

DATED

201●

THE INVESTORS

and

THE FOUNDERS

and

[THE EXISTING SHAREHOLDERS]

[and]

THE COMPANY

SUBSCRIPTION AND SHAREHOLDERS' AGREEMENT

relating to [●] Limited

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PARTIES

- (1) The persons whose names and addresses are set out in part 1 of schedule 1 (the "**Investors**" and each an "**Investor**");
- (2) The persons whose names and addresses are set out in part 2 of schedule 1 (together the "**Founders**" and each a "**Founder**"); [and]
- (3) [The persons whose names and addresses are set out in part 3 of schedule 1 (together the "**Existing Shareholders**"); and]
- (4) [●] **LIMITED** (company number [] incorporated under the laws of [England]) whose registered office is at [] (the "**Company**") [Note: *insert company details*].

INTRODUCTION

- (A) The Company is a company limited by shares, brief particulars of which are set out in [part 1 of] schedule 2.
- (B) Details of the legal and beneficial ownership of the share capital of the Company are set out in parts 1 and 2 [and 3] of schedule 3.
- (C) The Investors wish to subscribe for shares in the capital of the Company on and subject to the terms of this agreement.

AGREED TERMS

1. Definitions

In this agreement, except where a different interpretation is necessary in the context, the words and expressions set out below shall have the following meanings:

"Accounts" means [the audited balance sheet and profit and loss account of the Company] [a consolidation of the audited balance sheets and profit and loss accounts of the Company and the Subsidiary Undertakings] for the period ended on the Accounts Date in the agreed form; [*Note: amend as appropriate*]

"Accounts Date" means [] [*Note: insert relevant details*];

"Act" means the Companies Act 2006;

"Adequate Procedures" means adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010 or as referred to in any other applicable anti-corruption laws or regulations of any other jurisdiction;

["Additional New Shares" means up to [*insert*] additional Series A Shares to be subscribed by one or more additional investors at a price of at least £[*insert*] per share pursuant to clause 3.3;]

"Affiliate" means, with respect to any Investor, any other person who, directly or indirectly, controls, is controlled by, or is under common control with such Investor, including, without limitation, any general partner, managing member, officer or director of such Investor or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management or advisory company with, such Investor;

"Associated Person" means in relation to a company, a person (including an employee, agent or Subsidiary Undertaking) who performs services for or on that company's behalf;

"Board" means the board of directors of the Company as constituted from time to time;

"Budget" has the meaning given in clause 9.2;

"Business" means [], as more fully described in the Business Plan [*Note: insert relevant details*];

"Business Day" means a day on which the English clearing banks are ordinarily open for the transaction of normal banking business in the City of London (other than a Saturday or Sunday);

"Business Plan" means the business plan for the Company in the agreed form;

"Claim(s)" means any claim(s) for breach of any Warranty;

"Company Product" means any product or service designed, developed, manufactured, marketed, distributed, provided, licensed, or sold at any time by the Company;

"Company's Solicitors" means [] of [] [*Note: insert relevant details*];

"Company Website" means any internet website owned, operated or hosted by the Company or through which the Company conducts any of its business;

"Completion" means completion by the parties of their respective obligations in accordance with clauses 4.1 and 4.2 (Completion);

"Completion Conditions" means the conditions set out in [part 1 of] schedule 4;

"Completion Date" means the date upon which Completion occurs [OR] [the date of this agreement];

"Computer Data" means the computer-readable information or data owned or used by the Company and stored in electronic form;

"Computer Hardware" means the computer hardware, firmware, equipment and ancillary equipment (other than the Computer Software and Computer Data) owned or used by the Company and all related manuals and documentation;

"Computer Software" means the computer programs owned or used by the Company and all related manuals and documentation;

"Computer System" means the Computer Hardware, Computer Data and Computer Software;

"CTA 2010" means the Corporation Tax Act 2010;

"Data Protection Legislation" means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Privacy and Electronic Communications Directive 2002/58/EC (as amended), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 and all applicable laws and regulations relating to processing of personal data, including where applicable the guidance and codes issued by the Information Commissioner or other appropriate supervisory authority;

"Data Protection Principles" has the same meaning as the term "Data Protection Principles" under the Data Protection Legislation;

"Deed of Adherence" means a deed of adherence substantially in the form set out in schedule 9;

"Disclosed" means fairly disclosed to the Investors in the Disclosure Letter[, or the Further Disclosure Letter as applicable], with sufficient explanation and detail to enable the Investors to identify clearly the nature, scope and full implications of the matters disclosed;

"Disclosure Letter" means the letter in the agreed form from the Warrantors to the Investors executed and delivered immediately prior to the execution of this agreement;

"Encumbrance" means any mortgage, charge, security interest, lien, pledge, assignment by way of security, equity, claim, right of pre-emption, option, covenant, restriction, reservation, lease, trust, order, decree, judgment, title defect (including retention of title claim), conflicting claim of ownership or any other encumbrance of any nature whatsoever (whether or not perfected other than liens arising by operation of law);

"Equity Shares" has the same meaning as set out in the New Articles [*Note: insert definition if appropriate. See clause 8.2;*]

"Financial Year" means a financial year as determined in accordance with section 390 of the Act;

"First Tranche Shares" means the [] shares subscribed by the Investors pursuant to clause 3.1 [and shall include the Additional Shares if applicable] [*Note: to be used if more than one tranche*];

"Further Disclosure Letter" means the letter in the agreed form from the Warrantors to the Investors executed and delivered immediately before Second Completion] [*Note: insert definition if appropriate*];

"Further Relevant Change Letter" means each letter in the agreed form informing the Company that Second Completion will result in a relevant change (as defined in section 790E(3) of the Act);]

"Grant Funding" means any funding or other aid or assistance from any central, state or local government body or authority, any statutory undertaking, any other public body or authority, or any other body funded by public money;

"Group Companies" means the Company and each and any of the Subsidiaries from time to time;

"HMRC" means HM Revenue & Customs;

"Intellectual Property" means copyrights, trade and service marks, including the trade marks, trade names, rights in logos and get-up, inventions, confidential information, trade secrets and know-how, registered designs, design rights, patents, utility models, semi-conductor topographies, all rights of whatsoever nature in computer software and data, all rights of privacy and all intangible rights and privileges of a nature similar or allied to any of the foregoing, in every case in any part of the world and whether or not registered; and including all granted registrations and all applications for registration in respect of any of the same;

"Investor Director Consent" means the prior written consent of [all OR at least [*insert number*] of] [*Note: amend as appropriate*] the Investor Directors;

"Investor Directors" means the directors appointed in accordance with clause[s] [8.2] [*Note: complete as appropriate*];

"Investor Majority" means [the holders of at least [] per cent of Series A Shares from time to time] [*Note: amend as appropriate*];

"Investor Majority Consent" means the prior written consent of the Investor Majority;

"Investors" means the persons whose names and addresses are set out in part 1 of schedule 1 and any other person to whom any of them transfer their shares [or who subscribes for Series A Shares] and who becomes a party as an "Investor" by signing a Deed of Adherence in accordance with clause 13.2 and is named therein as an **"Investor"**;

"Investors' Solicitors" means [] of [] [*Note: insert relevant details*];

"IPO" means the admission of all or any of the Shares or securities representing those shares (including without limitation depositary interests, American depositary receipts, American depositary shares and/or other instruments) on NASDAQ or on the Official List of the United Kingdom Listing Authority or on the AIM Market operated by the London Stock Exchange Plc or any other recognised investment exchange (as defined in section 285 of the Financial Services and Markets Act 2000);

"ITEPA" means the Income Tax (Earnings and Pensions) Act 2003;

"Key Employee" means any employee who is or was during the Period employed by any Group Company at management grade or in a senior capacity;

"Management Accounts" means the management accounts of the Company for the period starting on the Accounts Date and ending on [] 201[], in the agreed form [*Note: insert relevant details*];

"Member of the same Fund Group" has the same meaning as set out in the New Articles;

"Member of the same Group" has the same meaning as set out in the New Articles;

"Milestone Date" means [] 201[] [or such later date as agreed by the Company and Investor Majority in writing] [*Note: insert definition if appropriate*];

"Milestone Determination" has the meaning given in clause 4.3 [*Note: insert definition if appropriate*];

"Milestones" means the milestones to be satisfied by the Company by the Milestone Date, as set out in schedule 10] [*Note: insert definition if appropriate*];

"NASDAQ" means the NASDAQ Stock Market of the NASDAQ OMX Group Inc.;

"New Articles" means the new articles of association of the Company in the agreed form to be adopted on or prior to Completion as amended or superseded from time to time;

"New Shares" means the shares subscribed by the Investors pursuant to clause 3.1 at a price of £[] per share [*Note: insert relevant details*] [and shall include the Additional New Shares if applicable] [*Note: to be used if only one tranche*];

"Off-the-Shelf Software" means the software packages which are readily available to any person to purchase and use in their business;

"Open Source Code" means any software code that is distributed as "free software" or "open source software" or is otherwise distributed publicly in source code form under terms

that permit modification and redistribution of such software, which Open Source Code includes software code that is licensed under the GNU General Public License, GNU Lesser General Public License, Mozilla License, Common Public License, Apache License, BSD License, Artistic License, or Sun Community Source License;

"Ordinary Shares" means ordinary shares of £[] [Note: *insert par value*] each in the capital of the Company from time to time having the rights set out in the New Articles;

["Pension Scheme"]: means the group personal pension scheme of the [Company] operated by []; [Note: *include if relevant*]

"Period" means the period of two years immediately preceding the Termination Date;

["Permitted Transferees"] has the same meaning as set out in the New Articles [Note: *insert definition if appropriate. See clause 8.2;*]

"Personal Data" has the same meaning as the term **"personal data"** under the Data Protection Legislation;

["Prior Agreement"] means the subscription and shareholders' agreement dated [insert] between the Company, the Founders and [the Existing Shareholders] [as amended];

"Properties" means the properties described in schedule 8;

["Relevant Change Letter"] means each letter in the agreed form informing the Company that Completion will result in a relevant change (as defined in section 790E(3) of the Act);

"Resolutions" means the resolutions in agreed form to be passed by the Company by [general meeting/written resolution] [Note: *amend as appropriate*] as specified in paragraph 1 of [part 1 of] schedule 4;

"Sale" means a Share Sale or an Asset Sale, both as defined in the New Articles;

["Second Completion"] means completion by the parties of their respective obligations in accordance with clauses 4.3 to 4.7 (inclusive) [Note: *insert definition if appropriate*];

["Second Completion Conditions"] means the conditions set out in part 2 of schedule 4 [Note: *insert definition if appropriate*];

["Second Completion Date"] means the date which is [15] Business Days following the Milestone Determination (or if such date is not a Business Day, the next Business Day) or such other date as agreed by the Company and Investor Majority in writing [Note: *insert definition if appropriate*];

["Second Tranche Shares"] means the [] shares subscribed by the Investors pursuant to clause 3.2 [Note: *insert definition if appropriate*];

"Series A Shares" means series A shares of £[] each in the capital of the Company from time to time having the rights set out in the New Articles;

"Service Agreements" means the agreements in the agreed form to be entered into between the Company and each of the Founders;

"Shareholder" means any shareholder of the Company from time to time who is a party to this agreement (but excludes the Company holding Shares as Treasury Shares from time to time);

"Share Option Plan" means the share option plan to be established by the Company pursuant to clause 7;

"Shares" means the Ordinary Shares and the Series A Shares;

"Social Obligations" means:

- (a) any common or statutory law, regulation, directive, code of practice or other law in any jurisdiction relating to (i) the relationship between any Group Company and its employees (and/or Workers), any potential employee (and/or Worker) and/or any trade unions and/or (ii) the health and safety of its employees; and
- (b) any agreements or arrangements between any Group Company and its employees and/or any trade union or other organisation which represents some or all of its employees;

"Subsidiary" means any subsidiary of the Company as defined in section 1159 of the Act from time to time [which as at date of this agreement include those, brief particulars of which, are set out in part 2 of schedule 2] [*Note: amend as appropriate*];

"Subsidiary Undertaking" has the meaning set out in section 1162 of the Act;

"Successor Entity" means an entity which, shortly before an IPO of such entity, shall have acquired all of the shares or the assets of the Company and the ownership of which, following such acquisition, is substantially the same as that of the Company immediately prior to such acquisition (disregarding any new investors or selling shareholders as a result of such IPO or any related fundraising);

"Taxation" means all forms of taxation, duties, rates, levies, contributions, withholdings, deductions, liabilities to account, charges and imposts whether imposed in the United Kingdom or elsewhere in the world;

"Taxing Authority" means HMRC and any other governmental, state, federal, provincial, local governmental or municipal authority, body or official whether of the United Kingdom or elsewhere in the world, which is competent to impose or collect Taxation;

"Termination Date" means the date upon which the Founder concerned ceases to be a director or employee of or a consultant to, the Company whichever is the latest;

"Treasury Shares" means shares in the capital of the Company held by the Company as treasury shares within the meaning set out in section 724(5) of the Act;

"VAT" means value added tax chargeable under the VATA or under any legislation replacing it or under any legislation which the VATA replaced and further means value added tax at the rate in force when the relevant supply is made and any tax of a similar nature which is introduced in substitution for such value added tax;

"VATA" means the Value Added Tax Act 1994;

"Warranties" means the warranties given pursuant to clause 5 (references to a particular representation or warranty being to a statement set out in schedule 5);

"Warrantors" means the Company and each of the Founders; and

"Workers" has the meaning set out in Chapter 8, section 88(3) of the Pensions Act 2008.

2. Interpretation

- 1.1. The clause and paragraph headings and the table of contents used in this agreement are inserted for ease of reference only and shall not affect construction.
- 1.2. References to an Investor Director shall include any alternate appointed to act in his place from time to time.
- 1.3. References to persons shall include bodies corporate, unincorporated associations and partnerships, in each case whether or not having a separate legal personality.
- 1.4. Reference to a party or parties is to a party or parties of the agreement.
- 1.5. References to documents **"in the agreed form"** are to documents in terms agreed on behalf of the Company and the Investors and initialled on behalf of each such party for the purposes of identification only.
- 1.6. References to any English statute or other legislation or legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.
- 1.7. References to those of the parties that are individuals include their respective legal personal representatives.
- 1.8. References to **"writing"** or **"written"** includes any non-transitory form of visible reproduction of words.
- 1.9. References to the word **"include"** or **"including"** (or any similar term) are not to be construed as implying any limitation and general words introduced by the word **"other"** (or any similar term) shall not be given a restrictive meaning by reason of the fact that they are preceded or followed by words indicating a particular class of acts, matters or things.
- 1.10. Reference to **"issued Shares"** of any class or Shares of any class **"in issue"** shall exclude any Shares of that class held as Treasury Shares from time to time, unless stated otherwise.
- 1.11. Reference to the **"holders"** of a class of Shares shall exclude the Company holding Shares of that class as Treasury Shares from time to time, unless stated otherwise.
- 1.12. Except where the context specifically requires otherwise, words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing corporations and vice versa, words importing the singular shall be treated as importing the plural and vice versa, and words importing the whole shall be treated as including a reference to any part thereof.
- 1.13. References to statutory provisions, enactments or EC Directives shall include references to any amendment, modification, extension, consolidation, replacement or re-enactment of any such provision, enactment or EC Directive (whether before or after the date of this agreement), to any previous enactment which has been replaced or amended and to any

regulation, instrument or order or other subordinate legislation made under such provision, enactment or EC Directive unless any such change imposes upon any party any liabilities or obligations which are more onerous than as at the date of this agreement.

