quorum requirement to be met.

Directors' Situational Conflicts – pre-approval for all Directors

- 23 3 Subject to compliance by him with his duties as a Director under Part X of the Companies Act 2006 (other than the duty in section 175(1) of that Act which is the subject of this Article 23 3), a Director (including the chairman of the Company (if any) and any other non-executive Director) may, at any time
- (a) be an officer of, employed by or hold Shares or other securities (whether direct or indirectly) in, the Company, or
 - (b) be a director or other officer of, employed by or hold shares or other securities (whether directly or indirectly) in, or otherwise be interested, whether directly or indirectly, in any other Group Company (in either case a **"Group Company Interest"**) and notwithstanding his office or the existence of an actual or potential conflict between any Group Company Interest and the interests of the Company which would fall within the ambit of that section 175(1), the relevant Director,
 - (i) shall be entitled to attend any meeting or part of a meeting of the Directors or a committee of the Directors at which any matter which may be relevant to the Group Company Interest may be discussed and to vote on any resolution of the Directors or a committee thereof relating to such matter, and any board papers relating to such matter shall be provided to the relevant Director at the same time as the other Directors (save that a Director may not vote on any resolution in respect of matters relating to his employment with the Company or other Group Company),
 - (ii) shall not be obliged to account to the Company for any remuneration or other benefits received by him in consequence of any Group Company Interest, and
 - (iii) shall not be obliged to disclose to the Company or use for the benefit of the Company any Confidential Information received by him by virtue of his Group Company Interest and otherwise than by virtue of his position as a Director, if to do so would breach any duty of confidentiality to any other Group Company or third party

Directors' Situational Conflicts – pre-approval for Investor Directors

- 23 4 Subject to compliance by him with his duties as a Director under Part X of the Companies Act 2006 (other than the duty in section 175(1) of that Act to the extent that it is the subject of this Article 23 4), an NM Investor Director or SVC Investor Director may be a director or other officer of, employed by or hold shares or other securities in, or otherwise be interested, whether directly or indirectly, in
- (a) any entity which, directly or indirectly, holds Shares in the Company (a **"Relevant Investor"**) and as such the relevant Director may, on behalf of the Relevant Investor, give or withhold any consent or give any direction required of any Relevant Investor pursuant to the terms of any subscription, investment or shareholder's agreement relating to the Company or any similar agreement or document ancillary to such an agreement, or
 - (b) any other company in which the Relevant Investor also holds shares or other securities or is otherwise interested, whether directly or indirectly (in either case

an **"Investor Director Interest"**), and notwithstanding his office or the existence of an actual or potential conflict between any Investor Director Interest and the interests of the Company which would fall within the ambit of section 175(1) of the Companies Act 2006, the relevant Director

- (i) shall be entitled to attend any meeting or part of a meeting of the Directors or a committee or the Directors at which any matter which may be relevant to the Investor Director Interest may be discussed and to vote on a resolution of the Directors or a committee thereof relating to such matter, and any board papers relating to such matter shall be provided to the relevant Investor Director at the same time as other Directors,
- (ii) shall not be obliged to account to the Company for any remuneration or other benefits received by him in consequence of any Investor Director Interest,
- (iii) shall be entitled to consult freely about the Group and its affairs with, and to disclose, for investment appraisal purposes, Confidential Information to any Member appointing him (or, in the case of the NM Investor Director, any member of the ESB Novusmodus Group and, in the case of the SVC Investor Director, to any one or more of the SVC Investors or any member of the SEP Group) or proposed investor in the Group or any other person on whose behalf it is investing in the Group and to the Group's auditors, lenders and proposed lenders (or with and to any of its or their professional advisers),
- (iv) for the purposes of facilitating an Exit, shall be entitled to disclose any Confidential Information to any proposed purchaser, underwriter, sponsor or broker, subject to the relevant Director using all reasonable endeavours to procure that any such recipient is made aware that it is Confidential Information and agrees to treat it accordingly, and
- (v) shall not be obliged to disclosure to the Company or use for the benefit of the Company any other confidential information received by him by virtue of his Investor Director Interest and otherwise by virtue of his position as a Director

- 23 5 For the purposes of Articles 23 3 and 23 4, the expression **"Confidential Information"** shall mean all information (whether oral or recorded in any medium) relating to the Group Company's business, financial or other affairs (including future plans of any Group Company) which is treated by a Group Company as confidential (or is marked or is by its nature confidential)

Directors' Situational Conflicts – disclosure of interests

- 23 6 Without prejudice to Articles 23 3 and 23 4, any Director who has a Group Company Interest and any NM Investor Director or SVC Investor Director who has an Investor Director Interest shall, as soon as reasonable practicable following the relevant interest arising, disclose to the Board the existence of such interest and the nature and extent of such interest so far as the relevant Director is able at the time the disclosure is made, provided that no such disclosure is required to be made of any matter in respect of which the relevant Director owes any duty confidentiality to any third party A disclosure made

to the Board under this Article 23 6 may be made either at a meeting of the Board or by notice in writing to the Company marked for the attention of the Directors

