

APROVACIÓ DE LA COMPRA D'UNA ACCIÓ DE LA SOCIETAT KIC INNOENERGY SE

Acord núm. 60/2011 del Consell de Govern, pel qual s'aprova la participació de la UPC en la societat KIC InnoEnergy SE, perquè l'aprovi el Consell Social.

- Document informat favorablement per la Comissió Permanent del dia 25 de març de 2011.
- Document aprovat pel Consell de Govern del dia 31 de març de 2011.

DOCUMENT CG 37/3 2011

Secretaria General

31 de març de 2011

**ACORD DE LA COMISSIÓ PERMANENT SOBRE LA PARTICIPACIÓ
DE LA UPC A L'ENTITAT KIC InnoEnergy SE.**

ANTECEDENTS

1. Per Acord núm. 29/2010, el Consell de Govern delegà en la Comissió Permanent la presa dels acords necessaris per la constitució de l'entitat KIC InnoEnergy SE, amb la forma jurídica que es determini.
2. El Consell Social, per acord 3/5 2010 delegà al president del Consell Social la presa dels acords necessaris per la constitució de l'entitat KIC InnoEnergy SE, amb la forma jurídica que es determini.
3. En data 8 d'octubre de 2010, prèvia autorització de la Comissió Permanent i del President del Consell Social, per delegació, el rector va signar el *General Partnership Agreement* per la constitució de l'entitat KIC InnoEnergy SE, que estableix, entre d'altres, la tipologia de socis, els seus drets i obligacions, la seva participació a l'entitat, òrgans de govern i el finançament de la mateixa.
4. D'acord amb el *General Partnership Agreement*, en data 6 de desembre de 2010 es va constituir a Holanda la societat europea KIC InnoEnergy SE.
5. La UPC ha de procedir a la compra d'una acció de la societat KIC InnoEnergy SE per import 10.000 euros. S'adjunta com a annex núm. 1 Estatuts de la SE, i com a annex núm. 2 l'esborrany de contracte de compravenda.
6. Paral·lelament, s'han introduït unes modificacions al *General Partnership Agreement* que concreten aquelles aportacions que es podran considerar aportació en espècie. S'adjunta com a annex núm. 3 l'*Addendum to General Partnership Agreement*.

Per tot l'anterior, la Comissió Permanent, en ús de les competències delegades pel Consell de Govern,

ACORDA

Autoritzar al rector de la Universitat Politècnica de Catalunya perquè, en nom i representació d'aquesta universitat executi els actes necessaris per a:

- 1.- La compra d'una acció de la societat KIC InnoEnergy SE i la signatura de l'*Addendum del General Partnership Agreement*.

2.- La formalització davant notari, si escau, del present acord i dels compromisos que se'n derivin, i perquè si cal, d'acord amb la finalitat que es persegueix, el notari rectifiqui els defectes o els omissions que s'hi hagin pogut advertir.

Barcelona, març de 2011



233858/MV/JvdW

In this unofficial English translation an attempt has been made to be as literal as possible without jeopardizing the overall continuity. However, differences may occur between this translation and the original Dutch text, and if so, the Dutch text will prevail.

**INCORPORATION OF A EUROPEAN LIMITED LIABILITY COMPANY
KIC InnoEnergy S.E.**

On this day, the sixth of December two thousand and ten, appeared before me, MONIQUE GERTRUDA HELENA MARIA VERKUILEN, civil law notary officiating at Rotterdam:

1. mr. dr. Gerrit Meincke, residing at Friedrich-Wilhelm-Strasse 29, 53113 Bonn, Germany, born at Hamburg, Germany, on the thirteenth day of November nineteen hundred and sixty-eight, holder of a German identity card with number 520941933, valid until the first day of June two thousand and fifteen;
acting as managing director of and as such representing:
Lavend GmbH, a company existing under the laws of Germany, with address Kurt-Schumacher-Strasse 18, 53133 Bonn, Germany, this company hereinafter referred to as the "Incorporator 1"; and
2. mr. Peter Friedrich Karl Adolf Hille, residing at Hirschstrasse 154, 76136 Karlsruhe, Germany, born at Barbis, Germany, on the fifth day of June nineteen hundred and sixty, holder of a German passport with number C8RVOXC25, valid until the fourth day of January two thousand and twenty;
acting as managing director of and as such representing:
Atrium Vermögensverwaltungs Ltd, a company existing under the laws of the United Kingdom, with address 69 Great Hampton Street, B18 6EW, Birmingham, United Kingdom, this company hereinafter referred to as the "Incorporator 2",

the Incorporator 1 and the Incorporator 2 hereinafter jointly referred to as the "Incorporators". The appearing persons declared that the Incorporators incorporate a Societas Europaeae, with the following articles of incorporation.

ARTICLES OF ASSOCIATION

CHAPTER I

Definitions

Article 1

In these articles of association, the following terms shall mean:

- a. General Assembly: the general meeting of shareholders;
- b. shares: registered shares;
- c. shareholders: holders of registered shares;
- d. annual accounts: the balance sheet and profit and loss account plus explanatory notes;
- e. Executive Board: board of managing directors;



- Supervisory Board: board of supervisory directors;
- f. subsidiary:
- a legal entity in respect whereof the company or any of its subsidiaries have, whether or not pursuant to an agreement with other persons entitled to vote, can exercise either individually or collectively, more than one-half of the voting rights at the General Assembly;
 - a legal entity of which the company or any of its subsidiaries are members or shareholders, and in respect of which the company or any of its subsidiaries have, either individually or collectively, the right to appoint or dismiss more than half of such legal entity's members of the Executive Board or members of the Supervisory Board, whether or not pursuant to any agreement with other persons having voting rights, and even if all persons having voting rights in fact cast their vote;
- g. auditor: a registered accountant or any such other accountant as referred to in article 2:393 of the Dutch Civil Code, or any organization in which such accountants co-operate;
- h. corporate bodies: the General Assembly, the Executive Board and the Supervisory Board.

CHAPTER II

Name. Corporate seat. Duration. Objects

Article 2. Name and corporate seat

- 2.1 The name of the company is **KIC InnoEnergy S.E.**
- 2.2 The company has its corporate seat at Eindhoven.
- 2.3 The company is established for an indefinite period of time.

Article 3. Objects

The objects of the company are:

- a. to pursue the aims of a Knowledge and Innovation Community as described in REGULATION (EC) No 294/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 March 2008 establishing the European Institute of Innovation and Technology;
 - b. to incorporate, participate in, conduct the management of and take any other financial interest in other companies and enterprises;
 - c. to render administrative, technical, financial, economic or managerial services to other companies, persons or enterprises;
 - d. to acquire, dispose of, manage and exploit real and personal property, including patents, marks, licenses, permits and other industrial property rights;
 - e. to act as paying agent and/or trustee;
 - f. to borrow and/or lend moneys, act as surety or guarantor in any other manner, and bind itself jointly and severally or otherwise in addition to or on behalf of others,
- the foregoing whether or not in collaboration with third parties and inclusive of the performance and promotion of all activities which directly and indirectly relate to those objects, all this in the broadest sense of the terms; for the avoidance of doubt, the company shall not pursue any banking activities or other financial activities that might require a banking authorisation or other financial authorisation under applicable law.

CHAPTER III

Capital and shares. Register of shareholders

Article 4. Authorized capital

- 4.1 The authorized capital amounts to three hundred and twenty thousand euros (EUR 320,000.--) and is divided into thirty-two (32) shares, each with a nominal value of ten



thousand euros (EUR 10.000.--).

- 4.2. All shares shall be in registered form.
- 4.3 The shares shall be numbered consecutively from 1 onwards.

Article 5. Register of shareholders

- 5.1 The Executive Board shall keep a register in which the names and addresses of all holders of registered shares shall be recorded, specifying the date on which they acquired their shares, the date of acknowledgment by or service upon the company, as well as the amount paid up on each share. The register shall also contain the names and addresses of all owners of a right of usufruct or pledge on such shares, specifying the date on which they acquired such right, the date of acknowledgment by or service upon the company and what rights they have been granted attached to the shares under articles 11 and 12.
- 5.2 Each holder of registered shares, each usufructuary and each pledgee shall be obliged to notify the company of his address in writing.
- 5.3 The register shall be regularly updated. All entries in the register shall be signed by a member of the Executive Board.
- 5.4 The Executive Board shall, upon request, provide a shareholder, a usufructuary or a pledgee at no costs with an excerpt from the register relating to his right to a share. If the shares are encumbered with a right of usufruct or a right of pledge, the excerpt shall indicate in whom the rights referred to in article 11.4 and article 12.2, 12.3 and 12.4 respectively are vested.