- 1.14. Section 1122 of the CTA 2010 shall apply to determine whether one person is connected with another for the purposes of this agreement.
- 1.15. References in clause 1 (Definitions) (in so far as they are used in the clauses and schedules referred to in this clause), clauses 5 (Warranties), 8 (The Board and the Investor Directors), 9 (Information rights), 10 (Matters requiring consent of the Investors or the Investor Directors), 11 (Business undertakings), 14 (Founder covenants), 15 (Confidentiality), schedule 5 (Warranties), schedule 6 (Consent matters) and schedule 7 (Undertakings) to the Company and the Board shall include, where appropriate in the context, each of the subsidiaries of the Company and any Successor Entity and the directors for the time being of those subsidiaries and any Successor Entity respectively. *[Note: see drafting notes.]*
- 1.16. In respect of any actions or matters requiring or seeking the acceptance, approval, agreement, consent or words having similar effect of an Investor Director under this agreement, if at any time an Investor Director has not been appointed or an Investor Director declares in writing to the Company and the Investors that he considers that providing such consent gives rise or may give rise to a conflict of interest to his duties as a Director, such action or matter shall require an Investor Majority Consent.

2. Subscriptions

- 2.1. Subject to the provisions of clauses 4.1 and 4.2, the Investors apply for the allotment and issue to them at Completion of the following shares as set out in the table below and the Company accepts such applications:

Investor	No. of <i>[Note: insert class of shares]</i>	Total subscription monies (£)
•	•	•
Total	•	•

- 1.2. [Subject to the provisions of clauses 4.3 to 4.7 (inclusive), the Investors apply for the allotment and issue to them at Second Completion of the following shares as set out in the table below and the Company accepts such applications:]

Investor	No. of <i>[Note: insert class of shares]</i>	Total subscription monies (£)
•	•	•
Total	•	•

[Note: insert clause 3.2 if investment is being made in two tranches]

- 1.3. [No later than *[insert date]* (unless the Company and Investor Majority have agreed in writing to extend such date), the Company may allot and issue the Additional New Shares

to one or more additional investors that have been approved by the Company and the Investor Majority, provided that any such additional investor(s) execute a Deed of Adherence prior to such allotment and issue.]

- 2.2. The Investors shall be entitled to direct that the [New Shares] [First Tranche Shares and the Second Tranche Shares] [*Note: amend as appropriate*] be issued and registered in the name of any nominee or custodian holding such shares on its behalf as bare nominee and the provisions of clauses 3.1, [3.2], [3.3], 4 (Completion) and 19 (Effect of ceasing to hold shares) shall be interpreted accordingly.
- 2.3. Each of the Founders [and the Existing Shareholders] agrees to vote in favour of the Resolutions and hereby irrevocably waives (or confirms that it has procured the waiver of) all and any pre-emption rights he or his nominees may have pursuant to the Company's articles of association or otherwise so as to enable the issue of any shares in the capital of the Company contemplated by this agreement to proceed free of any such pre-emption rights.

4. Completion

Completion

- 2.4. Subject to the Completion Conditions having been satisfied or waived by the [Investors], Completion shall take place on the Completion Date once the events set out in clause 4.2 have occurred.

- 2.5. At Completion the following events shall occur:

- (a) each Investor shall pay the sum set out against its name in column 3 of the table in clause 3.1 (being the aggregate subscription price for the [First Tranche Shares] [New Shares] [*Note: amend as appropriate*]) [less any fees and disbursements referred to in clause 17.1] by electronic funds transfer to the bank account of the [Company] [Company's Solicitors] [*Note: amend as appropriate*] as set out below and payment made in accordance with this clause 4.2 shall constitute a good discharge for the Investor of its obligations under this clause 4.2:

Account name : []

Bank : []

Account number : []

Sort code : []

IBAN : []

Swift Code : []

- (b) a meeting of the Board shall be held at which the Company shall:

- (i) issue the [First Tranche Shares] [New Shares] [*Note: amend as appropriate*] credited as fully paid to the Investors and enter their names in the register of members in respect thereof;
- (ii) execute and deliver to the Investors certificates for the [First Tranche Shares] [New Shares]; [*Note: amend as appropriate*]

- (iii) [accept the resignations of each of [●] and [●] as directors of the Company;]
 - (iv) appoint [●] and [●] as Investor Directors; [and]
 - (v) [approve and authorise the execution by the Company of the Service Agreements]; [and]
 - (vi) pass any such other resolutions as may be required to carry out the obligations of the Company under this agreement.
- (b) [the Company and each of the Founders shall enter into the Service Agreements.]

[Second Completion [Note insert if relevant]]

- 1.3. [Subject to (a) the Milestones having been satisfied or waived by [the Investors] [an Investor Majority] by the Milestone Date (the “**Milestone Determination**”) and (b) the remaining Second Completion Conditions having been satisfied or waived by [the Investors] [an Investor Majority], Second Completion shall take place on the Second Completion Date once the events set out in clause 4.6 have occurred. [For the avoidance of doubt, if an Investor Majority has determined that the Second Completion Conditions have been satisfied or waived, all Investors shall be obliged to subscribe simultaneously for their respective Second Tranche Shares on the Second Completion Date and the provisions of clauses 4.3 to 4.7 (inclusive) shall apply equally to all Investors.]
- 2.6. [Notwithstanding clause 4.3, each Investor may at its option (by written notice to the Company copied to each other Investor) require the Company at any time prior to the Milestone Date to accept its subscription for its allocation of the Second Tranche Shares irrespective of whether the Second Completion Conditions have been satisfied, in which event the Founders (in so far as they are legally able to do so) and the Company shall effect Second Completion for that Investor on the date so specified by that Investor, and the requirements of clause 4.6 shall apply in respect of that Investor for such Second Completion.]
- 2.7. Each of the Company and the Founders shall notify the Investors as soon as it or they become aware of any fact or circumstance which has caused or will or is likely to cause any of the Second Completion Conditions not to be satisfied.
- 2.8. At Second Completion the following events shall occur:
- (a) each Investor shall pay the sum listed against its name in column 3 of the table set out in clause 3.2 (being the subscription price for the Second Tranche Shares subscribed by each Investor) by electronic funds transfer to the bank account of the [Company] [Company’s Solicitors] *[Note: amend as appropriate]* and payment made in accordance with this clause 4.6 shall constitute a good discharge for each Investor of its obligations under clauses 4.3 to 4.7 (inclusive);
 - (b) a meeting of the Board shall be held at which the Company shall:
 - (i) issue the Second Tranche Shares credited as fully paid to the Investors and enter their names in the register of members in respect thereof;
 - (ii) execute and deliver to the Investors certificates for the Second Tranche Shares; and

- (iii) pass any such other resolutions as may be required to issue the Second Tranche Shares.

2.9. [If an Investor does not subscribe for its Second Tranche Shares (the "**Surplus Shares**") on the Second Completion Date in accordance with the requirements of clauses 4.3 and 4.6 or under clause 4.4 (a "**Defaulting Investor**") (the date of such default being the "**Default Date**"), then the following shall apply:

- (a) Each of the Investors (other than the Defaulting Investor) shall have the right (but not the obligation) within [30 days] of the Default Date to subscribe for the Surplus Shares pro rata to its participation in Second Completion (excluding the Defaulting Investor) and shall be entitled (but not required), with the consent of the other such Investors, within this period to subscribe for any excess Surplus Shares if any of the other Investors do not wish to subscribe for their pro rata amount of Surplus Shares, which excess Surplus Shares shall be apportioned in the amounts so subscribed, unless there are insufficient excess Surplus Shares to satisfy all such subscriptions, in which case such excess Surplus Shares shall be allotted to those subscribing Investors pro rata to the participation in Second Completion by those subscribing Investors which procedure shall be repeated until all Surplus Shares have been allocated but no allocation shall be made for more than the amounts that have been so subscribed.
- (b) [In addition to and without prejudice to all other rights and remedies available to the parties, including without limitation the right to bring a claim for breach of contract, a Defaulting Investor shall be deemed (unless the Company and the Investor Majority (which shall not include the Defaulting Investor) have determined that this clause will not apply), upon the Default Date, to have served an irrevocable and unconditional written notice to the Company of the conversion of all of its holdings of Series A Shares into Ordinary Shares in accordance with article [9.1] of the New Articles and shall be required to comply with the requirements set out in article [9] the New Articles in respect of the conversion of such shares.] [*Note: see drafting note.*]

5. Warranties

2.10. The Warrantors severally warrant to the Investors that each and every Warranty set out in [part 1 of] schedule 5 is true, accurate and not misleading at the date of this agreement subject only to:

- (a) the matters Disclosed; and
- (b) any exceptions expressly provided for under this agreement.

2.11. [Immediately before the Investors subscribe for the Second Tranche Shares, the Warrantors severally warrant to those Investors subscribing for Second Tranche Shares that each and every Warranty set out in part 2 of schedule 5 is true, accurate and not misleading as at the Second Completion Date subject only to:

- (a) the matters Disclosed; and
- (b) any exceptions expressly provided for under this agreement.

2.12. Each Warranty is a separate and independent warranty, and, save as otherwise expressly provided, no Warranty shall be limited by reference to any other Warranty or by the other

terms of this agreement, the Disclosure Letter and the Further Disclosure Letter (if applicable).

- 2.13. The rights and remedies of the Investors in respect of any breach of any of the Warranties shall not be affected by Completion [or Second Completion], any investigation made by or on behalf of the Investors into the affairs of the Company or any other event or matter whatsoever which otherwise might have affected such rights and remedies except a specific and duly authorised written waiver or release.
- 2.14. [No information relating to the Company of which the Investors have knowledge (actual or constructive) other than by reason of it being Disclosed in accordance with clause 5.1(a) [or clause 5.2(a) (as appropriate)] [*Note: amend as appropriate*] shall prejudice any Claim which the Investors shall be entitled to bring or shall operate to reduce any amount recoverable by the Investors under this agreement.] [*Note: see drafting notes*]
- 2.15. Without limitation to the rights of the Investors under this agreement, in the case of a Claim against the Company, no counterclaim or right of contribution or indemnity shall lie against the other Warrantors and, in the case of a Claim against any or all of the other Warrantors, no counterclaim or right of contribution or indemnity shall lie by any of them against the Company or any other Warrantor.
- 2.16. Where any Warranty is qualified by the expression "**so far as the Warrantors are aware**" or words having similar effect, such Warranty shall be deemed to include a statement that such awareness means both the actual knowledge of the Warrantors and also such knowledge which the Warrantors would have had if they had made reasonable enquiry of all relevant persons.
- 2.17. Any information supplied by the Company, its officers, employees or agents to the Founders or their agents, representatives or advisers in connection with, or which forms the basis of, any of the Warranties or any matter covered in the Disclosure Letter [or Further Disclosure Letter] [*Note: amend as appropriate*] or otherwise in relation to the business and affairs of the Company (whether before or after the date hereof) shall be deemed not to include or have included a representation, warranty or guarantee of its accuracy by the Company to the Founders and shall not constitute a defence to any Claim by the Investors. The Founders hereby irrevocably waive any and all claims against the Company, its officers, employees or agents in respect of any information so supplied.
- 2.18. The Investors agree among themselves that the following provisions shall (unless they subsequently agree amongst themselves to the contrary acting by way of an Investor Majority) apply in relation to the bringing of any Claim:
 - (a) no Claim shall be brought by any of the Investors without Investor Majority Consent provided that all Investors have been informed of the breach of Warranty and consulted prior to an Investor Majority decision being made;
 - (b) the costs incurred by any Investors in bringing a Claim shall be borne by all of the Investors proportionately to the amounts subscribed by each of them pursuant to this agreement; and
 - (c) any damages obtained as a result of any Claim will, after deduction of all costs and expenses, be divided amongst the Investors in such proportions.

Any Investor shall be entitled to waive its right to bring and/or participate in a Claim at any time prior to the issue of proceedings with the consequence that it shall not be liable to bear its proportion of the costs referred to in (b) above (which costs per Investor shall increase rateably for the

remaining Investors) nor entitled to any of the damages referred to in (c) above. In such circumstances, the consent of that Investor will not be required under clause 5.9(a).

6. Limitations on Warranty Claims

2.19. The limitations set out in this clause 6 shall not apply to any Claim which is:

- (a) the consequence of fraud, dishonesty, wilful concealment or wilful misrepresentation by or on behalf of the Warrantors; or
- (b) which is a result of a breach of warranty statements 1.1 and 1.2 (share capital) and 2.4 (questionnaires) of [part 1 of] schedule 5.

2.20. No Claim may be made against the Warrantors unless written notice of such Claim is served on the Warrantors giving reasonable details of the Claim by (i) no later than the date which is six months after the date on which the Company delivers to the Investors the Board approved audited accounts of the Company for the Financial Year of the Company ending [*insert date*]; or (ii) two years after the Warranties were last given, whichever is the later. [*Note: consider extending term for second tranche warranties*]

Failure to give reasonable details of any Claims shall not prevent the Investors from proceeding with any Claim otherwise made properly under this agreement.

1.3. The aggregate liability of the Warrantors in respect of all and any Claims shall be limited to:

- (a) in the case of the Company, an amount equal to the aggregate amount subscribed by the Investors pursuant to this agreement; and
- (b) in the case of each of the Founders, £[] [*Note: insert amount*]

[together with the proper and reasonable costs of recovery in respect of any Claim incurred by or on behalf of the Investors.]

1.4. The Warrantors shall not be liable in respect of any Claim unless the aggregate liability for all Claims exceeds £• [*Note: insert amount*], in which case the Warrantors shall be liable for the entire amount and not merely the excess.

2.21. [In calculating liability for Claims for the purposes of clause 6.4 above, any Claim which is less than £• (excluding interest, costs and expenses) shall be disregarded. For these purposes, a number of Claims arising out of the same or similar subject matter, facts, events or circumstances shall be aggregated and form a single Claim.]

2.22. No liability of the Warrantors in respect of any breach of any Warranty shall arise:

- (a) if such breach occurs by reason of any matter which would not have arisen but for the coming into force of any legislation not in force at the Completion Date or by reason of any change to HMRC's practice occurring after the Completion Date;
- (b) to the extent that specific allowance, provision or reserve has been made in the Accounts or in the Management Accounts in respect of the matter to which such liability relates;
- (c) to the extent that such breach or claim arises as a result of any change in the accounting bases or policies in accordance with which the Company values its assets or calculate its liabilities or any other change in accounting practice from the treatment or application of the same used in preparing the Accounts (save to the

extent that such changes are required to correct errors or because relevant generally accepted accounting principles have not been complied with).