Directors' Situational Conflicts – shareholder approval

23 7 Notwithstanding the provisions of Articles 23 1, 23 3 and 23 4, the holders of a majority of the issued Equity Shares from time to time may, at any time, by notice in writing to the Company, authorise, on such terms as they shall think fit and shall specify in the notice

- (a) any Situational Conflict which has been notified to the Board by any Director under Article 23 1,
- (b) any Situational Conflict which has been notified to the Board by the chairman of the Company (if any) under Article 23 1 and which arises by virtue of his appointment or proposed appointment as a director or other officer of, and/or his holding of shares or other securities (whether directly or indirectly) in, any company other than a Group Company (a "Chairman's Interest"), or
- (c) any Group Company Interest or Investor Director Interest which has been disclosed to the Board under Article 23 6,

(whether or not the matter has already been considered under, or deemed to fall within, Article 23 1, 23 3 and 23 4, as the case may be)

23 8 No contract entered into shall be liable to be avoided by virtue of

- (a) any Director having an interest of the type referred to in Article 23 1 where the relevant Situational Conflict has been approved as provided by that Article or which is authorised pursuant to Article 23 7,
- (b) the chairman of the Company (if any) having a Chairman's Interest which has been approved by the Board under Article 23 1 or which is authorised pursuant to Article 23 7,
- (c) any Director having a Group Company Interest which falls within Article 23 3 or which is authorised pursuant to Article 23 7, or
- (d) any NM Investor Director or SVC Investor Director having an Investor Director Interest which falls within Article 23 4 or which is authorised pursuant to Article 23 7

Directors' conflicts of interest – Transactional Conflicts

23 9 The provisions of Articles 23 1 to 23 8 shall not apply to Transactional Conflicts but the following provisions of this Article 23 9 and Articles 23 10 to 23 12 shall so apply Any Director may be interested in an existing or proposed transaction or arrangement with the Company, provided that he complies with the Companies Act 2006 and (if applicable) Articles 23 10 and 23 11

23 10 Subject to the provisions of the Companies Act 2006, and provided that he has disclosed to the Directors the nature and extent of any interest of his pursuant to Article 23 11, a Director, notwithstanding his office

- (a) may be party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested,
- (b) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Company or in which the Company is otherwise interested, and
- (c) shall not, by reason of his office, be accountable to the Company for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit

23 11 For the purposes of Article 23 10

- (a) a general note given to the Directors that a Director is to be regarded as having an interest in the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such transaction of the nature and extent so specified, and
- (b) an interest of which a Director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his

23 12 Without prejudice to the obligation of each Director to declare an interest in accordance with the Companies Act 2006, a Director, having declared any such interest or duty he may have, may vote at a meeting of the Board or of a committee of the Board on any resolution concerning a matter in which he has an interest, whether direct or indirect, which relates to a transaction or arrangement with the Company or in relation to which he has a duty. Having so declared any such interest or duty he may have, the Director shall be counted in the quorum present when any such resolution is under consideration and if he votes on such resolution his vote shall be counted

24 NOTICES

- 24 1 Any notices to be given to the Company pursuant to these Articles shall be sent to the registered office of the Company or presented at a meeting of the Board
- 24 2 Any notice or other document delivered or left at a registered address otherwise than by post shall be deemed to have been served or delivered on the day it was so delivered or left
- 24 3 If deemed receipt under Article 24 2 occurs before 9 00am on a Business Day, the notice shall be deemed to have been received at 9 00am on that day. If deemed receipt occurs after 4.00pm on a Business Day or on any day which is not a Business Day, the notice shall be deemed to have been received at 9 00am on the next Business Day

25 INDEMNITY

- 25 1 Subject to article 25 2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled

- (a) each relevant officer shall be indemnified out of the Company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer
 - (i) in the actual or purported execution and/or discharge of his duties, or in relation to them, and
 - (ii) in relation to the Company's (or any associated company's) activities as trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006),

including (in each case) any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the Company's (or any associated company's) affairs, and

- (b) the Company may provide any relevant officer with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings or application referred to in Article 25 1(a) and otherwise may take any action to enable any such relevant officer to avoid incurring such expenditure

25 2 This Article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law

25 3 In this article

- (a) companies are associated if one is a Subsidiary of the other or both are Subsidiaries of the same body corporate, and
- (b) a **"relevant officer"** means any director or other officer or former director or other officer of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Companies Act 2006), but excluding in each case any person engaged by the Company (or associated company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor)

26 INSURANCE

26 1 The directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant officer in respect of any relevant loss

26 2 In this Article

- (a) a **"relevant officer"** means any director or other officer or former director or other officer of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Companies Act 2006), but excluding in each case any person engaged by the Company (or associated company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor),

- (b) a "**relevant loss**" means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer's duties or powers in relation to the Company, any associated company or any pension fund or employees' share scheme of the Company or associated company, and
- (c) companies are associated if one is a Subsidiary of the other or both are Subsidiaries of the same body corporate