CHAPTER IV

Issue of shares. Own shares

Article 6. Issue of shares. Authorized corporate body

- 6.1 The company shall only issue shares pursuant to a resolution of the General Assembly or of the Executive Board designated to do so by a resolution of the General Assembly for a fixed period not exceeding five years and after approval of the Supervisory Board. The designation must be accompanied by a stipulation as to the number of shares that may be issued.
The designation may each time be extended for a period of up to five years. The designation may not be cancelled, unless the designation provides otherwise.
- 6.2 Within eight (8) days after the resolution of the General Assembly to issue shares or to designate a corporate body, the company shall deposit a full text thereof at the trade register where the company is registered.
- 6.3 Within eight (8) days after each issue of shares, the company shall notify the trade register referred to in the preceding paragraph of this article of such issue, stating the number.
- 6.4 The provisions of paragraph 1 up to and including paragraph 3 of this article shall apply accordingly to the granting of rights to subscribe to shares, but does not apply to the issue of shares to someone who exercises a previously acquired right to subscribe to shares.
- 6.5 The issue of a registered share, not being a share as mentioned in article 2:86c of the Dutch Civil Code, shall require a notarial deed, executed before a civil law notary authorized to practice in the Netherlands, and to which those involved are party.

Article 7. Terms and conditions of issue. Pre-emptive rights

- 7.1 If a resolution to issue shares is adopted, the issue price of the shares and the other conditions of the issue shall also be determined.
- 7.2 Each shareholder shall have a pre-emptive right with respect to any further share issue



in proportion to the aggregate amount of his shares, except if shares are issued to employees of the company or/of a group company.

- 7.3 Pre-emptive rights may be restricted or excluded by a resolution of the General Assembly. The reasons for such proposal and the issue price of the shares must be given in writing in the proposal thereto. Pre-emptive rights may also be excluded or restricted by the authorized corporate body referred to in article 6.1 if such corporate body is authorized by the resolution of the General Assembly for a fixed period, not exceeding five years, to restrict or exclude the pre-emptive rights. The designation may each time be extended for a period of up to five years. Unless determined otherwise, the designation can not be cancelled.
- Upon termination of the authority of the corporate body to issue shares, its authority to restrict or exclude pre-emptive rights shall also terminate.
- 7.4 A resolution of the General Assembly to restrict or exclude pre-emptive rights or to authorize a corporate body for that purpose shall require a majority of at least two-thirds (2/3) of the votes cast if less than one-half of the issued capital is represented at the general assembly.
- Within eight (8) days after the resolution, the company shall deposit the full text thereof at the trade register.
- 7.5 If, on the issue of shares, an announcement is made as to the amount to be issued and only a lesser amount can be placed, such lower amount shall be placed only if the conditions of issue explicitly provide therefore.
- 7.6 At the granting of rights to subscribe to shares, the shareholders shall have a pre-emptive right. The provisions of the previous paragraphs of this article shall apply accordingly at the granting of rights to subscribe to shares.
- Shareholders shall have no pre-emptive rights in respect to shares issued to a person who exercises right to acquire shares granted to him at an earlier date.

Article 8. Payment for shares

Upon the issue of each share, the nominal value must be fully paid up, and, in addition, if the share is subscribed at a higher amount, the difference between such amounts. It may be stipulated that a part, not exceeding three quarters (3/4) of the nominal value needs only be paid after such part is called up by the company.

Article 9. Own shares

- 9.1 The company may not subscribe for its own shares upon the issue thereof.
- 9.2 Any acquisition by the company of shares which are not fully paid up in its capital shall be null and void.
- Any acquisition by the company of fully paid up registered shares in its capital, in violation of paragraph 3 shall be null and void.
- 9.3 The company may only acquire its own fully-paid shares with due observance of the relevant provisions of the law.
- 9.4 The company may not with a view to any other party subscribing to or acquiring the company's shares, grant loans, provide security or any price guarantee, act as surety in any other manner, or bind itself jointly and severally or otherwise in addition to or on behalf of others. This prohibition shall also apply to its subsidiaries.
- This prohibition shall not apply if shares are subscribed for or acquired by employees of the company or a group company.
- 9.5 Shares in the company's capital may, upon issue, not be subscribed for by or on behalf of any of its subsidiaries. The subsidiaries may acquire such shares and for their own account only insofar as the company is permitted to acquire own shares pursuant to



- paragraphs 2 up to and including 4.
- 9.6 Disposal of any own shares held by the company shall require a resolution of the General Assembly provided that the General Assembly has not granted this authority to another corporate body.
- 9.7 The company may not cast votes in respect of own shares held by the company or own shares on which the company has a right of usufruct or pledge. Nor may any votes be cast by the pledgee or usufructuary of own shares held by the company if the right has been created by the company. The provisions of this paragraph shall also apply to shares held by any subsidiary or in respect of which any subsidiary owns a right of usufruct or pledge.
- 9.8 When determining to what extent the company's capital is represented, or whether a majority represents a certain part of the capital, the capital shall be reduced by the amount of the shares for which no votes can be cast.

CHAPTER V

Transfer of shares. Usufruct. Pledge

Article 10. Transfer of shares

- 10.1 The transfer of shares or any restricted rights thereon shall require a notarial deed, executed before a civil law notary authorized to practice in the Netherlands, to which those involved are party.
- 10.2 The transfer of shares or any restricted rights thereon as referred to in paragraph 1 of this article - including the creation and relinquishment of restricted rights - shall, by operation of law, also be valid vis-à-vis the company.
The rights attached to shares cannot be exercised until the company either acknowledges the juristic act or is officially served with the notarial deed in accordance with the relevant statutory provisions, except in case the company is party to the juristic act.
- 10.3 The provisions of paragraphs 1 and paragraph 2 of this article shall also apply to the allotment of shares or any restricted rights thereon in case of any division of any joint interest.

Article 11. Usufruct

- 11.1 A shareholder may freely create a right of usufruct on one or more of his shares.
- 11.2 The shareholder shall have the voting rights attached to the shares on which the usufruct has been established.
- 11.3 The voting rights shall not be vested in the usufructuary.
- 11.4 The usufructuary shall have the rights conferred by law upon holders of with cooperation of the company issued depositary receipts, unless these are withheld from him upon the creation or transfer of the usufruct.
- 11.5 Any rights arising from the share to acquire other shares, shall vest in the shareholder on the understanding that he must compensate the usufructuary for the value thereof to the extent the usufructuary is entitled thereto pursuant to his right of usufruct.

Article 12. Pledge

- 12.1 A shareholder may create a right of pledge on one or more of his shares.
- 12.2 The shareholder shall have the voting rights attached to the shares on which the pledge has been established.
- 12.3 In deviation of the previous paragraph, the voting rights shall be vested in the pledgee if such is provided upon the creation of the pledge.
- 12.4 The shareholder without voting rights and the pledgee with voting rights shall have the rights conferred by law upon holders of with the cooperation of the company issued



depository receipts. Pledges without voting rights shall also have such rights unless these are withheld from him upon the creation or transfer of the pledge.

Article 13. Acknowledgement pledge

- 13.1 A pledge may also be created without acknowledgement by or service on the company. In that case article 3:239 of the Dutch Civil Code shall apply accordingly, whereby the acknowledgement by or service on the company shall take the place of the notification referred to in paragraph 3 of that article.
- 13.2 If a pledge is created without acknowledgement by or service on the company, the rights pursuant to the provisions of article 12 shall vest in the pledgee only after the pledge has been acknowledged by or has been served on the company.

Article 14. Transfer restrictions. Approval

- 14.1 In order to be valid, every transfer of shares shall require the prior approval of the General Assembly, unless all shareholders have given their approval in writing. The approval shall be valid for three (3) months only.
- 14.2 The shareholder who wishes to transfer his shares - hereinafter to be referred to as the "proposing transferor" - shall inform the Executive Board by registered mail or return receipt requested, specifying the number of shares to be transferred and the person(s) to whom he wishes to transfer his shares.
- 14.3 The Executive Board shall be obliged to call a general assembly to be held within six months of receiving the proposing transferor's notification. The convening notice shall state the content of the notification.
- 14.4 If the General Assembly grants the approval requested, the transfer must take place within the following three (3) months.
- 14.5 Approval shall be deemed given if:
- the general assembly referred to in paragraph 3 has not been held within the term set in that paragraph;
 - the General Assembly has failed to decide on the request for approval;
 - simultaneously with its refusal, the General Assembly fails to notify the proposing transferor of the name(s) of (an) other party(ies) interested in purchasing for cash all shares to which the request for approval relates.