- 2.23. The Investors shall be entitled to make a Claim in respect of liability which is contingent or unascertained provided that written notice of the Claim (giving as far as practical the amount and details of the Claim) is given to the Warrantors before the expiry of the relevant periods specified in clause 6.2.
- 2.24. The Warrantors shall not be liable for any Claim if the alleged breach which is the subject of the Claim is capable of remedy and is remedied to the reasonable satisfaction of the Investors by the Warrantors within 30 days of the date on which the notice in clause 6.2 is received by the Warrantors and no Investor suffers any losses in connection with the alleged breach.
- 2.25. Nothing in this agreement shall prejudice each Investor's duty under common law to mitigate any loss or liability which is the subject of a Claim.
- 2.26. [At the option of each Founder but at all times subject to Investor Majority Consent, any liability in respect of any Claims may be settled (in whole or in part) in Shares held by the relevant Founder, whereby the number of Shares is calculated by dividing the value of the Claim by the [lower of (i) the Fair Value *[Note: add definition]* of such Shares at the time of the settlement of the Claim; and (ii) the] Subscription Price *[Note: add definition]*. [Any Shares so transferred to the Investors shall, if they are Ordinary Shares, be re-designated as Series A Shares and each of the parties (other than the Company) hereby irrevocably agrees to approve such re-designation and waives any pre-emption rights on transfer he or his nominees may have pursuant to the Company's articles of association or otherwise so as to enable the transfer of any Shares in the capital of the Company contemplated by this clause 6.10 to proceed free of any such pre-emption rights.] The transfer of the adequate number of Shares (or, where Shares are transferred in partial settlement, the adequate number of Shares together with the adequate cash payment) to the Investors by a relevant Founder shall fully and finally discharge such Founder from any liability for a Claim.] *[Note: Authority for re-designation and transfer to be added to New Articles if not all shareholders party to the agreement.]*

7. Share Option Plan

Within [] Business Days of the Completion Date, the Company shall adopt a Share Option Plan in a form acceptable to the Investor Majority whereby options over Ordinary Shares (subject to a maximum option pool [of [] Ordinary Shares] [equal to [] per cent of the Equity Shares (excluding Treasury Shares) [in issue immediately following Completion] [on a fully diluted basis from time to time]) may be granted to directors, employees and consultants of the Company pursuant to the Share Option Plan in such number as may be decided by the Board (in both cases with Investor Director Consent). *[Note insert relevant details]*

8. The Board and the Investor Directors

- 2.27. The members of the Board immediately following Completion shall be [the Founders] and the Investor Directors (if appointed). Board meetings will be held at intervals of not more than [] weeks and at least [] Board meetings will be held in each calendar year. *[Note: insert details]*

- 2.28. [For so long as] [Name of Investor] [*Note: insert name*] [and its Permitted Transferees] [holds not less than [] per cent of the Equity Shares (excluding Treasury Shares) in issue] [*Note: amend as appropriate*] he/they shall have the right:
- (a) to appoint and maintain in office such natural person as [name of Investor] may from time to time nominate as a director of the Company (and as a member of each and any committee of the Board) and to remove any director so appointed and, upon his removal whether by the Investor or otherwise, to appoint another director in his place; [and] [or] [*Note: amend as appropriate*]
 - (b) to appoint a representative to attend as an observer at each and any meeting of the Board and of each and any committee of the Board who will be entitled to speak at any such meetings but will not be entitled to vote.
- [] shall be deemed to be the first director appointed pursuant to this clause 8.2. [*Note: complete details*]
- 1.3. Appointment and removal of an Investor Director or an observer in accordance with clause 8.2 shall be by written notice from the appointing Investor to the Company which shall take effect on delivery at the Company's registered office or at any meeting of the Board or committee thereof.
- 2.29. The Company shall send to the Investors, to any Investor Directors and any observer appointed by an Investor (in electronic form if so required):
- (a) reasonable advance notice of each meeting of the Board (being not fewer than five Business Days) and each committee of the Board, such notice to be accompanied by a written agenda specifying the business to be discussed at such meeting together with all relevant papers; and
 - (b) as soon as practicable after each meeting of the Board (or committee of the Board) a copy of the minutes.
- 2.30. Save with Investor Director Consent no business shall be transacted at any meeting of the Board (or committee of the Board) save for that specified in the agenda referred to in clause 8.4.
- 2.31. [The Company shall pay to each of [*Note: insert relevant Investor details*] (or as it shall direct) from Completion, in respect of the provision of services (and whether or not an Investor Director holds office or any observer is appointed) a fee of £[] per annum exclusive of VAT. Such fee shall accrue due from day to day and be payable [monthly] [quarterly] in arrears on [the last Business Day in each month] [[], [], [] and [] in each year], the first payment being due on []. [*Note: amend as appropriate*]]
- 2.32. The Company will reimburse the Investor Directors and any observer appointed by an Investor with the reasonable costs and out of pocket expenses incurred by them in respect of attending meetings of the Company or carrying out authorised business on behalf of the Company.
- 2.33. An Investor who has appointed an Investor Director and/or an observer pursuant to clause 8.2 shall procure that such Investor Director and/or observer shall comply with clause 15 save that such Investor Director and/or observer shall be at liberty from time to time to make full disclosure to its appointing Investor of any information relating to the Company.

- 2.34. The parties agree that the Investor Directors shall be under no obligation to disclose any information or opportunities to the Company except to the extent that the information or opportunity was passed to him expressly in his capacity as a director of the Company.
- 2.35. A [remuneration] [audit] [other] [*Note: complete as appropriate*] committee shall be established by the Board as soon as practicable following Completion [on such terms as shall be approved by an Investor Majority] [having the terms of reference set out in schedule 11]. [*Note: insert details*] shall be members of the [*Note: insert details*] committee [and [Investor Director] [*Note: insert name*] shall be the Chairman of such committee(s).]
- 2.36. [If the chairman of the Board has not been appointed within [three] months of Completion or within [three] months of the resignation of a chairman, the Investor Majority [with the consultation of the Founders] shall be entitled to appoint a chairman, whether from the existing members of the Board or by the appointment of a new director, by notice in writing addressed to the Company.] [*Note: insert if agreed.*]

3. Information rights

- 3.1. The Company shall for each month prepare management accounts (in a form approved by an Investor Majority and which reasonably reflect the financial affairs of the Company for that period) with comparisons to budgets and containing trading and profit and loss accounts, balance sheets, cash flow statements and forecasts and shall deliver them to the Investors within [21] days after the end of each month. The first management accounts shall be delivered to the Investors within [21] days after the end of the month in which Completion takes place.
- 3.2. The Company shall prepare a detailed operating and capital budget and cash flow forecast in respect of each Financial Year of the Company (in such form as an Investor Majority shall reasonably require from time to time) that shall be approved by the Board and the Investor Majority and delivered to each Investor at least [30] days prior to the end of the Company's preceding Financial Year (the "**Budget**").
- 3.3. The audited accounts of the Company [and audited consolidated accounts of the Group Companies] in respect of each accounting period together with the relevant audit and management letters and all correspondence between the Company and the auditors of the Company concerning the accounts, shall be completed and approved by the Board and delivered to the Investors within [four] months after the end of the accounting period to which such audited accounts relate.
- 3.4. [The Company shall prepare a schedule of the Company's issued share capital and any warrants and/or options to acquire shares and/or convertible securities, broken down by shareholder, optionholder, warrant holder and convertible securities holder (as appropriate) and including the percentage of the fully diluted issued share capital held by each holder and shall deliver such share capital schedule to the Investors within [21] days after the end of each [quarter] in the Company's Financial Year.]
- 3.5. The Company shall provide each Investor promptly with such other information concerning the Company and its business as that Investor may reasonably require from time to time.
- 3.6. Each of the Company and the Founders shall promptly provide the Investors with full details of any offer or proposed offer from any person wishing to enter into any Sale or purchase any of the Company's assets or share capital or loan capital which may from time to time be brought to its or their attention.

- 3.7. [If the Company does not comply with its obligations in clauses 9.1 to 9.6,] the Investors, the Investor Directors and a firm of accountants nominated by the Investor Majority at the Company's expense will be entitled to attend the Company's premises to examine the books and accounts of the Company and to discuss the Company's affairs, finances and accounts with its directors, officers and senior employees. Each Founder and the Company separately undertakes to the Investors to co-operate with any accountants appointed by the Investor Majority pursuant to this clause 9.7.

4. Matters requiring consent of the Investors or the Investor Directors

- 4.1. Each of the Shareholders shall exercise all voting rights and powers of control available to him in relation to the Company to procure that:
- (a) save with Investor Majority Consent, the Company shall not effect any of the matters referred to in part 1 of schedule 6; and
 - (b) save with Investor Director Consent, the Company shall not effect any of the matters referred to in part 2 of schedule 6.
- 4.2. As a separate obligation, severable from the obligations in clause 10.1, the Company agrees that:
- (a) save with Investor Majority Consent, it shall not effect any of the matters referred to in part 1 of schedule 6; and
 - (b) save with Investor Director Consent, the Company shall not effect any of the matters referred to in part 2 of schedule 6.
- 4.3. Each Investor Director or such other person as each Investor shall nominate in writing to the Board shall be authorised to communicate [in writing] the consent of its appointing Investor to any of the matters referred to in schedule 6.

5. Business undertakings

- 5.1. The Founders will promote the best interests of the Company and ensure that the Business is conducted in accordance with the Business Plan and with good business practice.
- 5.2. The Company shall apply the proceeds of the subscription by the Investors for the [New Shares] [First Tranche Shares and Second Tranche Shares] [*Note: amend as appropriate*] in the furtherance of the Business in accordance with the Business Plan and the Budget.
- 5.3. The Founders and the Company severally undertake to the Investors to procure, so far as it lies within their respective power to do so, that the Founders and the Company will comply with the requirements set out in schedule 7.

6. Sale or IPO

- 6.1. It is the parties' intention to effect a Sale or IPO as soon as practicable and in any event within [five] years of the Completion Date. Subject to any restrictions to which the parties are subject, they will keep one another informed of all and any developments which might lead to any Sale or IPO.
- 6.2. Each party acknowledges and agrees that upon a Sale or IPO the Investors shall not be obliged to give warranties or indemnities (except a warranty as to title to the shares held by such Investor).

- 6.3. If a Sale or IPO is not achieved by the [fifth] anniversary of Completion then the Company shall if required by an Investor Majority at the Company's expense appoint a professional adviser (to be agreed with the prior sanction of an Investor Director Consent) to report on exit opportunities and strategy and copies of such reports shall be made available to the Investors (at the Company's cost).
- 6.4. It is hereby agreed by the parties that, on an IPO, the Shareholders shall:
- (a) to the extent required by the applicable rules of the relevant exchange, retain such number of their shares in the Company held at the time of the IPO for such period after IPO as is required by the applicable rules of the relevant exchange; and
 - (b) have regard to the recommendation of the Company's brokers on an IPO in determining their respective sale of shares upon the Company's IPO and shall make such determination with a view to ensuring the success of the IPO.
- 6.5. [It is agreed that in the event of an initial public offering of the Company's shares on a US stock exchange (including NASDAQ) the Investors shall be entitled to registration rights on terms to be agreed which shall include:
- (a) two demand registration rights commencing six months after the Company's initial public offering; [*Note: complete details*]
 - (b) unlimited shelf and piggy back registrations on all registrations by the Company for its own account; and
 - (c) all expenses of a registration will be payable by the Company including the legal costs of one professional firm appointed to act on behalf of the Investors.] [*Note: see drafting notes*]

7. Further issue and transfer of shares

- 7.1. Each of the Founders [and the Existing Shareholders] undertakes to the Investors that he shall not, and shall not agree to, transfer, mortgage, charge or otherwise dispose of the whole or any part of his interest in, or grant any option or other rights over, any shares in the capital of the Company to any person except:
- (a) with Investor Majority Consent; or
 - (b) where required so to do pursuant to the New Articles or this agreement.
- 7.2. Without prejudice to clause 13.1, none of the Founders [and the Existing Shareholders] shall effect any transfer, mortgage, charge or other disposal of any interest in Shares described in clause 13.1 nor shall the Company issue any shares or equity securities (as defined in section 560 of the Act) or sell or transfer any Shares held as Treasury Shares, to any person who is not a party to this agreement without first obtaining from the transferee or subscriber a Deed of Adherence [save in respect of the grant or exercise of an option pursuant to the Share Option Plan] [unless otherwise approved by the Board (including Investor Director Consent)].
- 7.3. The Deed of Adherence shall be in favour of the Company, the Investors and any other parties to this agreement and shall be delivered to the Company at its registered office and to the Investors. Subject to clause 13.2, no share transfer or issue of shares shall be registered unless such Deed of Adherence has been delivered.

8. Founder covenants

Restrictive covenants

- 8.1. For the purpose of assuring to the Investors the value of the Business and the full benefit of the goodwill of the business of the Company, each of the Founders hereby undertakes and covenants with the Investors and the Company that (save for any interest in the shares or other securities of a company traded on a securities market so long as such interest does not extend to more than 3 per cent of the issued share capital of the company or the class of securities concerned or save with Investor Majority Consent) he shall not:
- (a) while he is a director or employee of, or a consultant to, the Company carry on or be concerned, engaged or interested directly or indirectly (in any capacity whatsoever) in any trade or business competing with the trade or business of the Company as carried on at the time or, in relation to any trade or business of the Company that he has been engaged or involved in, at any time during a period of two years immediately preceding that time; or
 - (b) during the period of [●] commencing on the Termination Date:
 - (i) within [*Note: insert geographic area/region to which the restriction is to apply*] carry on or be concerned, engaged or interested directly or indirectly in any capacity whatsoever in any trade or business competing with the business carried on by the Company in which he shall have been engaged or involved at any time during the Period;
 - (ii) either on his own behalf or in any other capacity whatsoever directly or indirectly do or say anything which may lead to any person ceasing to do business with the Company on substantially the same terms as previously (or at all);
 - (iii) either on his own behalf or in any other capacity whatsoever directly or indirectly endeavour to entice away from the Company or solicit any person, firm or company who was a client, customer, supplier, agent or distributor of the Company during the Period with whom he shall have been engaged or involved by virtue of his duties during the Period in competition with or to the detriment of the Company;
 - (iv) either on his own behalf or in any other capacity whatsoever directly or indirectly have any dealings with any person, firm or company who was a client, customer, supplier, agent or distributor of the Company during the Period with whom he shall have been engaged or involved by virtue of his duties during the Period in competition with or to the detriment of the Company; or
 - (v) either on his own behalf or in any other capacity whatsoever directly or indirectly employ, engage or induce, or seek to induce, to leave the service of the Company any person who is or was a Key Employee with whom he shall have had dealings during the Period whether or not such person would commit any breach of his contract of employment by reason of so leaving the service of the Company or otherwise; or

- (c) at any time after the Termination Date represent himself as being in any way currently connected with or interested in the business of the Company (other than as a shareholder if that be the case).
- 8.2. Each of the restrictions contained in each paragraph of clause 14.1 is separate and distinct and is to be construed separately from the other such restrictions. Each of the Founders hereby acknowledges that he considers such restrictions to be reasonable both individually and in the aggregate and that the duration extent and application of each of such restrictions are no greater than is necessary for the protection of the goodwill of the businesses of the Company and that the consideration paid by the Investors for the [New Shares] [First Tranche Shares and Second Tranche Shares] [*Note: amend as appropriate*] applied for in this agreement takes into account and adequately compensates him for any restriction or restraint imposed thereby. However, if any such restriction shall be found to be void or unenforceable but would be valid or enforceable if some part or parts thereof were deleted or the period or area of application reduced, each of the Founders hereby agrees that such restriction shall apply with such modification as may be necessary to make it valid.

