|  |  |
| --- | --- |
| [DATED][AS AMENDED AND RESTATED ON] | 20[**••**] |
| **THE INVESTORS**  **and**  **THE FOUNDERS**  **and**  **[THE EXISTING SHAREHOLDERS**  **and]**  **THE COMPANY** | |
| **SHAREHOLDERS' AGREEMENT**  **relating to [•] [Limited]/[Ltd]** | |
|  | |
|  | |

**Index**

**Clause No. Page No.**

[**1.** **Definitions** 1](#_Toc191367577)

[**2.** **Interpretation** 7](#_Toc191367578)

[**3.** **[Amendment, restatement and execution]** 8](#_Toc191367579)

[**4.** **The Board** 9](#_Toc191367580)

[**5.** **Information rights** 11](#_Toc191367581)

[**6.** **Consent Matters** 12](#_Toc191367582)

[**7.** **Undertakings** 13](#_Toc191367583)

[**8.** **Sale or IPO** 16](#_Toc191367584)

[**9.** **Further issue and transfer of shares** 17](#_Toc191367585)

[**10.** **Founder covenants** 17](#_Toc191367586)

[**11.** **Other investments and business opportunities** 19](#_Toc191367587)

[**12.** **Confidentiality** 20](#_Toc191367588)

[**13.** **Survival and cessation of obligations of the Founders** 22](#_Toc191367589)

[**14.** **Effect of ceasing to hold Equity Shares or defaulting for New Shares** 22](#_Toc191367590)

[**15.** **Cumulative remedies** 22](#_Toc191367591)

[**16.** **Waiver** 22](#_Toc191367592)

[**17.** **Entire agreement** 23](#_Toc191367593)

[**18.** **Variation and termination** 23](#_Toc191367594)

[**19.** **No partnership** 25](#_Toc191367595)

[**20.** **Assignment and transfer** 25](#_Toc191367596)

[**21.** **Rights of third parties** 25](#_Toc191367597)

[**22.** **Conflict between agreements** 25](#_Toc191367598)

[**23.** **Counterparts; No originals** 26](#_Toc191367599)

[**24.** **Notices** 26](#_Toc191367600)

[**25.** **[Consideration]** 26](#_Toc191367601)

[**26.** **Severance** 27](#_Toc191367602)

[**27.** **Governing law** 27](#_Toc191367603)

[**28.** **Jurisdiction** 27](#_Toc191367604)

[**29.** **Confirmation by Founders and Investors[ and Existing Shareholders]** 27](#_Toc191367605)

[**30.** **Regulatory matters** 28](#_Toc191367606)

[**31.** **[US Tax Covenants]** 28](#_Toc191367607)

[Schedule 1 Parties 30](#_Toc191367608)

[Schedule 2 Consent Matters 31](#_Toc191367609)

[Schedule 3 Undertakings 35](#_Toc191367610)

[Schedule 4 PFIC Annual Information Statement 38](#_Toc191367611)

[Schedule 5 Adherence Agreement 39](#_Toc191367612)

**[DATED][AS AMENDED AND RESTATED ON]** 20[**••**]

**PARTIES**

(1) The persons whose names and addresses are set out in Part 1 of Schedule 1 (*Parties*) (together the "**Investors**" and each an "**Investor**"), which expression shall also include any other Shareholder from time to time who has executed an Adherence Agreement as an Investor;

(2) The persons whose names and addresses are set out in Part 2 of Schedule 1 (*Parties*) (together the "**Founders**" and each a "**Founder**"), which expression shall also include any other Shareholder from time to time who has executed an Adherence Agreement as a Founder; [and]

(3) [The persons whose names and addresses are set out in Part 3 of Schedule 1 (*Parties*) (together the "**Existing Shareholders**" and each an "**Existing Shareholder**"), which expression shall also include any other Shareholder from time to time who has executed an Adherence Agreement as an Existing Shareholder; and]

(4) [**•**] [**LIMITED**/**LTD**] (company number [•] incorporated under the laws of England and Wales) whose registered office is at [•] (the "**Company**").

**INTRODUCTION**

(A) [The Participating Investors have agreed to subscribe for shares in the capital of the Company on the terms of the Subscription Agreement (as defined below).]

(B) [Pursuant to clause [•] of the Prior Agreement (as defined below), the Prior Agreement may be deleted, varied, supplemented, restated or otherwise changed in any way at any time with the prior written consent of [*insert as appropriate*] (together the “**Requisite Parties**”).][[1]](#footnote-1)

(C) [The Participating Investors and the Requisite Parties wish to amend and restate the Prior Agreement in its entirety on the terms of this agreement and to accept the rights created pursuant to this agreement in lieu of the rights granted under the Prior Agreement.]