If the situation under paragraph 5a. above occurs, approval shall be deemed to have been given on the last date on which the general assembly should have been held.

- 14.6 Unless the proposing transferor and the interested party(ies) specified by the General Assembly and accepted by the proposing transferor make deviating arrangements regarding the price or the method of determining the price, the purchase price of the shares shall be determined by an independent expert to be appointed at the request of the party that takes the initiative by the Chairman of the Chamber of Commerce, which holds the trade register in which the company is registered.
- 14.7 The proposing transferor shall remain entitled to withdraw his offer, provided that he does so within one (1) month of having been informed of the name of the party to whom he may transfer all of the shares specified in the request for approval and of the price offered for the shares.
- 14.8 The costs incurred in determining the purchase price shall be borne:
- by the proposing transferor if he or the buyer withdraws;
 - in equal parts by the proposing transferor and the buyers if the shares are purchased by the interested parties, on the understanding that every buyer shall contribute to the costs in proportion to the number of shares he has bought.
- 14.9 The company itself may propose to buy the shares as contemplated in paragraph 5(c).



CHAPTER VI

Executive Board

Article 15. Executive Board

The Executive Board shall be in charge of managing the company, subject to the restrictions set forth in these articles of association. Its responsibilities include in particular the elaboration and implementation of the company's business strategy, as well as the proposition and execution of a detailed annual business plan, tri-annual work programmes and a general business plan.

Article 16. Appointment

16.1 The Executive Board shall consist of members A and members B. Any reference to a "member of the Executive Board" in these articles of association shall mean a member A of the Executive Board or a member B of the Executive Board, unless explicitly stipulated otherwise. The Executive Board shall consist of up to eight (8) members. The Supervisory Board shall determine the term and the precise number of the members of the Executive Board.

16.2 The members of the Executive Board shall be appointed by the Supervisory Board. It shall also appoint a Chairman of the Executive Board and a deputy Chairman of the Executive Board.

Only a member A of the Executive Board may be appointed as Chairman.

The Supervisory Board may revoke the appointment of a member of the Executive Board for a good cause.

16.3 The members of the Executive Board shall be appointed for a maximum term of six years. Reappointment of a member of the Executive Board is permitted.

Article 17. Suspension and dismissal

17.1 The Supervisory Board shall at all times have the power to suspend or dismiss each member of the Executive Board.

17.2 Any such suspension may be extended several times but the total term of the suspension may not exceed three (3) months. The suspension shall expire on lapse of this period if no resolution has been adopted either to lift the suspension or to dismiss the member of the Executive Board.

Article 18. Decision-making. Division of duties

18.1 The Executive Board shall meet upon request of the Chairman and further at any time when the interest of the company requires so, or at the request of a member of the Executive Board.

18.2 The Executive Board can only adopt valid resolutions if all members of the Executive Board are invited and if at least two-thirds (2/3) of its members – among them the Chairman or the Deputy Chairman – participate in the meeting. Absent members of the Executive Board may cast their vote in writing, over the telephone, by telefax, by e-mail or by other electronic media.

18.3 The Executive Board or a member of the Executive Board may furthermore participate in a meeting of the Executive Board by telephone, video conference or any other means of communication, provided that:

- a. all the members of the Executive Board participating in the meeting may follow all the proceedings of the meeting without interruption and direct;
- b. the members of the Executive Board may actively participate in the deliberations; and
- c. the members of the Executive Board may cast their votes.

18.4 In the meeting of the Executive Board each member of the Executive Board has a right



to cast one (1) vote. All resolutions by the Executive Board shall be adopted by an absolute majority of the votes cast.

If the votes are tied, the Chairman has a decisive vote.

- 18.5 A member of the Executive Board may grant another member of the Executive Board a written proxy to represent him at the meeting.
- 18.6 The absent members of the Executive Board shall be notified about the resolutions adopted without undue delay.
- 18.7 The Executive Board may adopt resolutions without holding a meeting, provided that the resolution is adopted in writing and all members of the Executive Board have expressed themselves in favour of the proposal.
- 18.8 The Executive Board may adopt rules and regulations governing its decision-making process.
- 18.9 The Executive Board may make a division of duties, specifying the individual duties of every member of the Executive Board. Such division of duties shall require the approval of the Supervisory Board.

Article 19. Representative authority

- 19.1 The Executive Board shall represent the company. The authority to represent the company shall also be vested in two members of the Executive Board acting jointly or in a member A of the Executive Board or in a member of the Executive Board acting jointly with an officer as referred to in the next paragraph.
- 19.2 The Executive Board may appoint officers and grant them a general or special power of attorney. Every attorney in fact shall represent the company within the bounds of his authorization. Their title shall be determined by the Executive Board.
- 19.3 In the event that the company has a conflict of interest with a member of the Executive Board, in the sense that the member of the Executive Board in private enters into an agreement with, or is party in a legal proceeding between him and the company, the company shall be represented by two other members of the Executive Board designated by the Supervisory Board.

Article 20. Approval of board resolutions

- 20.1 The Executive Board shall require the approval of the Supervisory Board for:
 - a. transactions that fundamentally affect the assets, financial or income situation of the company, or the company's exposure to risk;
 - b. acquisition and disposal of companies, participations in companies, and parts of companies or of other legal entities in which the company might have interests;
 - c. establishment of a new and closure of an existing co-location centre;
 - d. the conclusion of a legal act with members of its corporate bodies and members of the General Advisory Board, the Scientific Advisory Board and the IP Advisory Board;
- 20.2 For application of paragraph 1, a resolution by the Executive Board to undertake any act shall include any resolution by the Executive Board to approve a decision taken by a corporate body of any company in which the company owns any interest, provided that such decision is subject to the approval of the Executive Board.
- 20.3 The Supervisory Board shall also be authorized to make subject to its approval Executive Board's resolutions other than those set out in paragraph 1. Any such other resolution shall be clearly described and reported to the Executive Board in writing.
- 20.4 The Executive Board must comply with any such instructions outlining the company's general financial, social, economic and staffing policy as may be given by the Supervisory Board.



20.5 The absence of approval as meant in this article does not affect the representative authority of the Executive Board or the members of the Executive Board.

Article 21. Absence or inability to act

21.1 If a member of the Executive Board is absent or unable to act, the remaining member(s) of the Executive Board shall be temporarily charged with the management of the company. If the sole member of the Executive Board is or all members of the Executive Board are absent or unable to act, a person appointed by the Supervisory Board shall be temporarily charged with the management of the company.

21.2 The Supervisory Board may nominate one of its members to act as a member of the Executive Board in the event of a vacancy. During this period the functions of the person concerned as a member of the Supervisory Board shall be suspended.

CHAPTER VII

Supervisory Board

Article 22. Number

The company shall have a Supervisory Board, consisting of fourteen (14) natural persons.

Article 23. Appointment

23.1 The members of the Supervisory Board shall be appointed by the General Assembly for a maximum term of six (6) years. Reappointment of a member of the Supervisory Board is permitted.

23.2 A Supervisory Board meeting shall take place directly after the meeting of the General Assembly in which the members of the Supervisory Board have been newly elected. This meeting does not have to be convened separately. In such meeting the Supervisory Board shall elect a Chairman and a Deputy Chairman from its midst for a maximum of two (2) years. The Deputy Chairman takes the place of the Chairman in all cases in which the Chairman is unable to act, unless these articles of association specify otherwise. In all cases in which the Deputy Chairman acts as the representative of the Chairman, the Deputy Chairman has the same rights as the Chairman. If the Chairman or the Deputy Chairman retires from office early, a new election must take place without undue delay for the remaining term of office of the retiring person.

Article 24. Suspension and dismissal. Retirement

24.1 A member of the Supervisory Board can at any time be suspended and dismissed by the General Assembly.

24.2 The members of the Supervisory Board may resign from office at any time upon four weeks' notice even without good cause by submitting a written declaration to the Chairman of the Executive Board and the Chairman of the Supervisory Board.

Article 25. Remuneration

25.1 The members of the Supervisory Board shall hold their offices in an honorary capacity and without remuneration.

25.2 The company shall reimburse the member of the Supervisory Board for their reasonable expenses.

25.3 The company may take out third party liability insurance at its own expense for the benefit of the members of the Supervisory Board which covers the statutory liability for pecuniary loss resulting from the activities of the Supervisory Board.

Article 26. Duties and powers

26.1 The duty of the Supervisory Board shall be to supervise the policies of the Executive Board and the general course of affairs of the company and its affiliated business. It shall give advice to the Executive Board. When performing their duties, the members of the Supervisory Board shall be guided by the interests of the company and its



affiliated business.