Intellectual property

- 1.3. Any discovery, invention, secret process or improvement in procedure made or discovered by any Founder while in the service of any Group Company or while a shareholder in the Company in connection with or in any way affecting or relating to the Company's business or capable of being used or adapted for use in or in connection with the Company's business shall as soon as reasonably practicable be disclosed to the Company and shall belong to and be the absolute property of the Group Company which the Company nominates for the purpose. For the avoidance of doubt, this agreement shall not operate as a transfer instrument and any transfer of Intellectual Property rights shall be effected under a separate agreement.
- 8.3. Each of the Founders (whether before or after his ceasing to be a Shareholder in the Company or his ceasing to be an employee or engaged as a consultant of any Group Company) shall at the expense of the Company or its nominee apply or join in applying for patent or other similar protection in the United Kingdom, the Republic of Ireland or any other part of the world for any such discovery, invention, process or improvement as referred to in clause 14.3 and shall execute all instruments and do all things necessary for vesting those letters patent or other similar protection when obtained and all right and title to and interest in them in the Company (or its nominee) absolutely and as sole beneficial owner.

No claim

- 1.5. A Founder shall have no claim against the Company in respect of the termination of his contract of employment in relation to any provision in the New Articles, this Agreement or any other agreement or arrangement which has the effect of requiring that Founder to transfer, sell, convert, re-designate or otherwise dispose of the whole or any part of his interest in any shares or other securities in the capital of the Company at any price or into any other class of share (if applicable) or which causes any options or other rights granted to him to become prematurely exercisable or lapse.

15. Confidentiality

- 8.4. Subject to clause 15.2, each of the parties agrees to keep secret and confidential and not to use disclose or divulge to any third party or to enable or cause any person to become

aware of (except for the purposes of the Company's business) any Confidential Information.

8.5. Each Investor shall be at liberty from time to time to make such disclosure:

- (a) to its partners, trustees, shareholders, unitholders and other participants [or potential participants] and/or to any Member of the same Fund Group as an Investor [and/or to any Member of the same Group as an Investor] for the purposes of, but not limited to, reviewing existing investments and investment proposals;
- (b) to any lender to the Company and/or to any shareholder of the Company;
- (c) as shall be required by law or by any regulatory authority to which the Investor is subject or by the rules of any stock exchange upon which an Investor's securities are listed or traded;
- (d) to the Company's auditors and/or any other professional advisers of the Company;
- (e) to the Investor's professional advisers and to the professional advisers of any person to whom the Investor is entitled to disclose information pursuant to this clause 15.2;
- (f) [to any person who is considering making an investment in the Company or purchasing Shares for the purposes of evaluating any such investment or purchase,]

in relation to the business affairs and financial position of the Company as it may in its reasonable discretion think fit, provided that the recipient is subject to an obligation to keep the disclosure confidential on the same basis as is required by the Investor.

1.3. For the purposes of this clause, "**Confidential Information**" means any information or know-how of a secret or confidential nature relating to the Company or of any Investor, including (without limitation):

- (g) any information regarding this agreement and the investment by the Investors in the Company pursuant to this agreement;
- (h) any financial information or trading information relating to the Company or of any Investor which a party may receive or obtain as a result of entering into this agreement;
- (i) in the case of the Company, information concerning:
 - (i) its finances and financial data, business transactions, dealings and affairs and prospective business transactions;
 - (ii) any operational model, its business plans and sales and marketing information, plans and strategies;
 - (iii) its customers, including, without limitation, customer lists, customer identities and contact details and customer requirements;
 - (iv) any existing and planned product lines, services, price lists and pricing structures (including, without limitation, discounts, special prices or special contract terms offered to or agreed with customers);

- (v) its technology or methodology associated with concepts, products and services including research activities and the techniques and processes used for development of concepts, products and services;
- (vi) its computer systems, source codes and software, including, without limitation, software and technical information necessary for the development, maintenance or operation of websites;
- (vii) its current and prospective Intellectual Property;
- (viii) its directors, officers, employees and shareholders (including, without limitation, salaries, bonuses, commissions and the terms on which such individuals are employed or engaged and decisions or contents of board meetings);
- (ix) its suppliers, licensors, licensees, agents, distributors or contractors including the identity of such parties and the terms on which they do business, or participate in any form of commercial co-operation with the Company;
- (x) information concerning or provided to third parties, in respect of which the Company owes a duty of confidence (in particular but without limitation, the content of discussions or communications with any prospective customers or prospective business partner); and
- (xi) any other information which it may reasonably be expected would be regarded by a company as confidential or commercially sensitive,

but shall not include any information which:

- (A) is, or which becomes (other than through a breach of this agreement), available in the public domain or otherwise available to the public generally without requiring a significant expenditure of labour, skill or money;
- (B) is, at the time of disclosure, already known to the receiving party without restriction on disclosure;
- (C) is, or subsequently comes, into the possession of the receiving party without violation of any obligation of confidentiality;
- (D) is independently developed by the receiving party without breach of this agreement;
- (E) is explicitly approved for release by the written consent of an authorised representative of the disclosing party; or
- (F) a party is required to disclose by law, by any securities exchange on which such party's securities are listed or traded, by any regulatory or governmental or other authority with relevant powers to which such party is subject or submits, whether or not the requirement has the force of law, or by any court order.

9. Announcements

- 9.1. Except in accordance with clauses 15.2 or 16.2, the parties shall not make any public announcement or issue a press release or respond to any enquiry from the press or other media concerning or relating to this agreement or its subject matter (including but not limited to the Investors' investment in the Company) or any ancillary matter.
- 9.2. Notwithstanding clause 16.1, any party may:
- (a) make any press release to the effect that it has made an investment in the Company and/or that it is a shareholder in the Company without obtaining the prior approval of any other parties;
 - (b) make or permit to be made an announcement concerning or relating to this agreement or its subject matter or any ancillary matter with the prior written approval of an Investor Majority and the Board or if and to the extent required by:
 - (i) law;
 - (ii) any securities exchange on which such party's securities are listed or traded;
 - (iii) any regulatory or governmental or other authority with relevant powers to which such party is subject or submits, whether or not the requirement has the force of law; or
 - (iv) any court order.

10. Costs and expenses

- 10.1. The Company shall pay at Completion all legal, accounting and due diligence fees and disbursements of the Investors in relation to the negotiation, preparation, execution, performance and implementation of this agreement and each document referred to in it and other agreements forming part of the transaction [up to a maximum aggregate amount of £[insert] [plus VAT and disbursements]].
- 10.2. The Company [and] the Founders [and the Existing Shareholders] shall bear their own costs and disbursements incurred in the negotiations leading up to and in the preparation of this agreement and of matters incidental to this agreement.

11. Survival and cessation of obligations of the Founders

The obligations on a Founder under clauses 5 (Warranties), 14 (Founder covenants), 15 (Confidentiality) and schedule 5 (Warranties) shall survive any transfer by him of all or any Shares and shall survive him ceasing to be a director or employee of or consultant to the Company but otherwise upon a Founder ceasing to hold Shares and ceasing to be a director or employee of or consultant to the Company he shall have no further obligation or liability hereunder but without prejudice to the due performance by him of all obligations up to the date of such cessation.

19. Effect of ceasing to hold Shares

A party shall cease to be a party to this agreement for the purpose of receiving benefits and enforcing his rights with effect from the date he ceases to hold or beneficially own any Shares (but without prejudice to any benefits and rights accrued prior to such cessation).

20. Cumulative remedies

The rights, powers, privileges and remedies conferred upon the Investors in this agreement are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law.

21. Waiver

The express or implied waiver by any party to this agreement of any of its rights or remedies arising under this agreement or by law shall not constitute a continuing waiver of the right or remedy waived or a waiver of any other right or remedy.

22. Entire agreement

- 11.1. This agreement and the documents referred to or incorporated in it constitute the entire agreement between the parties relating to the subject matter of this agreement and supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, between the parties in relation to the subject matter of this agreement.
- 11.2. [With effect from Completion [and in consideration of the obligations of the parties to each other under this agreement], the Prior Agreement shall terminate and cease to have effect]. [Each of the parties to the Prior Agreement shall stand released and discharged from all obligations arising under or resulting from the Prior Agreement. None of the parties to the Prior Agreement shall be entitled to exercise (and each such party waives) any rights to make any claim against any of the others under or in relation to the Prior Agreement or its termination [save that nothing in this clause shall release any party from liability for breaches of the Prior Agreement which occurred prior to Completion].]
- 11.3. Each of the parties acknowledges and agrees that it has not entered into this agreement in reliance on any statement or representation of any person (whether a party to this agreement or not) other than as expressly incorporated in this agreement and the documents referred to or incorporated in this agreement.
- 11.4. Without limiting the generality of the foregoing, each of the parties irrevocably and unconditionally waives any right or remedy it may have to claim damages and/or to rescind this agreement by reason of any misrepresentation (other than a fraudulent misrepresentation) having been made to it by any person (whether party to this agreement or not) and upon which it has relied in entering into this agreement.
- 11.5. Each of the parties acknowledges and agrees that the only cause of action available to it under the terms of this agreement and the documents referred to or incorporated in this agreement in respect of a Claim shall be for breach of contract.
- 11.6. Other than in respect of a Claim, each of the parties acknowledges and agrees that damages alone may not be an adequate remedy for the breach of any of the undertakings or obligations as set out in this agreement. Accordingly, without prejudice to any other rights and remedies the parties may have, the parties shall be entitled to seek the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement.
- 11.7. Nothing contained in this agreement or in any other document referred to or incorporated in it shall be read or construed as excluding any liability or remedy as a result of fraud.

12. Variation and termination

- 12.1. All and any of the provisions of this agreement may be deleted, varied, supplemented, restated or otherwise changed in any way at any time with the prior written consent of the Company and by the Shareholders holding at least [] per cent of the Equity Shares (excluding Treasury Shares) held by the Shareholders, in which event such change shall be binding against all of the parties hereto provided that if such change would impose any new obligations on a party, [vary an express contractual right of that party under this agreement] or increase any existing obligation, the consent of the affected party to such change shall be specifically required.
- 12.2. This agreement may be terminated with the prior written consent of the Company and by Shareholders holding at least [] per cent of the Equity Shares (excluding Treasury Shares) held by the Shareholders, in which event such termination shall be binding against all of the parties hereto save that nothing in this clause shall release any party from liability for breaches of this agreement which occurred prior to its termination.
- 12.3. [This agreement shall terminate and cease to have effect upon an IPO [approved in accordance with clause 10 (Matters requiring consent of the Investors or the Investor Directors)] save that nothing in this clause shall release any party from liability for breaches of this agreement which occurred prior to its termination.]

13. No partnership

Nothing in this agreement is intended to or shall be construed as establishing or implying any partnership of any kind between the parties.

25. Assignment and transfer

- 13.1. Subject to clause 25.3, this agreement is personal to the parties and no party shall:
- (a) assign any of its rights under this agreement;
 - (b) transfer any of its obligations under this agreement;
 - (c) sub-contract or delegate any of its obligations under this agreement; or
 - (d) charge or deal in any other manner with this agreement or any of its rights or obligations.
- 13.2. Any purported assignment, transfer, sub-contracting, delegation, charging or dealing in contravention of clause 25.1 shall be ineffective.
- 13.3. An Investor may assign the whole or part of any of its rights in this agreement to any person who has received a transfer of shares in the capital of the Company from such Investor in accordance with the New Articles and has executed a Deed of Adherence.

14. Rights of third parties

- 14.1. Subject to clause 26.2, this agreement does not confer any rights on any person or party (other than the parties to this agreement) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 14.2. The general partner of an Investor or the management company authorised from time to time to act on behalf of that Investor or another person or persons nominated by that

Investor, shall be entitled to enforce all of the rights and benefits under this agreement at all times as if party to this agreement.

15. Conflict between agreements

Subject to any applicable law, in the event of any ambiguity or conflict between this agreement and the New Articles, the terms of this agreement shall prevail as between the Shareholders and in such event the Shareholders shall procure such modification to the New Articles as shall be necessary.

28. Counterparts; No originals

This agreement may be executed in any number of counterparts, each of which shall constitute an original, and all the counterparts shall together constitute one and the same agreement. The exchange of a fully executed version of this agreement (in counterparts or otherwise) by electronic transmission in PDF format or by facsimile shall be sufficient to bind the parties to the terms and conditions of this agreement and no exchange of originals is necessary.

29. Notices

15.1. Any communication and/or information to be given in connection with this agreement shall be in writing in English and shall either be delivered by hand or sent by first class post or fax, email or other electronic form:

- (a) to any company which is a party at its registered office;
- (b) to any individual who is a party at the address of that individual shown in schedule 1; or
- (c) to an Investor at the principal place of business of that Investor,

(or in each such case such other address as the recipient may notify to the other parties for such purpose).

1.2. A communication sent according to clause 29.1 shall be deemed to have been received:

- (d) if delivered by hand, at the time of delivery;
- (e) if sent by pre-paid first class post, on the second day after posting; or
- (f) if sent by fax, email or other electronic form, at the time of completion of transmission by the sender;

except that if a communication is received between 5.30 pm on a Business Day and 9.30 am on the next Business Day, it shall be deemed to have been received at 9:30am on the second of such Business Days.

30. [Consideration]

The consideration under this agreement consists of the obligations of the parties to each other. The Founders [and the Existing Shareholders] further agree that payment by the Investors to each Founder [and each Existing Shareholder] of £1.00 (receipt of which is hereby acknowledged), and the investment by the Investors in the Company, alone and together amount to good consideration in respect of the obligations of the Founders [and the

Existing Shareholders] under this agreement. *[To be included if agreement to be signed under hand. Note: see drafting notes.]*

31. Severance

- 15.2. If any provision of this agreement is held to be invalid or unenforceable by any judicial or other competent authority, all other provisions of this agreement will remain in full force and effect and will not in any way be impaired.
- 15.3. If any provision of this agreement is held to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question will apply with the minimum modifications necessary to make it valid and enforceable.

16. Governing law

This agreement (and any dispute or claim relating to it or its subject matter (including non-contractual claims)) is governed by and is to be construed in accordance with English law.

33. Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any claim, dispute or issue (including non-contractual claims) which may arise out of or in connection with this agreement.

34. Confirmation by Founders and Investors

- 16.1. Each of the Founders confirms to the Investors that, for the purposes of entering into the transactions contemplated by this agreement:
- (a) he has entered into such transactions entirely on the basis of his own assessment of the risks and effect thereof;
 - (b) he is owed no duty of care or other obligation by the Investors; and
 - (c) insofar as he is owed any such duty or obligation (whether in contract, tort or otherwise) by the Investors he hereby waives, to the extent permitted by law, any rights (save in the case of any fraudulent misrepresentation) which he may have in respect of such duty or obligation.
- 16.2. Each Investor acknowledges to the other Investors that such Investor is not relying upon any person, firm, or corporation, other than the Company and its officers and directors (other than the Investor Directors), in making its investment or decision to invest in the Company. Each Investor agrees that no Investor, no respective Affiliates of any Investor and no Investor Directors shall be liable to any of the other Investors, or any of the Investors in the case of the Investor Directors, for any action taken or omitted to be taken by any of them in connection with the transactions described or contemplated in this agreement.

17. Regulatory matters

No Investor or general partner of any Investor or management company authorised from time to time to act on behalf of any Investor is acting for or advising any other party to the transaction that is the subject of this agreement or undertaking any other activity in relation to that other party that implies in any way that the other party is a client and accordingly no

such Investor, general partner of any Investor and/or management company of any Investor (as appropriate) shall be responsible to any other party for providing any protection afforded to any client (as defined in the Glossary to the FCA Handbook of rules and guidance) for any Investor.

36. [Liability of non-UK limited partners]

Each of the parties hereby acknowledges that the liability of the limited partners in [each of] *[insert name of fund investors which are non-UK/non-Delaware limited partnerships]* for the purposes of this agreement and otherwise is limited and, notwithstanding clause 32 (Governing law), shall be regulated in accordance with the law of the jurisdiction in which that partnership is registered or otherwise constituted.]

SCHEDULE 1

Part 1

The Investors

Name	Address

Part 2

The Founders

Name	Address

[Part 3

The Existing Shareholders]

Name	Address

SCHEDULE 2

Part 1

Particulars of the Company

Registered number:

Registered office:

Directors:

Secretary:

Accounting reference date:

Charges:

Auditors:

Issued share capital
(including treasury shares):

Part 2

Particulars of the [Subsidiary] [Subsidiaries]

Name of company:

Registered number:

Registered office:

Directors:

Secretary:

Accounting reference date:

Charges:

Auditors:

Issued share capital
(including treasury shares)::

SCHEDULE 3

Part 1

Members of the Company - pre-Completion

Member	Number of Ordinary Shares held

Part 2

Members of the Company - post-Completion

Member	Number of Ordinary Shares held	Number of [<i>Note: insert details of other class of shares, options, warrants and/or convertible securities (as appropriate)</i>] held

Part 3

Members of the Company - post-Second Completion

[Note: insert table if appropriate]

Member	Number of Ordinary Shares held	Number of [<i>Note: insert details of other class of shares, options, warrants and/or convertible securities (as appropriate)</i>] held

SCHEDULE 4

[Part 1:]

Conditions to Completion

1. The passing of directors' and shareholders' resolutions in the agreed form at a duly convened Board meeting and a general meeting or by shareholders' written resolution to:
 - (a) [increase the limit on the number of shares that may be allotted by the Company];
[Note: delete if the authorised share capital of the Company has already been removed or the Company was formed on or after 1 October 2009 and has no such limit]
 - (b) authorise the allotment of the [New Shares][the First Tranche Shares and Second Tranche Shares] *[Note: amend as appropriate]*;
 - (c) waive pre-emption rights in respect of the allotment and issue of the [New Shares][the First Tranche Shares and Second Tranche Shares] *[Note: amend as appropriate]*; and
 - (d) adopt the New Articles.
2. The delivery to the Investors of the Accounts, the Management Accounts and the Business Plan.
3. [The delivery to the Investors of questionnaires in the agreed form relating to each of the Founders duly completed.]
4. [The delivery of a letter from the Company's Solicitors addressed to the Investors confirming that all necessary checks have been completed for the purposes of anti-money laundering regulations.]
5. Keyman and critical illness insurance having been effected in the sum of £[●] for the benefit of the Company on the life and health of [] on such terms as shall be approved by the Investors.
6. Directors' and officers' liability insurance having been effected in the sum of £[●] on such terms as shall be approved by the Investors.
7. Delivery to the Investors of the Disclosure Letter.
8. [Delivery to the Company of the Relevant Change Letters.]
9. *[Note: insert any other pre-completion matters.]*

[Part 2:

Conditions to Second Completion]

1. Completion having occurred in accordance with clauses 4.1 and 4.2.

2. Each of the Milestones having been achieved by the Company to the reasonable satisfaction of [the Investors] [an Investor Majority] (or waived in whole or in part by [the Investors] [an Investor Majority]) by the Second Completion Date.
3. In the [reasonable] opinion of [an Investor Majority] [the Investors], there having been no material adverse change in the financial position or prospects of the Company or its Business since Completion.
4. In the [reasonable] opinion of [an Investor Majority] [the Investors], there having been no material breach of this agreement, the New Articles or any document referred to herein as being in the agreed form, which if capable of remedy, has not been remedied within [seven] Business Days of notification of such breach.
5. There having been no material breach by any Founder of his Service Agreement, which if capable of remedy has not been remedied within [seven] Business Days of notification of such breach.
6. Each of the Founders continuing to be employed or engaged by the Company.
7. The Company:
 - (a) not having entered into any composition or arrangement with its creditors generally;
 - (b) not being placed in voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) nor having any order made for its compulsory liquidation;
 - (c) not having an administrator or receiver or other Encumbrance appointed over the whole or any part of its assets or undertaking or suffering any similar act in consequence of debt; or
 - (d) not having ceased to carry on business and not having been deemed unable to pay its debts for the purposes of section 123 of the Insolvency Act 1986.
8. [Delivery to the Investors of the Further Disclosure Letter.]
9. [Delivery to the Company of the Further Relevant Change Letters.]
10. [*Note: insert any other conditions.*]

SCHEDULE 5

*[Note: this is an example warranty schedule only.
Warranties will need to be tailored for each transaction]*

[Part 1

Completion Warranties]

1. Share capital and authority

- 1.1. The Founders are the legal and beneficial owners of the number of Ordinary Shares set opposite their respective names in part 1 of schedule 3.
- 1.2. All of the shares set out in part 1 of schedule 3 are fully paid and comprise the entire issued share capital of the Company. None of the share capital of the Company is under option or subject to any mortgage, charge (fixed or floating), pledge, lien, security, interest or other third party right (including rights of pre-emption), no options, warrants or other rights to subscribe for new shares in the Company have been granted or agreed to and no dividends or other rights or benefits have been declared, made or paid or agreed to be declared, made or paid thereon.
- 1.3. The execution and delivery by the Warrantors of this agreement and the documents referred to in it, and compliance with their respective terms, shall not breach or constitute a default under the Company's articles of association, or any other agreement or instrument to which any Warrantor is a party or by which any Warrantor is bound, and shall not constitute a breach under any order, judgment, decree or other restriction applicable to any Warrantor.

2. Information

- 2.1. All information contained in the Disclosure Letter is at the date of this agreement true, complete and accurate in all material respects.
- 2.2. The information contained or referred to in the Introduction and schedules 2, 3 and 8 is true, complete and accurate and not misleading.
- 2.3. [None of the Warrantors is aware of any fact or matter not Disclosed in writing to the Investors which directly affects the Business, the disclosure of which might reasonably affect the willingness of a reasonable institutional investor to apply for shares in the capital of the Company or the price at or terms upon which an institutional investor would be willing to subscribe them.]
- 2.4. The respective replies to the questionnaires referred to in paragraph 3 [of part 1] of schedule 4 are at the date hereof true, complete and accurate and not misleading.

3. Business Plan

- 3.1. The Business Plan has been diligently prepared and each of the Warrantors, believes that, as at the date of this agreement, it represents a realistic plan in relation to the future progress, expansion and development of the Business.

- 3.2. All factual information contained in the Business Plan was when given and is at the date of this agreement true, complete and accurate in all material respects and not misleading.
- 3.3. The financial forecasts, projections or estimates contained in the Business Plan have been diligently prepared, are fair, valid and reasonable nor have they been disproved in the light of any events or circumstances which have arisen subsequent to the preparation of the Business Plan up to the date of this agreement.
- 3.4. The assumptions upon which the Business Plan has been prepared have been carefully considered and are honestly believed to be reasonable, having regard to the information available and to the market conditions prevailing at the time of their preparation.
- 3.5. Each statement of opinion in the Business Plan is believed by each of the Warrantors to be fair and reasonable, accurately to represent the opinion held by him and not to be misleading.
- 3.6. So far as the Warrantors are aware, all matters within management control which could materially and adversely affect the achievement of the financial forecasts in the Business Plan (other than general economic factors) are referred to in the Business Plan and have been taken into account in the preparation of such forecasts.

4. Accounts

- 4.1. The Accounts have been prepared in accordance with accounting principles, standards and practices which are generally accepted in the United Kingdom and on the same basis and in accordance with the same accounting policies as the corresponding accounts for the preceding three financial years, comply with the requirements of the Act and give a true and fair view of the state of affairs of the Company at the Accounts Date and of the profits and losses for the period concerned.
- 4.2. The Accounts make proper provision or reserve for or, in the case of actual liabilities, properly disclose, note or take into account as at the Accounts Date:
 - (a) all liabilities whether actual contingent or disputed;
 - (b) all capital commitments whether actual or contingent;
 - (c) all bad and doubtful debts; and
 - (d) all Taxation.
- 4.3. The profits (or losses) shown in the Accounts have not to a material extent been affected (except as disclosed therein) by any extraordinary or exceptional event or circumstance or by any other factor rendering such profits unusually high or low.

5. Management Accounts

The Management Accounts:

- (a) have been prepared in accordance with good accounting practice on a basis consistent with that upon which the management accounts of the Company for the period to the Accounts Date were prepared;

- (b) reasonably reflect the financial affairs of the Company at the date to which they have been prepared and its results for the period covered by the Management Accounts; and
- (c) are not inaccurate or misleading in any material respect.

6. Events since the Accounts Date

Since the Accounts Date as regards the Company:

- (d) its business has been carried on in the ordinary course and so as to maintain the same as a going concern;
- (e) it has not acquired or disposed of or agreed to acquire or dispose of any business or any material asset (other than trading stock in the ordinary course of the business carried on by it) or assumed or acquired any material liability (including a contingent liability);
- (f) no dividend or other distribution (as defined by sections 1000, 1064 and 455, 459, and 460 of the CTA 2010) has been declared, made or paid to its members nor has it repaid any loan capital or other debenture;
- (g) no change has been made (or agreed to be made) in the emoluments or other terms of employment of any of its employees who are in receipt of remuneration in excess of £20,000 per annum or of any of the directors of the Company nor has it paid any bonus or special remuneration to any such employee or any of its directors;
- (h) it has not borrowed monies (except in the ordinary course of the business carried on by it or from its bankers under agreed loan facilities);
- (i) there has not been any [material] deterioration in the financial position or prospects of the Business (whether in consequence of normal trading or otherwise);
- (j) neither the trading nor the profitability of the Business shows, as regards turnover, the state of order book, expenses and profit margins, any material deterioration or downturn by comparison with the period ended on the Accounts Date;
- (k) no part of the Business has been affected to a material extent by the loss of any important customer, or of any source of supply or by the cancellation or loss of any order or contract or by any other abnormal factor or event nor so far as the Warrantors are aware are there any circumstances likely to lead thereto;
- (l) no employee has been dismissed or made redundant nor has the Company taken or omitted to take any action which would entitle any employee to claim that he has been constructively dismissed; and
- (m) there are no liabilities (including contingent liabilities) outstanding on the part of the Company other than those liabilities disclosed in the Accounts or incurred in the ordinary and proper course of business since the Account Date which are similarly disclosed in the Management Accounts or in the books and records of the Company.

7. Taxation

- 5.1. The Company has duly and punctually made all returns and given or delivered all notices, accounts and information which ought to have been made to and is not and has not been involved in any dispute with any Taxing Authority concerning any matter likely to affect in any way the liability (whether accrued, contingent or future) of it to Taxation and the Company is not aware of any matter which may lead to such dispute.
- 5.2. The Company has duly paid or fully provided for all Taxation [(including deferred tax)] for which it is liable and there are no circumstances in which interest or penalties in respect of Taxation not duly paid could be charged against it in respect of any period prior to Completion.
- 5.3. All Taxation due in respect of payments made by the Company to any person, which ought to have been made under deduction or reduction of Taxation, has been properly deducted and accounted for to the appropriate Taxation Authority from all such payments made.
- 5.4. All documents to which the Company is a party or which form part of the Company's title to any asset owned or possessed by it or which the Company may need to enforce or produce in evidence in the courts of the United Kingdom have been duly stamped and (where appropriate) adjudicated.
- 5.5. No directors, officers or employees of the Company have received any securities, interests in securities or securities options as defined in Part 7 of ITEPA.
- 5.6. No directors, employees or officers of the Company have received any securities or interests in securities in a form which is or could be treated as a **"readily convertible asset"** as defined in section 702 of ITEPA.
- 5.7. All directors, officers or employees of the Company who have received any securities or interests in securities falling within Chapter 2 of Part 7 of ITEPA have entered into elections jointly with the Company under section 431(1) of ITEPA within the statutory time limit and a schedule of any such directors, officers or employees and the elections entered into is attached to the Disclosure Letter.
- 5.8. The Company is a close company as defined in section 439 of the CTA 2010 and is not and has never been a close investment-holding company as defined in section 34 of the CTA 2010.
- 5.9. No distribution within section 1064 of the CTA 2010 has been made by the Company and no loan or advance within sections 455, 459 and 460 of the CTA 2010 has been made (and remains outstanding) or agreed to, by the Company, and the Company has not, since the Accounts Date, released or written off the whole or part of the debt in respect of any such loan or advance.
- 5.10. All acquisitions or disposals of assets by the Company and all supplies of services by and to the Company have occurred at arm's length between unconnected persons and for a consideration in cash at market value.
- 5.11. The Company is registered for the purposes of the VATA (and has not at any time been treated as a member of a group of companies for such purpose). The Company has complied with all statutory provisions, regulations and notices relating to VAT and has duly

and punctually accounted for and/or paid HMRC all amounts of VAT which it ought to have so accounted for and/or paid.

6. Litigation

- 6.1. Neither the Company nor, so far as the Warrantors are aware, any person for whose acts and defaults it may be vicariously liable, is at present engaged whether as claimant, defendant or otherwise in any legal action, proceeding or arbitration which is either in progress or is threatened or, so far as the Warrantors are aware, is pending (other than as claimant in the collection of debts arising in the ordinary course of the business carried on by it none of which exceeds £1,000 and which do not exceed £5,000 in aggregate) or is being prosecuted for any criminal offence and no governmental, regulatory or official investigation or inquiry concerning the Company is threatened or in progress or so far as the Warrantors are aware pending.
- 6.2. There are no circumstances known to any of the Warrantors likely to lead to any such claim or legal action, proceeding or arbitration, prosecution, investigation or inquiry.
- 6.3. Neither the Company nor any of the Founders nor, so far as the Warrantors are aware, any person acting for or on behalf of the Company is being prosecuted for an offence, nor are they or have they been the subject of any investigation, or inquiry by, or on behalf of, any governmental, administrative or regulatory authority, in respect of any offence or alleged offence, under the Bribery Act 2010 or under applicable anti-corruption laws or regulations of any other jurisdiction, and there are no circumstances known to any of the Warrantors likely to give rise to any such prosecution, investigation or inquiry.

7. Properties

- 7.1. The Properties (and the interest held by the Company) are identified in schedule 8 and they are the only properties in which the Company has an interest or occupies.
- 7.2. The Company is the sole owner of and has a good and marketable title to the Properties. The title documents for the Properties are held by the Company and are in good order.
- 7.3. The details in schedule 8 are entirely accurate and incorporate all adverse rights (including, without limitation, charges, leases, contracts, title and planning restrictions and Encumbrances) affecting the Properties.
- 7.4. The Properties have the benefit of adequate access rights to enable the Company to enjoy undisturbed beneficial occupation. None of the adverse rights affecting any of the Properties has an adverse effect on the Company's entitlement to use them, on their respective values to the Company, nor upon the Company's ability to dispose of them.
- 7.5. The Company has duly complied with the obligations affecting the Properties and no termination notice has been given (by the landlord or the tenant) in relation to any lease relating to any of the Properties.
- 7.6. There are no outstanding liabilities (actual, anticipated or contingent) in relation to any of the Properties (including, without limitation, outstanding rent reviews and future duties to reinstate alterations) or in relation to any property formerly owned or occupied by the Company.