- 26.2 To the extent permissible by law, the Supervisory Board may transfer tasks and duties incumbent upon it to its Chairman, to individual members or to the committees appointed from its midst. If the Chairman of the Supervisory Board belongs to a committee and if there is a tie in the committee voting, the Chairman – but not the Deputy Chairman – shall have two (2) votes in the second vote on the same subject-matter if there is again a tie in the voting.
- 26.3 The Supervisory Board may make a division of duties, specifying the individual duties of every member of the Supervisory Board.
- 26.4 The Executive Board shall timely provide the Supervisory Board with any such information as may be necessary for the Supervisory Board to perform its duties. The Executive Board shall report to the Supervisory Board at least once every three (3) months on the progress and foreseeable developments of the company's business.
- 26.5 The Supervisory Board shall have access to the buildings and grounds of the company and be authorized to inspect the books, records and other carriers of data of the company.
The Supervisory Board may appoint one or more persons from their midst or any expert to exercise such powers. The Supervisory Board may also seek assistance of experts in other cases.

Article 27. Decision-making

- 27.1 The Supervisory Board shall meet at least once every calendar quarter and further as often as a member of the Supervisory Board or the Executive Board may deem necessary.
- 27.2 The Supervisory Board has a quorum if at least half of the members of the Supervisory Board participate in the passing of a resolution personally or by casting written votes.
- 27.3 Meetings of the Supervisory Board shall be convened by the Chairman in writing, by telefax or email with a period of notice of at least two (2) weeks, stating the venue and the time of the meeting. In calculating the period of notice, the day on which the convocation notice is sent out and the day of the meeting itself shall not be included. In matters of urgency, to be determined by the Chairman, the Chairman may shorten the period of notice to three (3) days, and may also convene the meeting orally or by telephone.
- 27.4 The items on the agenda and the proposals for resolution shall be communicated together with the convocation notice. The documents required for the individual items on the agenda shall be sent to the members of the Supervisory Board as soon as possible.
- 27.5 Each Supervisory Board member or the Executive Board may, upon stating the purpose and the reasons therefore, request the Chairman of the Supervisory Board to convene promptly a meeting of the Supervisory Board. The meeting shall be held within two (2) weeks after the request. If such request is not complied with, the Supervisory Board member or the Executive Board may themselves convene a meeting of the Supervisory Board upon notification of the facts and the agenda.
- 27.6 The Chairman chairs the meetings of the Supervisory Board. The Chairman shall determine the order in which the items on the agenda are dealt with as well as the type of voting and the order in which voting takes place.
- 27.7 The Supervisory Board or a member of the Supervisory Board may furthermore participate in a meeting of the Supervisory Board by telephone, video conference or any other means of communication, provided that:



- a. all the members of the Supervisory Board participating in the meeting may follow all the proceedings of the meeting without interruption and direct;
 - b. the members of the Supervisory Board may actively participate in the deliberations; and
 - c. the members of the Supervisory Board may cast their votes.
- 27.8 In the meeting of the Supervisory Board each member of the Supervisory Board has a right to cast one (1) vote. All resolutions by the Supervisory Board shall be adopted by an absolute majority of the votes cast. This also applies to elections. In case of a tie in the voting, the Chairman of the Supervisory Board has two (2) votes in the second vote on the same subject-matter if there is again a tie in the voting.
- 27.9 If the Chairman does not participate, the passing of the resolution shall be postponed upon the request of two members of the Supervisory Board. In case of postponement, the passing of the resolution takes place in the next rotational meeting, unless a special Supervisory Board meeting is called. A renewed request for postponement by a minority is not permissible the next time the resolution is to be passed.
- 27.10 A member of the Supervisory Board may grant another member of the Supervisory board a written proxy to represent him at the meeting.
- 27.11 The Supervisory Board may pass resolutions outside a meeting, provided that the resolution is adopted in writing and all members of the Supervisory Board have expressed themselves in favour of the proposal.
- 27.12 The Supervisory Board may adopt rules and regulations governing its decision-making process.
- 27.13 The Supervisory Board shall have a meeting with the Executive Board as often as the Supervisory Board or the Executive Board deems necessary.
- 27.14 Minutes of the Supervisory Board's meetings and resolutions shall be prepared, signed by the Chairman of the meeting and copies sent to all members of the Supervisory Board without undue delay.
- 27.15 To the extent to which declarations must be made or received in order to implement resolutions of the Supervisory Board or one of its committees, the respective Chairman acts for the Supervisory Board. Other documents and announcements of the Supervisory Board shall be signed by the Chairman.

CHAPTER VIII

Advisory boards. General Advisory Board. Scientific Advisory Board. IP Advisory Board.

Article 28. Advisory boards

The company shall have a General Advisory Board, a Scientific Advisory Board and an IP Advisory Board.

Article 29. General Advisory Board.

- 29.1 The General Advisory Board shall consist of maximum of ten members, to be appointed by the Supervisory Board for a term of three (3) years.
- 29.2 The members of the General Advisory Board may resign from office at any time upon four weeks' notice even without good cause by submitting a written declaration to the Chairman of the Executive Board and the Chairman of the Supervisory Board. In the event of a member leaving the General Advisory Board before his or her term of office has expired, a successor shall be elected for the remaining term of office at the next meeting of the Supervisory Board following the resignation.
- 29.3 A General Advisory Board meeting shall take place directly after the appointment of its members by the Supervisory Board. That meeting does not have to be convened

separately. In such meeting the General Advisory Board shall elect a Chairman and a Deputy Chairman from its midst for the General Advisory Board's term of office.

- 29.4 The General Advisory board shall give advice to the Supervisory Board. It shall not be allowed to adopt binding resolutions or to give binding instructions.
- 29.5 The Supervisory Board shall issue rules of procedure to the General Advisory Board within the framework of the mandatory statutory provisions and the terms of the articles of association. In absence of such rules of procedure and to the extent they do not provide for a comprehensive regulation of the provisions of article 27 shall apply mutatis mutandis.
- 29.6 The members of the General Advisory Board shall hold their office in an honorary capacity and without remuneration.

Article 30. Scientific Advisory Board

- 30.1 The Scientific Advisory Board consists of a maximum of ten members, to be appointed by the Supervisory Board for a term of three (3) years.
- 30.2 The members of the Scientific Advisory Board may resign from office at any time upon four weeks' notice even without good cause by submitting a written declaration to the Chairman of the Executive Board and the Chairman of the Supervisory Board. In the event of a member leaving the Scientific Advisory Board before his or her term of office has expired, a successor shall be elected for the remaining term of office at the next meeting of the Supervisory Board following the resignation.
- 30.3 A Scientific Advisory Board meeting shall take place directly after the appointment of its members by the Supervisory Board. That meeting does not have to be convened separately. In such meeting the scientific advisory board shall elect a Chairman and a Deputy Chairman from its midst for the Scientific Advisory Board's term of office.
- 30.4 The Scientific Advisory Board shall advise the Executive Board on questions of scientific nature. It shall not be authorized to adopt binding resolutions or to give binding instructions.
- 30.5 The Supervisory Board shall issue rules of procedure to the Scientific Advisory Board within the framework of the mandatory statutory provisions and the terms of the articles of association. In absence of such rules of procedure and to the extent they do not provide for a comprehensive regulation of the provisions of article 27 shall apply mutatis mutandis.
- 30.6 The members of the Scientific Advisory Board shall hold their office in an honorary capacity and without remuneration.

Article 31. IP Advisory Board

- 31.1 The IP advisory board consists of a maximum of ten members, to be appointed by the Supervisory Board for a term of three (3) years.
- 31.2 The members of the IP Advisory Board may resign from office at any time upon four weeks' notice even without good cause by submitting a written declaration to the Chairman of the Executive Board and the Chairman of the Supervisory Board. In the event of a member leaving the IP Advisory Board before his or her term of office has expired, a successor shall be elected for the remaining term of office at the next meeting of the supervisory board following the resignation.
- 31.3 An IP Advisory Board meeting shall take place directly after the appointment of its members by the Supervisory Board. That meeting does not have to be convened separately. In such meeting the IP Advisory Board shall elect a Chairman and a



- Deputy Chairman from its midst for the IP Advisory Board's term of office.
- 31.4 The IP Advisory Board shall advise the Executive Board on intellectual property and IP related legal matters. It shall not be authorized to adopt binding resolutions or to give binding instructions.
- 31.5 The Supervisory Board shall issue rules of procedure to the IP Advisory Board within the framework of the mandatory statutory provisions and the terms of the articles of association. In absence of such rules of procedure and to the extent they do not provide for a comprehensive regulation of the provisions of article 27 shall apply mutatis mutandis.
- 31.6 The members of the IP Advisory Board shall hold their office in an honorary capacity and without remuneration.