- 7.7. The Properties are fully insured and the Company has appropriate rights to ensure any damage by an insured risk is reinstated.
- 7.8. All prudent local authority searches and enquiries have been undertaken and no adverse matter has been revealed. All prudent preliminary enquiries have been raised [/produced] and they present full and accurate information.
- 7.9. The Warrantors are not aware, save as Disclosed, of any matter adverse to the title, physical condition and liabilities concerning any of the Properties. No recent planning permission for development at any of the Properties is capable of challenge by judicial review or subject to a duty to pay Community Infrastructure Levy. No landlord of any of the Properties is a member of an organisation which is a Participant in the CRC Energy Efficiency Scheme.

8. Intellectual Property

- 8.1. The Company has taken all steps necessary or desirable for the fullest protection of all Intellectual Property and know-how used by it and the Company has not itself granted any rights to third parties in relation to any of its Intellectual Property.
- 8.2. The operations of the Company and any products or services supplied by them do not use or infringe the rights of any person or infringe any right of privacy and the Warrantors are not aware of any claims or applications for registration which might be material for disclosure to the Investor as an applicant for shares in the Company.
- 8.3. All Intellectual Property, which is or is likely to be material to the business of the Company:
 - (a) is (or in the case of applications will be) legally and beneficially vested exclusively in the Company; or
 - (b) is licensed to the Company by third parties by way of an agreement and/or licence which enable the Company to use the Intellectual Property as it requires in the ordinary course of its business.
- 8.4. [Details of all licences [other than in respect of Off-the-Shelf Software] (true, current and complete copies of each of which have been supplied to the Investors) entered into by the Company in relation to Intellectual Property, and in respect of which the Company is a licensor, licensee or otherwise a party, are set out in the Disclosure Letter.]
- 8.5. No Intellectual Property in which the Company has any interest and which is, or is likely to be, material to the business of the Company is:
 - (a) being (or has been) infringed, misappropriated or used without permission by any other person; or
 - (b) subject to any licence, estoppel or authority or similar right in favour of any other person, except as set out in the agreements listed in the Disclosure Letter.
- 8.6. All Intellectual Property which is registered in the name of the Company, or in respect of which the Company has made application for registration, is:

- (a) listed and briefly described in the Disclosure Letter;
 - (b) legally and beneficially vested in the Company; and
 - (c) valid and enforceable and not subject to any claims of opposition from any third party.
- 8.7. All renewal fees in respect of the Intellectual Property registered by the Company have been duly paid, and all other steps required for the maintenance and protection of such registered Intellectual Property have been taken, in any jurisdiction in which they are registered.
- 8.8. Nothing has been done or omitted to be done whereby any of the Intellectual Property owned or used by the Company have ceased or might cease to be valid and enforceable or whereby any person is or will be able to seek cancellation, rectification or any other modification of any registration of any such Intellectual Property.
- 8.9. No other person has registered or applied to register in any country any invention, topography, copyright work, design, trade or service mark or name, trade secret or know-how or other Intellectual Property made, or claimed to be owned, by the Company.
- 8.10. All licences, agreements and arrangements entered into by the Company in respect of which the Company is a licensor, a licensee or otherwise a party have been entered into in the ordinary course of business, are in full force and effect and no notice has been given on either side to terminate any of them and no amendment made or accepted to their terms since they were first entered into; and the obligations of all parties under each of the same have been fully complied with and no disputes exist or are anticipated in respect of any of them.
- 8.11. The Company has not knowingly disclosed or permitted to be disclosed to any person (other than to the Investors and to their agents, employees or professional advisers) any of its know-how, trade secrets, confidential information or lists of customers or suppliers.
- 8.12. The copy of the standard terms and conditions of the Company annexed to the Disclosure Letter are properly incorporated into any transaction conducted over the internet by the Company and govern access to and use of any Company Website.
- 8.13. No domain names have been registered by any person which are similar to any trade marks, service marks, domain names or business or trading names used, created or owned by the Company.
- 8.14. The contents of any Company Website comply with all laws and regulations and codes of practice in any applicable jurisdiction and the Company Website is not linked by a hypertext link to any other website.
- 8.15. [So far as the Warrantors are aware,] There are no third party claims that any domain name registered by the Company is in infringement of a third party's domain name or other Intellectual Property rights.
- 8.16. The Disclosure Letter sets out and describes:

- (a) each item of Open Source Code that is contained in, distributed with, or used in the development of the Company Products or from which any part of any Company Product is derived; and
 - (b) the Company Product(s) to which each such item of Open Source Code relates.
- 8.17. No Company Product contains, is derived from, is distributed with, or is being or was developed using Open Source Code that is licensed under any terms that:
 - (a) impose or could impose a requirement or condition that any Company Product or part thereof:
 - (i) be disclosed or distributed in source code form;
 - (ii) be licensed for the purpose of making modifications or derivative works; or
 - (iii) be redistributable at no charge; or
 - (b) otherwise impose or could impose any other material limitation, restriction, or condition on the right or ability of the Company to use or distribute any Company Product or to enforce Intellectual Property.
- 8.18. The Company is the legal and beneficial owner free from Encumbrances of the Computer System and no other person has any claims or rights in respect of any element of the Computer System; and
- 8.19. The Computer System:
 - (a) is not wholly or partly dependent on any facilities which are not under the exclusive ownership or control of the Company;
 - (b) has been and is being properly and regularly maintained and replaced and has the benefit of appropriate maintenance and support agreements;
 - (c) has the capacity and is of a suitable technical specification necessary to fulfil the present and foreseeable requirements of the business of the Company; and
 - (d) comprises all computer hardware, firmware, software (including source code and object code) manuals, supporting materials and accessories which are necessary to enable the Company to carry on business.
- 8.20. The Company has in place adequate back-up, disaster recovery and other systems and procedures (details of which have been provided to the Investors) to enable its business to continue without material adverse change in the event of a failure of the Computer System.

9. Assets, debts and stock

- 9.1. None of the book debts included in the Accounts, the Management Accounts or which have subsequently arisen have been outstanding for more than two months from their due dates for payment and all such debts have realised or will realise in the normal course of collection their full value save as provided in the Accounts, the Management Accounts or in the books of the Company.

- 9.2. The Company has not granted any security over any part of its undertaking or assets.
- 9.3. All assets used by and all debts due to the Company or which have otherwise been represented as being its property or due to it or used or held for the purposes of its business are at the date of Completion its absolute property and none is the subject of any Encumbrance (save in respect of liens arising in the normal course of trading) or the subject of any factoring arrangement, hire-purchase, retention of title, conditional sale or credit sale agreement.
- 9.4. The present stock and work-in-progress of the Company is in good condition and is (or will be once completed) capable of being sold profitably.
- 9.5. Each asset needed for the proper conduct of the Business is in good repair and working order (fair wear and tear excepted).

10. Contracts with connected persons

- 10.1. There are no loans made by the Company to any of its directors or shareholders and/or any person connected with any of them and no debts or liabilities owing by the Company to any of its directors or shareholders and/or any person connected with them as aforesaid.
- 10.2. There are no existing contracts or arrangements to which the Company is a party and in which any of its directors or shareholders and/or any person connected with any of them is interested.
- 10.3. There are no agreements between any of the Founders or between any of the Founders and the Company other than this agreement.
- 10.4. No Founder nor any person connected with a Founder owns any property used by the Company.

11. Employment and consultancy arrangements

- 11.1. Full details of all contracts of service or for services and other arrangements (including, without limitation, length of service, details of notice periods, confidentiality obligations, intellectual property rights and obligations and all remuneration) of all officers, employees, workers and consultants of the Company are set out in or copies thereof annexed to the Disclosure Letter. *[Note: consider limiting warranty to key employees only]*
- 11.2. There are no agreements or other arrangements (binding or otherwise) or outstanding or anticipated claims or disputes between the Company and any trade union or other body representing all or any of the employees of the Company.
- 11.3. The Company does not owe any amount to, nor does it have any outstanding obligations in respect of, any of its present or former directors, employees or shareholders other than remuneration accrued during the month in which this agreement has been entered into.
- 11.4. Save as Disclosed, there is not in existence nor is it proposed to introduce any share incentive, share option, profit sharing, bonus or other incentive arrangements for or affecting any employees or former employees.
- 11.5. No gratuitous payment has been made or promised in connection with the actual or proposed termination or suspension of employment or variation of any contract of

employment or of any contract for services of any present or former director, employee, worker or consultant of the Company.

- 11.6. No person has been or is employed by the Company who did not or does not have leave to enter or remain in the United Kingdom or otherwise in breach of section 8 of the Asylum and Immigration Act 1996 or sections 15 to 21 (inclusive) of the Immigration, Asylum and Nationality Act 2006 (as applicable).
- 11.7. [Save for the Pension Scheme,] there are no agreements or arrangements (whether legally enforceable or not) in relation to which the Company has incurred, will incur or could incur any liability or responsibility for or in relation to the provision of any pensions, allowances, lump sums gratuities or other like benefits on redundancy, retirement, withdrawal from service or on death or during periods of sickness or disablement or accident for or in respect of any director, or former director or employee or former employee of the Company or any person who has at any time agreed to provide services to the Company or any dependants of any such persons and no proposals or announcements have been made about the introduction, continuance, variation of, or payment of any contribution towards any such agreements or arrangements
- 11.8. There is no outstanding dispute or complaint in relation to the types of benefits described in warranty statement 13.7 and there have been no communications with the Pensions Advisory Service, the Pensions Ombudsman, HMRC, and/or the Pensions Regulator in relation to such benefits.
- 11.9. Neither the Company nor any person who is an "associate" of or "connected" with it (as such terms apply in sections 38 to 51 of the Pensions Act 2004) has, at any time since 19 December 1996, contributed towards, participated in or had employees who participated in, an occupational pension scheme to which section 75 of the Pensions Act 1995 applies, has applied or can apply.
- 11.10. No current or former employee or director of the Company has at any time since 30 August 1993 had his contract of employment transferred during the present period of continuous employment as a result of a "relevant transfer" for the purposes of either the Transfer of Undertakings (Protection of Employment) Regulations 1981 (before those Regulations were revoked) or the Transfer of Undertakings (Protection of Employment) Regulations 2006 where he had previously been a member of an occupational pension scheme that provided benefits available other than on old age, invalidity or death.
- 11.11. [The Pension Scheme; (i) is a "personal pension scheme" as defined in Part 1 of the Pension Schemes Act 1993, (ii) is registered with HMRC in accordance with the Finance Act 2004, and (iii) is not liable to provide any benefits other than "money purchase benefits" within the meaning of section 181(1) of the Pension Schemes Act 1993.] [*Note: to include if there is a pension scheme.*]
- 11.12. [The Company has at all times complied with its obligations to, under and in respect of the Pension Scheme, and the Pension Scheme has been operated and administered in accordance with the terms of its governing documentation, all legal obligations, and the requirements of all regulatory bodies, including, without limitation, the Pensions Regulator and HMRC.] [*Note: to include if there is a pension scheme.*]

12. Statutory and legal requirements

- 12.1. All statutory, municipal, governmental, court and other requirements applicable to the carrying on of the business of the Company, the formation, continuance in existence,

creation and issue of securities, management, property or operation of the Company have been complied with, and all permits, authorities, licences and consents have been obtained and all conditions applicable thereto complied with and so far as the Warrantors are aware there are no circumstances which might lead to the suspension, alteration or cancellation of any such permits, authorities, licences or consents, nor is there any agreement which materially restricts the fields within which the Company may carry on its business.

- 12.2. The Company has obtained all export licences required for all products, technology or services exported by or on behalf of the Company to or from any part of the world.
- 12.3. The Company has not committed and is not liable for any criminal, illegal, unlawful, ultra vires or unauthorised act or breach of covenant, contract or statutory duty.
- 12.4. No Founder has:
 - (a) been convicted of a criminal offence (except any road traffic offence not punished by a custodial sentence);
 - (b) been disqualified from being a company director; or
 - (c) given, or offered to give, a disqualification undertaking under section 1A of the Company Directors Disqualification Act 1986.
- 12.5. No person, not being a director of the Company, has any actual or ostensible authority, whether under a power of attorney, agency agreement or otherwise, to commit the Company to any obligation other than an obligation of a nature which it is usual for it to incur in the ordinary course of its business.
- 12.6. In respect of any Personal Data processed by the Company, the Company:
 - (a) has made all necessary registrations and notifications of its particulars in accordance with the Data Protection Legislation;
 - (b) has complied with the Data Protection Legislation (including but not limited to the Data Protection Principles) and any guidance notes or guidelines issued from time to time by the Information Commissioner (and any successor) and all other relevant authorities;
 - (c) has not received any enforcement notice, information notice, special information notice, monetary penalty notice or other notice, letter or complaint alleging a breach by it of any of the provisions of the Data Protection Legislation or requesting information as to its data protection policies or practices and no circumstances exist which may give rise to any of the above;
 - (d) has not awarded compensation to an individual under the Data Protection Legislation, no claim for such compensation is outstanding and so far as the Warrantors are aware there is no reason to believe that any circumstances exist which might lead to any claim for compensation being made;
 - (e) is not the subject of any order made against it for the rectification, blocking, erasure or destruction of any data under the Data Protection Legislation, no application for such an order is outstanding and, so far as the Warrantors are aware there is no

reason to believe that any circumstances exist which might lead to any application for such an order being made; and

- (f) has not received any warrant issued under the Data Protection Legislation authorising the Information Commissioner or other relevant authorities to enter any premises of the Company.

12.7. In respect of any Grant Funding provided to the Company full details of which are set out in the Disclosure Letter:

- (a) The Company has complied in all respects with the terms and conditions on which any Grant Funding has been provided to the Company.
- (b) The entry into this agreement and the fulfilment of the Business Plan will not:
 - (i) breach any terms or conditions of any Grant Funding; and
 - (ii) alter or abrogate any rights of the Company under any Grant Funding.
- (c) No Grant Funding will be terminated or be required to be repaid as a result of the entry into this agreement or the fulfilment of the Business Plan.

13. Records and registers

- 13.1. The records (including computer records), statutory books, registers, minute books and books of account of the Company are duly entered up and maintained in accordance with all legal requirements applicable thereto and contain true, full and accurate records of all matters required to be dealt with therein and all such books and all records and documents (including documents of title) which are its property are in its possession or under its control.
- 13.2. [The Warrantors are not aware of any outstanding matter required to be entered in any of the records, statutory books, registers[, minute books and books of account] of the Company which has not been so entered at the date of this agreement.]
- 13.3. All accounts, documents and returns required to be delivered or made to the Registrar of Companies have been duly and correctly delivered or made. There has been no notice of any proceedings to rectify the register of members of the Company or the Company's PSC register and there are no circumstances which might lead to any application for rectification of the register of members or the PSC register.
- 13.4. [Save as set out in the Relevant Change Letters, no relevant change (as defined by section 790E(3) of the Act) will occur in relation to any registrable person in relation to the Company as a [direct] result of Completion.]
- 13.5. The Company has not made (or withdrawn) an election to keep information in its register of members, PSC register, register of directors, register of directors' residential addresses or register of secretaries on the central register at Companies House.
- 13.6. The Company has not issued any warning notice [or restrictions notice] under Schedule 1B of the Act.

16. Insurance

The Disclosure Letter contains [full and accurate details] [a summary] [*Note: amend as appropriate*] of all insurance policies held by the Company. In respect of such insurances:

- (n) all premiums have been duly paid to date;
- (o) all the policies are in full force and effect and are not voidable on account of any act, omission or non-disclosure on the part of the insured party nor could they be declared null and void or as a consequence of which any claim might be rejected; and
- (p) there are no circumstances which would or might give rise to any claim and no insurance claim is outstanding.

17. Group structure

- 17.1. The Company does not have any subsidiary companies nor has it at any time been the holding company of any company or a member of or the beneficial owner of any shares, securities or other interest in any company or other person.
- 17.2. The Company is not, in relation to any company [(other than a Subsidiary [Undertaking]), limited liability partnership or Societas Europaea registered in the United Kingdom, a registrable relevant legal entity (as defined in section 790C of the Act.

18. Agreements and capital commitments

13.7. The Company:

- (a) has no material capital commitments;
- (b) is not a party to any contract, arrangement or commitment (whether in respect of capital expenditure or otherwise) which is of an unusual, onerous or long-term nature or which involves or could involve a material obligation or liability;
- (c) has not become bound and no person has become entitled (or with the giving of notice and/or the issue of a certificate and/or the passage of time or otherwise may become entitled) to require it to repay any loan capital or other debenture, redeemable preference share capital, borrowed money or grant made to it by any governmental or other authority or person prior to the stipulated due date;
- (d) is not a party to any agreement which is or may become terminable as a result of the entry into or completion of this agreement;
- (e) is not bound by any guarantee or contract of indemnity or suretyship under which any liability or contingent liability is outstanding;
- (f) has not entered into any agreement which requires or may require, or confers any right to require, the sale (whether for cash or otherwise) or the transfer by it of any asset;
- (g) is not a party to any joint venture, consortium, partnership, unincorporated association or profit sharing arrangement or agreement;
- (h) is not a party to or enjoys the benefit of any agreement requiring registration or notification under or by virtue of any statute; or
- (i) is not in default of any agreement or arrangement to which it is a party.

- 13.8. The Company has not been and is not a party to any contract or arrangements binding upon it for the purchase or sale of property or the supply of goods or services at a price different to that reasonably obtainable on an arm's length basis.

14. Borrowings and facilities

Full details of all limits on the Company's bank overdraft facilities and all borrowings of the Company are set out in the Disclosure Letter and the Company is not in breach of any of

their terms and none of such facilities or terms of borrowing will be terminated as a result of the entry into of this agreement.

20. Social obligations

- 14.1. So far as the Warrantors are aware, the Company has during the three years ending on the date of this agreement complied with all its Social Obligations and it continues to do so.
- 14.2. No person has in the last 12 months notified the Company of any alleged breach of its Social Obligations and there are no disputes between the Company and its employees or any trade union or other body representing all or any employees of the Company.

[Part 2

Second Completion Warranties]

1. General

The Warranties given at part 1 of schedule 5 were, subject to matters Disclosed in the Disclosure Letter, true when given and remain true, accurate and not misleading whether by inclusion or omission or otherwise.

2. Financial

- 14.3. The Investors have been provided with the latest set of audited [consolidated] accounts of the Company and management accounts for the Company for the period ending on the last day of the month ending prior to the Second Completion Date.
- 14.4. The accounts referred to in paragraph 2.1 above give a true and fair view, in the case of the audited accounts, and a fair and reasonable view, in the case of the management accounts, of the financial position of the Company [as at their date].
- 14.5. Since the date to which the aforesaid accounts were drawn, there has been no material adverse change in the financial or trading position of the Company.
- 14.6. The Company has disclosed to the Investors in writing all:
 - (a) commitments of an unduly onerous nature;
 - (b) litigation (including litigation known to be threatened);
 - (c) unusual or non-recurring items significantly affecting the financial position of the Company;
 - (d) debts known to be bad or doubtful;
 - (e) dividends paid or proposed; and
 - (f) any actual or potential intellectual property infringements by the Company of which the Founders are aware.

15. [PSC register

Save as set out in the Further Relevant Change Letters, no relevant change (as defined by section 790E(3) of the Act) will occur in relation to any registrable person in relation to the Company as a [direct] result of Second Completion.]

SCHEDULE 6

Part 1

Matters requiring Investor Majority Consent

1. Permit or cause to be proposed any alteration to its share capital [(including any increase or removal of the limit on the number of shares that may be allotted by the Company)] or the rights attaching to its shares or waive any right to receive payment on any of its shares issued partly paid.
2. Create, allot, issue, buy-in or redeem any share or loan capital or grant or agree to grant any options [other than pursuant to the Share Option Plan] or warrants for the issue of any share or loan capital or issue any securities convertible into shares, or establish any employee incentive scheme, except in accordance with the New Articles or this agreement.
3. Permit the Company to hold any Treasury Shares or permit the sale or transfer or cancellation of any shares held by the Company as Treasury Shares.
4. Permit or cause to be proposed any amendment to the New Articles.
5. Propose or pay any dividend or propose or make any other distribution (as defined under section 1000 or section 1064 of the CTA 2010).
6. Subscribe or otherwise acquire, or dispose of any shares in the capital of any other company.
7. Acquire or dispose of the whole or part of the undertaking of any other person or dispose of the whole or part of the undertaking of the Company or merge the Company or any part of its business with any other person or propose to do so.
8. Negotiate or permit the disposal of shares in the Company amounting to a Sale or IPO.
9. Permit the Company to cease, or propose to cease, to carry on its business or permit the Company or its directors (or any one of them) to take any step to wind up the Company, save where it is insolvent (within the meaning of section 123 of the Insolvency Act 1986).
10. Permit the Company or its directors (or any one of them) to take any step to place the Company into administration (whether by the filing of an administration application, a notice of intention to appoint an administrator or a notice of appointment), permit the Company or its directors to propose or enter into any arrangement, scheme, moratorium, compromise or composition with its creditors (whether under Part I of the Insolvency Act 1986 or otherwise) or to apply for an interim order under Part 1 of the Insolvency Act 1986, or permit the Company or its directors to invite the appointment of a receiver or administrative receiver over all or any part of the Company's assets or undertaking.
11. Enter into or give or permit or suffer to subsist any guarantee of or indemnity or contract of suretyship for or otherwise commit itself in respect of the due payment of money or the performance of any contract, engagement or obligation of any other person or body [other than a wholly-owned subsidiary of the Company].

12. Offer or grant any superior registration rights to any future shareholder in the Company without offering substantially similar rights to the Investors.
13. Engage any broker, advisor (including, without limitation, financial, accounting, auditing or legal), investment bank or similar party to provide any services for a Sale or IPO.
14. Enter into any right of first refusal, negotiation or notification that applies in relation to a Sale or IPO which gives a third party a preferential right to negotiate, make an offer or receive information in relation to such Sale or IPO.
15. Adopt the budget referred to in clause 9.2 in respect of each financial year of the Company.
16. Deal in any way (including the acquisition or disposal, whether outright or by way of licence or otherwise howsoever) with intellectual property other than in the ordinary course of business.

Part 2

Matters requiring Investor Director Consent

1. Incur any capital expenditure (including obligations under hire-purchase and leasing arrangements) which exceeds the amount for capital expenditure in the relevant capital expenditure of the Budget [by more than [] per cent] or (where no items were specified but a general provision made) in relation to any item exceeding £[].
2. Dispose (otherwise than in accordance with any relevant capital disposals forecast in the Budget) of any asset of a capital nature having a book or market value greater than £[].
3. Make any material change to the nature of the Business or the jurisdiction where it is managed and controlled or change the name of the Company.
4. Establish any new branch, agency, trading establishment or business or close any such branch, agency, trading establishment or business.
5. Do any act or thing outside the ordinary course of the business carried on by it.
6. Make any change to:
 - (a) its auditors;
 - (b) its bankers or the terms of the mandate given to such bankers in relation to its account(s);
 - (c) its accounting reference date;
 - (d) its accounting policies, bases or methods from those set out in the Accounts and the Accountants' Report (other than as recommended by the auditors of the Company); or
 - (e) the Budget or the Business Plan.

7. Factor any of its debts, borrow monies (other than by way of its facilities in place at the date of this agreement), [incur indebtedness in excess of £[]] or accept credit (other than normal trade credit).
8. Engage any employee or consultant on terms that either his contract cannot be terminated by three months' notice or less or his emoluments and/or commissions or bonuses are or are likely to be at the rate of £[] per annum or more or increase the emoluments and/or commissions or bonuses of any employee or consultant to more than £[] per annum or vary the terms of employment of any employee earning (or so that after such variation he will, or is likely to earn) more than £[] per annum.
9. Vary or make any binding decisions on the terms of employment and service of any director or company secretary of the Company, increase or vary the salary or other benefits of any such officer, or appoint or dismiss any such officer.
10. Mortgage or charge or permit the creation of or suffer to subsist any mortgage or fixed or floating charge, lien (other than a lien arising by operation of law) or other Encumbrance over the whole or any part of its undertaking, property or assets [(other than those mortgages and charges detailed in schedule 2)].
11. Make any loan or advance or give any credit (other than in the ordinary course of business) to any person or acquire any loan capital of any corporate body (wherever incorporated).
12. Permit the appointment or removal of any person as a director of it (save in respect of the appointment of an Investor Director [or a chairman of the Board pursuant to clause 8.11]).
13. Conduct any litigation material to the Company, save for the collection of debts arising in the ordinary course of the business carried on by the Company or any application for an interim injunction or other application or action (including interim defence) which is urgently required in the best interests of the Company in circumstances in which it is not reasonably practicable to obtain prior consent as aforesaid.
14. Propose or implement any variation to the Company's pension scheme or any of the benefits payable to members of the scheme.
15. Take or agree to take any leasehold interest in or licence over any real property.
16. Other than where expressly contemplated by this agreement or the Service Agreements, enter into or vary any transaction or arrangement with, or for the benefit of any of its Directors or Shareholders or any other person who is a "**connected person**" with any of its Directors or Shareholders.
17. Enter into any transaction or make any payment other than on an arm's length basis for the benefit of the Company.
18. Enter into any partnership, joint venture or consortium agreement.
19. Surrender or agree to any material change in the terms of any substantial supply or distribution agreement to which it is from time to time a party.
20. Enter into or vary either any unusual or onerous contract or any other material or major or long term contract.

21. Make any gifts or charitable donations above £[] in aggregate per annum.

SCHEDULE 7

Undertakings

1. The Company shall maintain in full force and effect the keyman insurance (for the exclusive benefit of the Company) and the directors' and officers' liability insurance both referred to in schedule 4 and shall not take or effect any steps so as to render such policies void or voidable or otherwise unenforceable.
2. The Company shall take out and maintain insurances satisfactory to the Investor Majority and shall on request supply any Investor with a schedule of such insurances.
3. The Company shall take all such reasonable action as may be required, including any action reasonably required of it by the Investor Majority, to protect its intellectual property rights and/or other property and assets.
4. [The Company shall upon the Investor Majority requesting in writing make a binding decision in the manner requested by the Investor Majority on the terms of employment and/or directorship of a Founder under his Service Agreement or otherwise in circumstances where the Company is permitted to do so.] *[Note: include if required by Investor Majority]*
5. All new business opportunities relevant to the Company shall only be taken up through the Company or a wholly-owned subsidiary.
6. New employees engaged by the Company shall not bring with them and employ Intellectual Property belonging to their ex-employers and other third parties.
7. The Company and each of the Founders shall comply with the terms of this agreement, the New Articles and the Service Agreements.
8. The Company shall comply with all applicable laws and regulations [including without limitation all applicable export regulations] and maintain all required licences and consents and shall immediately notify the Investors if the Company loses any such licence or consent.
9. Neither the Company nor the Founders shall engage in any activity, practice or conduct which would constitute an offence under section 1, 2 or 6 of the Bribery Act 2010 or any other applicable anti-corruption laws or regulations of any other jurisdiction.
10. The Company has and shall maintain in place Adequate Procedures designed to prevent any Associated Person of the Company from undertaking any conduct that would give rise to an offence under section 7 of the Bribery Act 2010 or any other applicable anti-corruption laws or regulations of any other jurisdiction.
11. The Company and each of the Founders shall, from time to time, at the reasonable request of the Investor Majority, confirm in writing that it has complied with undertakings 9 and 10 and will provide any information reasonably requested by any of the Investors in support of such compliance.

12. The Founders shall procure the passing of all resolutions at Board meetings and at shareholders' meetings of the Company and take all steps necessary to ensure performance of the terms of this agreement.
13. The Founders shall procure that forthwith upon receiving notice so to do from the Investor Majority, the Company convenes and holds at short notice a general meeting of the Company at such place and time as the Investor Majority shall reasonably determine at which any resolution required by the Investor Majority shall be proposed.
14. The Company shall enter into an election under section 431(1) of ITEPA, jointly with each of the relevant Founders in respect of any securities acquired by such Founder(s) which are "**restricted securities**" as defined in Chapter 2 of Part 7 of ITEPA. [*Note: see drafting notes*]
15. Each of the relevant Founders shall enter into an election pursuant to section 431(1) of ITEPA, jointly with the Company, in respect of any securities acquired by such Founder(s) which are "**restricted securities**" as defined in Chapter 2 of Part 7 of ITEPA. [*Note: see drafting notes*]
16. Each of the Founders appoints any other director of the Company to be his true and lawful attorney to execute on his behalf any election pursuant to section 431(1) of ITEPA and to execute any other documentation which the attorney considers necessary or relevant to the making of such election. [*Note: see drafting notes; this paragraph must be deleted or entered into separately if this agreement is not a deed.*]
17. The Company shall comply with its Social Obligations.
18. **[INSERT APPENDIX A IF AIFM DIRECTIVE APPLIES TO INVESTOR]**

SCHEDULE 8

The Properties

SCHEDULE 9

Deed of Adherence

THIS DEED is made on

201[]

BY []

INTRODUCTION

- (A) By a [transfer]/[subscription for shares] dated [of even date herewith] [] [(the "**Transferor**") transferred to the Transferee/[] (the "**Subscriber**") subscribed for] Series A/Ordinary Shares of [] each in the capital of [] Limited (the "**Company**") (together the ["**Transferred Shares**"/"**Subscribed Shares**").
- (B) This deed is entered into in compliance with the terms of clause [] of an agreement dated [] made between (1) [name parties to the agreement] and (2) the Company and others (all such terms as are therein defined) (which agreement is herein referred to as the "**Subscription and Shareholders' Agreement**").

AGREED TERMS

1. Words and expressions used in this deed shall have the same meaning as is given to them in the Subscription and Shareholders' Agreement unless the context otherwise expressly requires.
2. The [Transferee]/[Subscriber] hereby agrees to assume the benefit of the rights [of the Transferor] under the Subscription and Shareholders' Agreement in respect of the [Transferred]/[Subscribed] Shares) [provided that rights in respect of any breach of the Warranties given by the Founders shall only be capable of being assumed by the [Transferee] if he is a person who is to receive a transfer of shares in the capital of the Company from an Investor in accordance with Article [] of the New Articles]] and hereby agrees to assume and assumes the burden of the [Transferor's] obligations under the Subscription and Shareholders' Agreement to be performed after the date hereof] in respect of the [Transferred]/[Subscribed] Shares.
3. The [Transferee]/[Subscriber] hereby agrees to be bound by the Subscription and Shareholders' Agreement in all respects as if the [Transferee]/[Subscriber] were a party to the Subscription and Shareholders' Agreement as one of the [Investor and/or Founders] and to perform [:
 - (a) all the obligations of the Transferor in that capacity thereunder; and
 - (b)]all the obligations expressed to be imposed on such a party to the Subscription and Shareholders' Agreement[;][in both cases], to be performed or on or after [the date hereof].
4. This deed is made for the benefit of:

- (a) the parties to the Subscription and Shareholders' Agreement; and
- (b) any other person or persons who may after the date of the Subscription and Shareholders' Agreement (and whether or not prior to or after the date hereof) assume any rights or obligations under the Subscription and Shareholders' Agreement and be permitted to do so by the terms thereof,

and this deed shall be irrevocable without the consent of the Company acting on their behalf in each case only for so long as they hold any Series A/Ordinary Shares in the capital of the Company.