CHAPTER IX

Annual accounts. Profits

Article 32. Financial year. Drawing up the annual accounts

- 32.1 The company's financial year shall correspond with the calendar year.
- 32.2 Within five months of the end of the company's financial year, the Executive Board shall draw up the annual accounts unless, in special circumstances, an extension of this term by not more than six (6) months is approved by the General Assembly.
- 32.3 The annual accounts shall be signed by all the members of the Executive Board and members of the Supervisory Board; if the signature of any of them is missing, this fact and the reason for such omission shall be stated.
- 32.4 The Supervisory Board may submit to the General Assembly preliminary information on the annual accounts.
- 32.5 The General Assembly shall adopt the annual accounts. The annual accounts cannot be adopted if the General Assembly has not been able to examine the auditor's report referred to in article 33, unless under the additional data a lawful ground has been stated for the absence of the auditor's report.

Article 33. Auditor

In so far as the relevant legal provisions are applicable to the company, the General Assembly shall assign an expert or an organisation of experts as referred to in article 2:393 paragraph 1 of the Dutch Civil Code for the audit of the annual accounts. If the General Assembly does not effect the assignment, the Supervisory Board is authorised to do so. If the Supervisory Board does not effect the assignment, the Executive Board is authorised to do so. The assignment may be withdrawn at all times by the General Assembly and person who assigned the audit. The expert reports about his audit to the Supervisory Board and the Executive Board; he will set out the results of his audit in a declaration on the accuracy of the documents.

Article 34. Profits

- 34.1 The profits shall be at the disposal of the General Assembly.
- 34.2 The company can only make profit distributions to the extent its equity exceeds the paid and called up part of the capital increased with the reserves which must be maintained pursuant to the law.
- 34.3 Dividends shall be paid after the adoption of the annual accounts evidencing that the payment of dividends is lawful.
- 34.4 The General Assembly may resolve to pay interim dividends, if the requirement of paragraph 2 of this article has been met as evidenced by an interim statement of assets and liabilities.

Such interim statement shall relate to the condition of such assets and liabilities on a date no earlier than the first day of the third month preceding the month in which the



resolution to distribute is published.

It shall be prepared on the basis of generally acceptable valuation methods. The amounts to be reserved under law shall be included in such statement of assets and liabilities. The interim statement of assets and liabilities shall be signed by the members of the Executive Board, if the signature of one of them is missing, this fact and the reason for such omission shall be stated.

The company shall deposit the statement of assets and liabilities with the trade register within eight (8) days after the day on which the resolution to distribute is published.

34.5 The General Assembly may, with due observance of paragraph 2, resolve to make distributions out of a reserve which need not be kept by law.

34.6 A claim of a shareholder to receive a distribution expires after five years.

34.7 For the calculation of the amount of the profit distribution, the shares held by the company in its own capital shall be excluded.

CHAPTER X

General Assembly

Article 35. Annual general assembly

35.1 Within six (6) months of the end of the company's financial year the annual general assembly shall be held.

35.2 The agenda of that meeting shall, among other matters, contain the following items:

- a. the annual report;
- b. adoption of the annual accounts;
- c. adoption of the profit appropriation;
- d. filling of any vacancies;
- e. discharge of the members of the Executive Board and the members of the Supervisory Board;
- f. the annual business plan;
- g. any such other motions as the Supervisory Board, the Executive Board, or the shareholders or any other persons having voting rights together representing not less than one-tenth (1/10) of the issued capital, may file and notify with due observance of the provisions of article 36.

Article 36. Convocation. Agenda

36.1 General meetings shall be called by the Executive Board, the Supervisory Board, or by one or more shareholders representing at least one-tenth (1/10) of the issued share capital, hereinafter referred to as "the requesting shareholders".

The request that a general assembly be convened shall state the items to be put on the agenda.

36.2 If, following a request made by the requesting shareholders, a general assembly is not held in due time and, in any event, within two (2) months, the competent judicial or administrative authority within the jurisdiction of which the company's registered office is situated may order that a general assembly be convened within a given period or authorise either the shareholders who have requested it or their representatives to convene a general assembly.

36.3 The requesting shareholders may request that one or more additional items be put on the agenda of the general assembly.

36.4 The requesting shareholders are only authorized to call the general assembly themselves if it is evidenced that the requesting shareholders have requested the Executive Board to call a general assembly in writing, exactly stating the matters to be discussed, and the Executive Board has not taken the necessary steps so that the



general assembly could be held within six (6) weeks after the request. If the requesting shareholders represent more than half of the issued capital, however, they shall be authorized to call the general assembly themselves without first having to request the Executive Board to call the general assembly.

- 36.5 The general assembly shall be convened by the Executive Board. A preliminary notice of a meeting of the General Assembly shall be sent to each shareholder with a notification period of at least ninety (90) days and shall contain preliminary details concerning place, date, time and agenda. A final notice of a meeting of the General Assembly shall be made by registered mail to each shareholder with a notification period of at least thirty (30) days (not including the day of dispatch and the day of the meeting) and shall contain final details concerning place, date, time and agenda. In case the shareholder agrees, the call for the meeting may be carried out by means of a legible and reproducible notice sent electronically to the address made known by him to the company for this purpose. This address shall be entered into the shareholders' register.
- 36.6 The convening notice shall specify the items to be discussed. Items which have not been specified in the convening notice may be announced with due observance of the requirements of this article.
- 36.7 Convocation for the general assembly and all notifications to shall be given by letters to the addresses according to the register of shareholders.

Article 37. Place of the meetings

The general assembly shall be held in the municipality in which the company has its corporate seat or in Amsterdam or in Schiphol, municipality of Haarlemmermeer. In a meeting held elsewhere, valid resolutions can only be taken if the entire issued capital is represented.

Article 38. Imperfect convocation general assembly

- 38.1 Valid resolutions in respect of matters which were not mentioned on the agenda in the convocation letter or which have not been published in the same manner and with due observance of the period set for convocation, can only be taken by unanimous votes in a meeting where the entire issued capital is represented.
- 38.2 If the period for convocation mentioned in article 36.5 was shorter or if no convocation has taken place, valid resolutions can only be taken by unanimous votes in a meeting where the entire issued capital is represented.

Article 39. Chairman

- 39.1 The General Assembly shall be chaired by the Chairman of the Supervisory Board or, in the absence of the Chairman, by the Deputy Chairman of the Supervisory Board. Otherwise, the chairman shall be the oldest member participating in the general assembly.
- 39.2 The General Assembly's Chairman shall regulate the course of the general assembly, in particular the order in which the items on the agenda for discussion are dealt with, the order of the speakers, and the type of voting. In doing so, the Chairman can make use of the support of assistants, in particular in the exercise of rights as master of the house.
- 39.3 The Chairman of the General Assembly is authorized to set reasonable limits on the time available to shareholders for speaking and asking questions. In particular, he is entitled to set a limit on the time available for speaking and asking questions for the entire course of the general assembly, for individual items on the agenda and for individual speakers.

Article 40. Minutes

- 40.1 Minutes shall be taken of the matters discussed at every general assembly by a



secretary to be appointed by the Chairman. The minutes shall be adopted by the Chairman and the secretary and signed by them to that effect.

- 40.2 The Chairman, or the person who requested the meeting, may decide that an official notarial report should be drawn up of the matters discussed at the meeting. This report must be co-signed by the Chairman.

Article 41. Rights exercisable during a meeting. Admission

- 41.1 Every person entitled to vote, every usufructuary having the rights conferred by law upon holders of with cooperation of the company issued depository receipts and pledgee having voting rights shall be authorized to attend the general assembly, address the meeting and exercise their voting rights.
- 41.2 If the voting rights attached to a share are vested in the pledgee instead of the shareholder, also the shareholder shall be authorized to attend the general assembly and to address the meeting.
- 41.3 Every share shall give the right to cast one (1) vote.
- 41.4 If so determined by the Executive Board, each of the shareholders shall be entitled, subject to any conditions that may be set by the Executive Board, to participate in, vote at and address the General Assembly, either in person or through a proxy duly appointed in writing, by using an electronic means of communication, with the provision that the electronic means of communication used allows the identity of the shareholder to be established and enables the shareholder to follow the proceedings at the meeting directly and to exercise his voting right. The conditions under which the electronic means of communication may be used shall be specified in the notice of the meeting. If the electronic communication connection breaks down during a general assembly, this shall not affect the validity of that general assembly or the resolutions passed or yet to be passed at that meeting.
- If so determined by the Executive Board, votes cast by remote electronic means prior to the general assembly (but no sooner than on the thirtieth day before the day scheduled for the meeting) shall be deemed equivalent to votes cast at the meeting, subject to such conditions as the Executive Board shall set and specify in the notice convening the meeting.
- Any votes cast in the manner provided for by this paragraph may not be revoked or cast again.
- 41.5 The rights referred to in the previous paragraphs may be exercised by a person acting upon a written power of attorney. A power of attorney shall mean any power of attorney transmitted via standard means of communication and received in written form.
- 41.6 The members of the Supervisory Board and the members of the Executive Board shall have an advisory vote at the general assembly.
- 41.7 Admission to the general assembly of persons other than those referred to in this article shall require a resolution by the General Assembly.

Article 42. Decision making General Assembly

- 42.1 Resolutions shall be passed by an absolute majority of the votes cast, unless the law or the articles of association prescribe a greater majority.
- 42.2 Resolutions of the General Assembly regarding the following subject matters require a quorum of at least three-fourths (3/4) of the company's shareholders, unless mandatory legal provisions require otherwise:
- a. amendments of these articles of association;
 - b. increase of the company's share capital;
 - c. approval of transfer of shares;
 - d. approval of the resolution of the Executive Board to establish a new and to



- close an existing co-location centre;
- e. transformation of the company in another legal form.
- 42.3 If the requirement for a quorum according to paragraph 2 above is not complied with, a new meeting of the General Assembly shall be convened including the respective subject matter on the agenda, and in this new meeting of the General Assembly the resolution regarding that subject matter shall require a quorum of fifty-one percent (51%) of the company's shareholders, unless mandatory legal provisions require otherwise. The notification of that general assembly shall explicitly refer to such reduced quorum.
- 42.4 If no absolute majority is reached by a vote taken with respect to the election of persons, a second vote shall be taken whereby the voters are not required to vote for the previous candidates.
If, again, no one has gained an absolute majority of the votes, new votes shall be held until either one person has gained an absolute majority or, if the vote was between two persons, the votes are equally divided.
Such new votes (except for the second vote) shall only take place between the candidates who were voted for in the previous vote, except for the person who received the least number of votes.
If two or more persons have the least number of votes, it shall be decided by lot who cannot be voted for at the new vote.
If, in the event of an election between two candidates, the votes are equally divided, it shall be decided by lot who has been elected.
- 42.5 If a vote is taken in respect of matters other than in relation to election of persons and the votes are equally divided, the relevant motion shall be considered rejected.
- 42.6 All votings shall take place orally unless the Chairman decides or any person entitled to vote requests a voting in writing. A voting in writing shall take place by means of unsigned ballot papers.
- 42.7 Abstentions and invalid votes shall be deemed not to have been cast.
- 42.8 Votes by acclamation shall be allowed unless one of the persons present and entitled to vote objects.
- 42.9 The Chairman's view at the meeting expressing that the General Assembly has passed a resolution shall be decisive. The same shall apply to the contents of the resolution so passed, provided that the relevant motion was not put down in writing. However, if the Chairman's view is challenged immediately after it is expressed, a new vote shall be taken when the majority of the persons present and entitled to vote so require or, if the original vote was not by call or by ballot, when one person present and entitled to vote so requires. The new vote shall nullify the legal consequences of the original vote.

Article 43. Resolutions passed outside a meeting

- 43.1 Subject to the provision set out in the following paragraph, rather than at a general assembly, the shareholders may also pass resolutions in writing or electronically, provided that such resolutions are adopted by a unanimous vote of all shareholders entitled to vote.
- 43.2 This manner of decision-making shall not be possible if depositary receipts with the cooperation of the company have been issued.

CHAPTER XI

Article 44. Liquidation

- 44.1 If the company is dissolved pursuant to a resolution by the General Assembly, the members of the Executive Board shall be the liquidators of the dissolved company,



unless the General Assembly appoints other persons to that effect. The Supervisory Board shall supervise the liquidation.

- 44.2 The provisions of these articles of association shall, to the fullest extent possible, continue to be in force during the liquidation.
- 44.3 The surplus remaining after payment of the debts shall be paid to the shareholders in proportion to the total value of their individual shareholdings.
- 44.4 After the company has ceased to exist the books, records and other carriers of data shall be kept by the person designated thereto by the liquidators for seven (7) years.

Final provisions

- a. Upon incorporation the issued capital shall amount to two hundred and thirty thousand euros (EUR 230,000.--), divided into twenty-three (23) registered shares, numbered 1 up to and including 23.
The Incorporator 1 shall be allocated twelve (12) registered shares.
The Incorporator 2 shall be allocated eleven (11) registered shares.
The shares have been issued at par. The issued capital has been paid up in cash.
Payment in foreign currency is allowed.
The documents required under article 2:93a of the Netherlands Civil Code have been attached to this deed.
The company hereby accepts the payments for the registered shares issued upon its incorporation.
- b. For the first time shall be appointed as a member A of the Executive Board:
Mr. Diego Pavía Bardají, born in Madrid, Spain, on the twenty-fourth day of March nineteenthundred and sixty-three.
- c. For the first time shall be appointed as a member of the Supervisory Board:
1. Mr. Abel Georges Lodewijk Romme, born at Nijmegen, the Netherlands on the twenty-ninth day of February nineteen hundred and sixty;
 2. Mr. Józef Antoni Dubiński, born at Uście Solne, Poland, on the fifth day of December nineteen hundred and forty-five;
 3. Mr. dr. Wolfram Helmut Patrick Münch, born at Mannheim, Germany, on the fifteenth day of December nineteen hundred and sixty-two;
 4. Mr. dr. Karl-Friedrich Alfred Ziegahn, born at Ravensburg, Germany, on the fifteenth day of September nineteen hundred and fifty-two;
 5. Mr. Ernst Magnus Callavik, born at Örgryte, Sweden, on the nineteenth day of April nineteen hundred and sixty-nine;
 6. Mr. Stanislaw Marian Tokarski, born at Wojakowa, Poland, on the eleventh day of January nineteen hundred and fifty-nine;
 7. Mr. Carlos Losada Marrodan, born at Logroño, Spain, on the eighth day of July nineteen hundred and fifty-seven;
 8. Mr. Arcadio Gutierrez Zapico, born at Turon, Mieres, Spain, on the twenty-sixth day of February nineteen hundred and fifty-three;
 9. Mr. Philippe André Yves Tanguy, born at Pau, France, on the twelfth day of October nineteen hundred and fifty-five;
 10. Mr. Ramon Alexander Wyss, born at Heidelberg, Germany, on the first day of March nineteen hundred and fifty-two;
 11. Mrs. Christine Marie Clotilde Patte, born at Paris, France, on the third day of June nineteen hundred and fifty-five;
 12. Mr. Donald van Beveren, born at Soest, Germany, on the twentieth day of February nineteen hundred and fifty-eight;



13. Mr. Alain Bucaille, born at Paris, France on the twentieth day of November nineteen hundred and fifty-one; and
 14. Mr. Hervé Charles François Bernard, born at Valenciennes, France, on the twenty-fifth day of May nineteen hundred and fifty-three.
- d. The company's first financial year shall end on the thirty-first day of December two thousand and ten.

The ministerial statement of no-objection was granted on the first day of December two thousand and ten under SE number 1622538, and shall be attached to this deed.

The appearing persons are known to me, civil law notary.

The identity of the appearing persons was established by me, civil law notary, on the basis of the above mentioned document intended for identification purposes.

This deed was executed in Rotterdam on the date first given in the head of this deed.

Prior to the execution of this deed, I, civil law notary, informed the appearing persons of the substance of the deed and gave them an explanation thereon and furthermore pointed out the consequences which will result for the parties from the contents of this deed.

Subsequently, the appearing persons declared to have taken note of the contents of this deed after timely being given the opportunity thereto and waived a full reading of this deed.

Immediately after a limited reading, this deed was signed by the appearing persons and me, civil law notary.

DRAFT



233858/MV/JvdW
draft date 13-12-2010

[ANNEX 2](#)

SHARE TRANSFER AGREEMENT

On this day, the ●● day of ●●, two thousand ●, appeared before me, MONIQUE GERTRUDA HELENA MARIA VERKUILEN, civil-law notary appointed in Rotterdam, the Netherlands: ●●, born in ●●, on ●●, employed by me, civil law notary, at my offices: 3072 AP Rotterdam, the Netherlands, Wilhelminakade 1, for the purposes hereof acting as attorney authorised in writing of:

1. the company incorporated and organized under the laws of Germany: **EnBW Energie Baden-Württemberg AG**, with its offices at Durlacher Allee 93, 76131, Karlsruhe, Germany, and in such capacity representing this company, hereinafter also referred to as "the Vendor";
2. the legal entity existing under the laws of Spain: **Fundació Esade**, with its offices at Avenida Pedralbes 60-62, 08034 Barcelona, Spain, and in such capacity representing this legal entity, hereinafter also referred to as "the Purchaser";
3. the European limited liability company: **KIC InnoEnergy S.E.**, with its corporate seat in Eindhoven, with offices at (5656 AE) Eindhoven, High Tech Campus Eindhoven, EIT Building 69, registered in the Trade Register under file number 51418886, and in such capacity representing this company, hereinafter also referred to as "the Company".