5. [For the avoidance of doubt:

- (a) no transferee who acquires shares from an Founder shall be liable under any of the Warranties liability for which shall remain with the Founder; and
- (b) nothing in this deed shall release the Transferor from any liability in respect of any obligations under the Subscription and Shareholders' Agreement due to be performed prior to [the date of this deed].]

6. None of the Investors nor any of the Founders:

- (a) makes any representation or warranty or assumes any responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of any of the Subscription and Shareholders' Agreement (or any agreement entered into pursuant thereto);
- (b) makes any representation or warranty or assumes any responsibility with respect to the content of any information regarding the Company or any member of the group or otherwise relates to the [acquisition]/[subscription] of shares in the Company; or
- (c) assumes any responsibility for the financial condition of the Company [or any Subsidiary] or any other party to the Subscription and Shareholders' Agreement or any other document or for the performance and observance by the Company or any other party to the Subscription and Shareholders' Agreement or any other document (save as expressly provided therein),

and any and all conditions and warranties, whether express or implied by law or otherwise, are excluded save for the representations, warranties and undertakings contained in the Warranties.

7. This deed shall be governed by and construed in accordance with the laws of England and Wales.

This deed of adherence has been executed and delivered as a deed on the date shown on the first page.

EXECUTED as DEED by)
[Transferee/Subscriber])

SCHEDULE 10

Milestones

[Note: insert milestones]

SCHEDULE 11

Terms of reference for [] Committee

[Note: complete details as appropriate]

1. Membership

- 15.1. The [] committee shall comprise []. A quorum shall be []. The initial members shall be [].
- 15.2. The chairman of the [] committee shall be appointed from time to time by the Board. The initial chairman shall be [].
- 15.3. The Company secretary shall be the secretary to the [] committee.

16. Authority

The [] committee is authorised by the Board to investigate any activity within its terms of reference, which shall include the following duties and activities: *[Note: insert relevant details]*

3. Proceedings

- 16.1. Meetings of the [] committee shall be held as required, but not less than [] annually.
- 16.2. Questions arising at any such meeting shall be determined by a majority of those present and eligible to vote, voting in favour.
- 16.3. A note of the decisions of the [] committee signed by the chairman of such committee shall be a sufficient record and conclusive evidence of the validity of such committee's decisions. The secretary shall circulate the minutes of meetings of the [] committee to all members of the Board.

17. Amendment

These terms of reference may be amended only with [the prior written consent of the Board and] Investor Majority Consent.

The establishment of this committee and these terms of reference were approved by the Board at a meeting on [].

This agreement has been executed and delivered as a deed on the date shown on the first page.
[SEE BELOW FOR ALTERNATIVE]

SIGNED by)
[] LIMITED acting by a director)
acting as [general partner/manager])
of [THE INVESTOR])
in the presence of:)

..... Director

Signature of witness:

Name of witness:

Address of witness:

SIGNED by)
[THE COMPANY])
acting by a director)
in the presence of:)

..... Director

Signature of witness:

Name of witness:

Address of witness:

SIGNED by [MANAGER])
in the presence of:)

Signature of witness:

Name of witness:

Address of witness:

SIGNED by [MANAGER])
in the presence of:)

Signature of witness:

Name of witness:

Address of witness:

[TO BE USED IF AGREEMENT TO BE SIGNED UNDER HAND] This agreement has been executed on the date shown on the first page.

EXECUTED by)
[] LIMITED acting by a director)
acting as [general partner/manager])
of [THE INVESTOR])

..... Director

EXECUTED by)
[THE COMPANY])
acting by a director)

..... Director

EXECUTED by [FOUNDER])

EXECUTED by [FOUNDER])

[EXECUTED] by)
[EXISTING SHAREHOLDER])
acting by a director)

..... Director

[EXECUTED] by)
[EXISTING SHAREHOLDER])

Appendix A – AIFM

Under clause 1 (Definitions), add following definitions:

“AIF Controlling Investor” means an AIF Investor that acquires control, within the meaning of Regulation 36 of the AIFM Regulations or the equivalent in another relevant EEA state, of a Group Company;

“AIF Investor” means an Investor that is an AIF (Alternative Investment Fund) within the meaning of the AIFM Directive, and which has an AIFM;

“AIFM” means an AIFM (Alternative Investment Fund Manager) within the meaning of the AIFM Directive, which is subject to Part 5 of the AIFM Regulations, or the equivalent in another relevant EEA state;

“AIFM Directive” means the Alternative Investment Fund Managers Directive (2011/61/EU), and any applicable laws or regulations implementing such Directive in relevant member states of the EEA, including the AIFM Regulations;

“AIFM Regulations” means the Alternative Investment Fund Managers Regulations 2013;

Under schedule 7, add following paragraph 19:

19. For so long as *[insert]* is an AIF Investor and/or an AIF Controlling Investor, the Company shall comply with the provisions of schedule 12 and provide all such further assistance as may be requested by the AIFM of such Investor to enable it to comply with its obligations under the AIFM Directive.

Add following schedule 12:

AIFM DIRECTIVE

Notification required in relation to voting rights

1. Provide all reasonable assistance to the AIFM of an AIF Investor so that it may comply with its obligations to notify the Financial Conduct Authority (“FCA”) if the proportion of voting rights in a Group Company held by the AIF Investor reaches, exceeds or falls below the thresholds of 10, 20, 30, 50 and 75 per cent.

Notifications required on an AIF Investor acquiring control

2. Where a Group Company is notified that it has an AIF Controlling Investor, upon receiving the necessary information from the AIFM of the AIF Controlling Investor:
 - (a) provide all reasonable assistance to the AIFM of the AIF Controlling Investor so that it may comply with its obligations to notify the relevant Group Company, its shareholders, the FCA and the AIF’s investors of the information required by Regulations 38, 39 and 40 of the AIFM Regulations; and
 - (b) unless the communication of such information would seriously harm the functioning of the relevant Group Company, or would be seriously prejudicial to it, provide the employee representatives (or where there are none, the employees) of each applicable Group

Company with the information required by Regulations 38, 39 and 40 of the AIFM Regulations, using all reasonable endeavours to ensure that the recipients keep such information confidential.

Restrictions on distributions, capital reductions, share redemptions and buybacks

3. Where a Group Company is notified that it has an AIF Controlling Investor, for a period of 24 months following the acquisition of control, ensure that there is no distribution, capital reduction, share redemption or acquisition of its own shares by any Group Company without the written consent of the AIFM of the AIF Controlling Investor.

Information to be included in the annual report of a controlled company or a AIF Controlling Investor

4. Where a Group Company is notified that it has an AIF Controlling Investor:
 - (a) include in the annual report of such company the information required by Regulation 42(3) of the AIFM Regulations;
 - (b) make such report available to the employee representatives (or where there are none, the employees) of each applicable Group Company in accordance with Regulation 42(2)(b) of the AIFM Regulations; and
 - (c) provide all reasonable assistance to the AIFM of the AIF Controlling Investor so that it may comply with its obligations to make such information available to the investors of the AIF Controlling Investor in accordance with Regulation 42(4) of the AIFM Regulations;

or, alternatively, if requested by the relevant AIFM of the AIF Controlling Investor:

- (d) provide all reasonable assistance to the AIFM of the AIF Controlling Investor so that it may comply with its obligations to include the information required by Regulation 42(3) of the AIFM Regulations in the AIF Controlling Investor's annual report; and
 - (e) make such information available to the employee representatives (or where there are none, the employees) of each applicable Group Company in accordance with Regulation 42(5) of the AIFM Regulations.

Provisions applicable in other EEA member states

5. Where a Group Company is notified that an AIFM of an AIF Investor is subject to laws or regulations implementing the AIFM Directive in another member state of the EEA, comply with equivalent provisions to those set out above so as to enable the AIFM of the AIF Investor to comply with its obligations in respect of such laws and regulations.

Appendix B – US Securities law requirements and ERISA

Under clause 1 (Definitions), add the following definition:

“ERISA” means the Employee Retirement Income Security Act of 1974;

"Disqualification Event" has the meaning given in clause 8.12;

Insert the following after clause 8.11:

- 8.12 [Each Shareholder with the right to designate or participate in the designation of a director as specified above hereby warrants to the Company that, to such Shareholder's knowledge, none of the "bad actor" disqualifying events described in Rule 506(d)(1)(i)-(viii) promulgated under the Securities Act of 1933, as amended (the "**Securities Act**") (each, a "**Disqualification Event**"), is applicable to any director designated by such Shareholder except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable. Any director designee to whom any Disqualification Event is applicable, except for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable, is hereinafter referred to as a "**Disqualified Designee**".]
- 8.13 [Each Shareholder with the right to designate or participate in the designation of a director as specified above hereby covenants and agrees (A) not to designate or participate in the designation of any director designee who, to such Shareholder's knowledge, is a Disqualified Designee and (B) that in the event such Shareholder becomes aware that any individual previously designated by any such Shareholder is or has become a Disqualified Designee, such Shareholder shall as promptly as practicable take such actions as are necessary to remove such Disqualified Designee from the Board and designate a replacement designee who is not a Disqualified Designee.]

Insert the following after clause 36:

37. US securities laws requirements

Each of the Investors acknowledges and warrants separately for itself and in respect of its own position, to the Company, for the purpose of compliance with the United States Securities Act of 1933, as amended (the "Securities Act") and state securities laws, as follows: [Note: include this clause for any US investor]

- (a) each Investor acknowledges that the [New Shares] [First Tranche Shares and Second Tranche Shares] [Note: amend as appropriate] have not been registered under the Securities Act, or any state securities laws on the basis that the Company is relying on an exemption from registration under such laws that depends in part on the representations made by each Investor pursuant to this clause, and that the transferability of the [New Shares] [First Tranche Shares and Second Tranche Shares] [Note: amend as appropriate] is therefore subject to restrictions imposed by those laws;
- (b) each Investor agrees not to sell or otherwise transfer the [New Shares] [First Tranche Shares and Second Tranche Shares] [Note: amend as appropriate] insofar as the Securities Act restricts such sale or transfer unless they are registered under the Securities Act and United States state securities laws of the applicable jurisdiction or unless an exemption from registration is available;
- (c) each of the Investors has either a residence or business address as set out in part 1 of schedule 1; all offers of the [New Shares] [First Tranche Shares and Second Tranche Shares] [Note: amend as appropriate] were made to the Investors at that address or elsewhere outside of the United States; no offer or solicitation was made to the Investors in any jurisdiction other than that jurisdiction or elsewhere outside of the United States; and each of the Investors accepted the offer to purchase [New Shares] [First Tranche Shares and Second Tranche Shares] [Note: amend as appropriate] by executing this agreement or a Deed of Adherence within

that jurisdiction; and prior to such acceptance, the Investor did not accept the offer in any other jurisdiction, orally, in writing, or otherwise;

- (d) in respect of each Investor, no Disqualification Event is applicable to such Investor or any of its Rule 506(d) Related Parties, except, if applicable for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable. For the purposes of this agreement, "Rule 506(d) Related Party" shall mean a person or entity covered by the "Bad Actor disqualification" provision of Rule 506(d) of the Securities Act;
- (e) in respect of each Investor, such Investor hereby agrees that it shall notify the Company promptly in writing in the event a Disqualification Event becomes applicable to such Investor or any of its Rule 506(d) Related Parties, except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable;
- (f) each Investor that is a "U.S. Person" (within the meaning of Rule 902 of Regulation S promulgated under the Securities Act) is an "accredited investor" within the definition set forth in Rule 501(a) under the Securities Act;
- (g) each of the Investors that is a "U.S. Person" acknowledges that such Investor has experience in making investments such as those in the Company and is able to bear the economic risk of the investment for an indefinite period of time because the [New Shares] [First Tranche Shares and Second Tranche Shares] [Note: amend as appropriate] have not been registered under the Securities Act, and therefore, must (to the extent the Securities Act restricts a transfer of [New Shares] [First Tranche Shares and Second Tranche Shares] [Note: amend as appropriate]) be held unless they are subsequently registered under the Securities Act or an exemption from such registration is available;
- (h) each of the Investors acquired the [New Shares] [First Tranche Shares and Second Tranche Shares] [Note: amend as appropriate] for its own account for investment and not for the account of another nor with a view to, or for resale in connection with, any distribution or public offering thereof within the meaning of the Securities Act, the state securities laws of any applicable jurisdiction, or the rules and regulations promulgated thereunder and, if such Investor is an entity, such Investor was not formed for the specific purpose of acquiring the [New Shares] [First Tranche Shares and Second Tranche Shares] [Note: amend as appropriate]; and
- (i) each Investor believes that it has received all the information it considers necessary or appropriate for deciding whether to purchase the [New Shares] [First Tranche Shares and Second Tranche Shares] pursuant to this agreement. Each Investor has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the issue of the [New Shares] [First Tranche Shares and Second Tranche Shares] and the business, properties and financial condition of the Company. The foregoing, however, does not in any way limit or modify the Warranties.

38. ERISA

- 38.1. Each of the parties agree that whatever rights [insert name of Investor] may have or acquire to elect or designate directors of the Company and any other rights of [insert name of Investor] under this agreement the rights set out in this clause 38 shall belong solely to (and may be exercised exclusively by) [insert name of the fund of the Investor subject to

ERISA ("ERISA Fund")) for its own benefit and account. [Note: to include for any Investor subject to ERISA]

- 38.2. In addition to any other rights it has in this agreement, *[insert name of ERISA Fund]* shall have the right to appoint a representative to attend as an observer at each and any meeting of the Board and of each and any committee of the Board. The appointment and removal of such representative shall be by written notice from *[insert name of ERISA Fund]* to the Company which shall take effect on delivery at the Company's registered office or at any meeting of the Board or any committee thereof. Any person so appointed as an observer shall be entitled to receive notice of, place items on the agenda for discussion, attend and speak at any such meetings provided that an observer shall not be entitled in any circumstance to vote.
- 38.3. *[insert name of ERISA Fund]* shall have the right to meet on a regular basis with such management personnel of the Company as may reasonably be designated by either of them, upon reasonable notice to the Company, for the purpose of consulting with and advising and influencing management, obtaining information regarding the business and prospects of the Company or expressing their respective views thereon.
- 38.4. The parties agree that if legal counsel for *[insert name of ERISA Fund]* reasonably concludes that the rights granted by this clause 38 should be amended to preserve the qualifications of *[insert name of ERISA Fund]* or otherwise to ensure that the assets of *[insert name of ERISA Fund]* are not considered "plan assets" for the purposes of ERISA, the parties will make such amendments to this agreement to effect such alterations, provided however that no such alteration would result in an adverse effect on the operation, business or the prospects of the Company.