PREAMBLE

The person appearing, acting in the above capacities, hereby declared that:

- the Vendor is holder of twenty-three (23) shares, numbered 1 up to and including 23, each with a nominal value of ten thousand euros (EUR 10,000.--);
- the Vendor and he Purchaser have, amongst other parties, entered into a General Partner Agreement, hereinafter also referred to as "the GPA";
- according to the signature page of the GPA signed by the Purchaser, the Purchaser qualifies as an Unrestricted Partner as defined in the GPA;
- the Vendor wishes to sell and transfer one (1) of the issued shares in the capital of the Company held by the Vendor to the Purchaser, in the same way that the Purchaser wishes to purchase and accept the transfer of this share in the capital of the Company from the Vendor;

Subsequently the person appearing, acting in the above capacities, hereby declared as follows:

SALE, PURCHASE AND TRANSFER

Article 1

The Vendor hereby sells and transfers to the Purchaser, in the same way that the Purchaser hereby purchases and accepts from the Vendor:

one (1) share in the Company's capital, with a nominal value of ten thousand euros (EUR 10,000.--) each, numbered 4. The share referred to above will also be referred to below as "the Share".

TITLE

Article 2

The Vendor acquired the Share pursuant to notarial deed of sale, purchase and transfer, executed before me, civil-law notary, on the sixth day of December two thousand and ten.

PURCHASE PRICE.

Article 3

1. The purchase price of the Shares is ten thousand euros (EUR 10,000.--).
2. The Vendor declares that he has taken receipt of the purchase price from the Purchaser. The Vendor hereby grants the Purchaser an unconditional discharge for the payment of the purchase price of the Shares.

WARRANTIES

Article 4

As of today's date, the Vendor, without prejudice to the warranties of article 2.5 of the GPA, warrants the following vis-à-vis the Purchaser:

- a. the Share is completely at the Vendor's disposal, and the Vendor is fully authorised to sell the Share;
- b. the Vendor has granted no options and there are no other rights pursuant to which a person other than the Purchaser can claim the transfer of the Share;
- c. no person has been granted any pledge or other security, any other right of use on the Share, and no one can claim that they be granted such a right; neither has an attachment been served on the Share;
- d. the Share was validly issued and all the payment obligations on the Share, including the obligation to pay the Share up in full, have been complied with in full;
- e. no depository receipts have been issued on any of the Share;

INCOME AND EXPENDITURE

Article 5

All the income and expenditure and the entire risk for the Share will be for the account of the Purchaser as per •.

RESTRICTIONS ON THE TRANSFER OF SHARES

Article 6

Pursuant to what is provided in article 14 of the Company's Articles of Association the general meeting of shareholders of the Company has resolved without holding a meeting to grant the approval for the present transfer of shares, required pursuant to the restrictions on the transfer of shares laid down in the Company's Articles of Association.

A copy of this resolution will be attached to this deed.

The members of the executive board and members of the supervisory board of the Company have had the opportunity to render advice in respect of the aforementioned resolution.

RULING OUT RESCISSION

Article 7

The parties hereby explicitly rule out the right to rescind or annul -the latter to the extent possible- the contracts of sale, purchase and transfer.

COSTS

Article 8

The costs of the present deed and its enforcement are for the account of the Purchaser.

JURISDICTION

Article 9

The agreement recorded in the present deed and its execution are governed by the laws of the Netherlands.

ACKNOWLEDGEMENT

The Company hereby acknowledges the transfer of the Share in its capital by the Vendor to

DRAFT



the Purchaser recorded in the present deed.

Powers of attorney

The powers of attorney to the appearing person are evidenced by three (3) (copies of) private deeds, which will be attached to this deed.

End

The appearing person is known to me, civil-law notary.

This deed was executed in Rotterdam, the Netherlands on the date first given in the head of this deed.

After the substance of this deed was stated and explained and after I, civil-law notary, pointed out the consequences of the contents of this deed for the parties, the appearing person declared to have taken note of the contents of this deed after timely being given the opportunity thereto, to agree with the contents of this deed and not to require a full reading thereof.

Immediately after this deed was read out in a limited form, this deed was signed by the appearing person and myself, civil-law notary.



ANNEX 3

ADDENDUM

to

GENERAL PARTNERSHIP AGREEMENT

on

“KIC InnoEnergy”

THIS ADDENDUM TO THE GENERAL PARTNERSHIP AGREEMENT (hereinafter referred to as the “**Addendum**”) is amending certain provisions of the GENERAL PARTNERSHIP AGREEMENT (hereinafter referred to as the “**GPA**”) between the Formal Partners (as defined in the GPA) of the Consortium “KIC InnoEnergy”.

Section 1

Relationship between GPA and Addendum

1. This Addendum becomes effective as soon as all Formal Partners that have signed the GPA as of October 8, 2010, (hereinafter collectively referred to as the “**Parties**”) sign this Addendum.
2. The Parties agree that the GPA and this Addendum shall constitute one and the same instrument.
3. It is the common understanding of all Parties that any future party that will sign the GPA shall sign it in the version as restated by this Addendum.

Section 2

Amendment of the GPA Preamble

The paragraph in the Preamble of the GPA defining the term “Affiliated Partner Entity” shall be rephrased as follows:

“hereinafter “**Affiliated Partner Entity**” shall mean any legal entity that is under the direct or indirect control of a Formal Partner, or under the same direct or indirect control as the Formal Partner, control taking any of the following forms: either the direct or indirect holding of more than 50% of the nominal value of the issued share capital in the legal entity concerned, or of a

majority of the voting rights of the shareholders or associates of that entity; or the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.”

Section 3

Amendment of Section 2 paragraph 1 GPA

Section 2 paragraph 1 GPA shall be rephrased as follows:

“**EnBW Energie Baden-Württemberg AG** (in this capacity hereinafter referred to as “**Implementation Partner**”) undertakes to acquire all shares in a *Societas Europaea* with an issued share capital (*geplaatst kapitaal*) corresponding to the number of Initial Formal Partners multiplied by EUR 10,000 (ten thousand Euros), divided into a corresponding number of shares, each with a nominal value of EUR 10,000 (ten thousand Euros) (each share hereinafter referred to as “**KIC Share**”) with articles of association substantially in the form of the draft attached in an English translation as **Exhibit 2.1**, which shall be the articles of association of KIC SE (hereinafter to be referred to as the “**KIC-Articles of Association**”); the Implementation Partner may deviate from the draft attached as Exhibit 2.1 and/or supplement it only if and to the extent necessary in order to allow a swift and effective establishment of KIC SE with the competent commercial register and in any case in the spirit of this Agreement.”

Section 4

Amendment of Section 4 GPA

To Section 4 GPA a new paragraph 11 shall be added as follows:

“11. The Parties agree that the Formal Partners of CC Iberia shall have the right to appoint a person (hereinafter referred to as the “**CC Iberia Observer**”), who will be invited to meetings of the Supervisory Board of KIC SE as observer, may attend such meetings and participate in the discussion of the Supervisory Board, and that the Formal Partners of CC Iberia shall also have the right to revoke the appointment of the CC Iberia Observer. The first such CC Iberia Observer shall be José Santos Victor.”

Section 5

Amendment of Section 5 paragraph 5 GPA

Section 5 paragraph 5 shall be rephrased as follows:

“5. Financial Matters

Each Formal Partner shall, upon Effective Date 1, if an Initial Formal Partner, or upon Effective Date 2, if not an Initial Formal Partner, except in cases in which the KIC Permission is required by such Formal Partner before entering into such financial obligations, in which case the performance of financial obligations will become due as of the receipt of the KIC Permission by the relevant Formal Partner, perform its financial obligations until the end of Contract Year 2016 (as defined in Section 10 paragraph 2 below), in particular render contributions in cash and render and/or make available contributions in kind, as described hereinafter, and as agreed upon between the relevant Formal Partner(s) and KIC SE from time to time, and in due regard to the statutory obligations pertaining to each Formal Partner and to the contractual obligations with third parties, in particular funding organisations, by which such Formal Partner may be bound:

5.1. On January 1 of each Contract Year (as defined in Section 10 paragraph 2 below), starting from Contract Year 2011 onwards, each Formal

Partner shall pay to KIC SE under this Agreement an amount of EUR 100,000 p.a. (one hundred thousand Euros per year) in cash to one of KIC SE's designated bank accounts. For Contract Year 2010, each Formal Partner shall pay to KIC SE under this Agreement an amount of EUR 40,000 (fourty thousand Euros) in cash to one of KIC SE's designated bank accounts. To the extent that these payments are to be used for KIC Partner Activities, KIC SE shall receive these payments on its own behalf, but for account of the respective Activity Partners.

5.2. Each Formal Partner shall render and/or make available either to KIC SE and/or to one or more Co-Location Centre(s) and/or to other Formal Partners in kind contributions for the purpose of KIC Activities and/or to KIC SE and/or to the Co-Location Centres in an aggregate value of at least EUR 450,000 (four hundred fifty thousand Euros) for Contract Year 2010, and in an aggregate value of at least EUR 900,000 p.a. (nine hundred thousand Euros per year) from Contract Year 2011 onwards, subject to the following conditions:

5.2.1. For the purpose of this agreement, i.e. to govern the relationship amongst the Formal Partners and between the Formal Partners and KIC SE, the value of in kind contributions will be determined in accordance with valuation guidelines to be resolved upon, and amended from time to time, unanimously by the General Assembly of KIC SE, which will – on a generalising and simplifying basis – reflect the cost according to the accounting systems and principles of each Formal Partner and pay due regard to the statutory obligations pertaining to each Formal Partner and to the contractual obligations with third parties, in particular funding organisations, by which such Formal Partner may be bound; for other purposes, e.g. for obligations under corporate and commercial law, tax law etc., the value of in kind contributions may, if necessary, be determined differently (e.g. at

a fair market value), without any effect on the relationship amongst the Formal Partners and between the Formal Partners and KIC SE; any tax or other negative consequences resulting from in kind contributions shall be borne by the contributing Formal Partner.

5.2.2. The relevant Formal Partner and KIC SE will determine the respective in kind contribution to be rendered and/or made available by the relevant Formal Partner either to KIC SE and/or to one or more Co-Location Centre(s) and/or to other Formal Partners by mutual agreement to be negotiated in good faith. The relevant Formal Partner shall demonstrate how the in kind contributions proposed by it will contribute to the common aims of the KIC Consortium, and KIC SE shall only have the right to refuse the in kind contribution proposed by the relevant Formal Partner if this is necessary to safeguard substantial interests of the KIC Consortium. For the avoidance of doubt, in kind contributions can be, in particular, but without limitation, any of the following assets, services, and/or rights, regardless of whether or not such assets, services and/or rights are funded by own sources or other sources:

- Personnel (cost and expenses)
- Material expenses and incidental expenses
- Office and research space
- Use of facilities and real estate
- Use of office and standard business equipment
- Use of technical and research equipment
- Use of equipment and products

- Use of intangible and tangible assets and/or rights (e.g. intellectual property rights, output from other programmes)
- Consultancy and technology transfer services
- Teaching and internship services.

The relevant Formal Partner shall be responsible to ensure that the valuation of this in kind contribution is fully auditable. As far as such assets, services, and/or rights are funded by other sources, the relevant Formal Partner shall be responsible for ensuring that any funding conditions from external sources are duly observed.

5.2.3. For accounting purposes, KIC SE shall, upon consultation with the relevant Formal Partner, have the right to decide if the in kind contribution, as determined and rendered and/or made available according to paragraph 5.2.2 above, shall be accounted for KIC SE itself and/or for one or more Co-Location Centre(s) and/or, subject to the consent of the Partner(s) concerned, for one or more Partner(s) as respective recipient(s).

5.2.4. If a Formal Partner renders and/or makes available in kind contributions to KIC SE and/or to one or more Co-Location Centre(s) and/or to other Formal Partners for the purpose of KIC Activities in an aggregate value of less than EUR 450,000 in Contract Year 2010 or in an aggregate value of less than EUR 900,000 in any Contract Year from Contract Year 2011 onwards, the value of the in kind contributions to be rendered and/or made available by this Formal Partner in the following Contract Year will be increased by the difference between the agreed value and the value of the in kind contributions actually rendered and/or

made available by this Formal Partner. If, upon a termination of this Agreement either between all Formal Partners and KIC SE or between this Formal Partner and the other Formal Partners and KIC SE, there is still a difference between the aggregate value of the in kind contributions rendered and/or made available by this Formal Partner and the aggregate claim of KIC SE for in kind contributions to be rendered and/or made available by this Formal Partner, this difference shall be considered for compensation to KIC SE in the context of the Exit Agreement to be concluded according to Section 9 paragraph 2.2 below, subject to the proviso that in the case that this Formal Partner leaves in the course of a Contract Year the calculation shall be adapted pro rata temporis.

- 5.2.5. If a Formal Partner renders and/or makes available in kind contributions to KIC SE and/or to one or more Co-Location Centre(s) and/or to other Formal Partners for the purpose of KIC Activities in an aggregate value of more than EUR 450,000 in Contract Year 2010 or in an aggregate value of more than EUR 900,000 in any Contract Year from Contract Year 2011 onwards, the value of the in kind contributions to be rendered and/or made available by this Formal Partner in the following Contract Year will be decreased by the difference between the value of EUR 900,000 and the value of the in kind contributions actually rendered and/or made available by this Formal Partner. If, upon a termination of this Agreement either between all Formal Partners and KIC SE or between this Formal Partner and the other Formal Partners and KIC SE, there is still a difference between the aggregate value of the in kind contributions rendered and/or made available by this Formal Partners and the aggregate claim of KIC SE for in kind contributions to be rendered and/or made available by this Formal Partner, this difference shall be

considered for compensation to the Exiting Partner (as defined in Section 9 paragraph 2 below) in the context of the Exit Agreement to be concluded according to Section 9 paragraph 2.2 below, subject to the proviso that in the case that this Formal Partner leaves in the course of a Contract Year the calculation will be adapted pro rata temporis.

- 5.3. The Formal Partners and KIC SE undertake to conclude agreements (e.g. as provisions in the CC-Agreements) with the Associate Partners to all of the Co-Location Centres, whereby each of the Associate Partners shall render cash contributions in the amount of EUR 13,500 (thirteen thousand five hundred Euros) for Contract Year 2010 and in the amount of EUR 30,000 p.a. (thirty thousand Euros per year) from Contract Year 2011 onwards, as well as to render and/or make available in kind contributions in an aggregate value of EUR 135,000 (one hundred thirty five thousand Euros) for Contract Year 2010 and in an aggregate value of EUR 270,000 p.a. (two hundred seventy thousand Euros per year) from Contract Year 2011 onwards to one of the Co-Location Centres or to other Partners respectively, whereupon, if the CC Entity will receive such contributions, it shall receive them either for its own account or for the account of the Activity Partners. The provision in paragraph 5.2 shall apply *mutatis mutandis* to the obligations of the Associate Partners to render cash contributions and to render and/or make available in kind contributions respectively, unless the parties to a CC-Agreement devise otherwise.
- 5.4. KIC SE shall duly keep its books and records and make true and complete entries in such books and records of all dealings and transactions of and in relation to its business.
- 5.5. All books and accounts of KIC SE shall be kept in Euros.

- 5.6. All records of KIC SE shall be kept and retained for a period of at least seven years from the end of each year to which such record relates, unless another period of retention is required by operation of any applicable law or under the EIT-Agreements.
- 5.7. The Executive Board of KIC SE shall prepare and submit to each of the Formal Partners such further information as a Formal Partner may reasonably require from time to time as to any and all matters relating to KIC SE's business or the financial condition of KIC SE.
- 5.8. Each Formal Partner shall have the right to inspect the books and records of KIC SE during normal business hours or to have the books and records inspected on its behalf by an independent auditor at the cost of such Formal Partner.
- 5.9. Unless resolved unanimously otherwise by the General Assembly, KIC SE shall distribute no dividends to its shareholders, but use all profits generated for the furtherance of KIC SE's or KIC NPE's purpose.
- 5.10. The Parties will, in the course of Contract Year 2016, negotiate in good faith on the future financing of KIC SE following the end of Contract Year 2016."

Section 6

Application of GPA to this Addendum

The provisions of the GPA on Duration (Section 10 GPA), Dispute Resolution (Section 11), Conflict with KIC-Articles of Association (Section 12), Interpretation (Section 13), and Miscellaneous (Section 14) shall apply to this Addendum *mutatis mutandis*.

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Magnificent Rector