(D) The parties have entered into this agreement to regulate their relationship with each other and certain aspects of the Company’s affairs and dealings.

**AGREED TERMS**

# **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 meaning:

"**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 [applicable] jurisdiction;

"**Adherence Agreement**" means an adherence agreement substantially in the form set out in Schedule 5 (*Adherence Agreement*);

"**Articles**" means the articles of association of the Company adopted on or prior to the date of this agreement as amended or superseded from time to time in accordance with clause 6 (*Consent Matters*) and Part 1 of Schedule 2 (*Consent Matters*);

"**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**" means a detailed operating and capital budget and cash flow forecast in respect of each Financial Year of the Company, as adopted in accordance with clause 6 (*Consent Matters*) and Part 2 of Schedule 2 (*Consent Matters*);

"**Business**" means [•], as more fully described in the Business Plan[[2]](#footnote-2);

"**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 or public or bank holiday in England);

"**Business Plan**" means the business plan for the Company from time to time, as adopted or amended from time to time in accordance with clause 6 (*Consent Matters*) and Part 2 of Schedule 2 (*Consent Matters*);

"**CTA 2010**" means the Corporation Tax Act 2010;

"**Data Protection Legislation**" means any applicable legislation relating to the processing of personal data or the protection of the privacy of individuals, including the GDPR, together with any applicable implementing or supplementary national legislation including the UK Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as amended), together with any applicable implementing or supplementary national legislation including the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended); the Investigatory Powers Act 2016 and the Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018;

"**data subject**", "**personal data**", "**personal data breach**" and "**process**" have the meaning given in Data Protection Legislation;

"**Director(s)**" means a director or directors of the Company from time to time;

["**EIS Investors**" means [•];]

["**EIS Manager**" means [•];][[3]](#footnote-3)

["**EIS Provisions**" means the provisions of Part 5 of ITA and of sections 150, 150A, 150B and 150C and Schedule 5B of the TCGA (in each case as inserted and/or amended by the FA);]

["**EIS Reliefs**" the reliefs in respect of income tax and capital gains tax available to certain subscribers of Shares pursuant to the EIS Provisions;]

["**EIS Shares**" the [*insert class of share*] subscribed for by the [EIS Investors];]

"**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 Articles;][[4]](#footnote-4)

[“**FA”** the Finance Acts 1994 to 20[24] inclusive (and the Finance (No 2) Act 2015 and the Finance (No 2) Act 2017);]

"**Financial Year**" has the meaning given in section 390 of the Act;

"**GDPR**" means in each case to the extent applicable to data processing activities: (i) Regulation (EU) 2016/679; and (ii) UK GDPR;

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

"**HMRC**" means HM Revenue & Customs;

"**Intellectual Property**" means copyrights and related rights, trade marks and service marks, business and trade names, rights in logos and get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in inventions, rights to use and protect the confidentiality of confidential information (including 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 other intellectual property or other intangible rights and privileges, and rights of a nature similar or allied to any of the foregoing, in every case which subsists now or in the future in any part of the world and whether or not registered, and including all granted registrations and all applications for registration, and rights to apply for and be granted, renewals and extensions of, and rights to claim priority from, any such rights;

"**Investor Director(s)**" has the same meaning as set out in the New Articles;

"**Investor Director Consent**" means the prior written consent of [all][at least [•]of][a majority of][[5]](#footnote-5) the Investor Directors;

"**Investor Majority**" means [the holders of [more than/at least] [•] per cent of the Series A Shares from time to time][[6]](#footnote-6);

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

"**Investor Observer(s)**" means the observer(s) appointed in accordance with clause 4.2 of this agreement;

"**IPO**" means the admission of all or any of the Shares or securities representing those shares (including depositary interests, American depositary receipts, American depositary shares and/or other instruments) on the New York Stock Exchange, NASDAQ or on the Official List of the United Kingdom Financial Conduct Authority or 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) or overseas investment exchange (as defined in section 313 of the Financial Services and Markets Act 2000);

"**ITA**" means the Income Tax Act 2007;

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

"**Key Service Providers**" means: (a) each Founder; and (b) any Service Provider who is or was during the Period employed by any Group Company at management grade or in a senior capacity;

“**Know How**” means any and all data, results, materials, compositions, information relating to any and all inventions (whether a patent application is filed or not), objectives, plans, drawings, instructions, ideas, concepts, specifications, algorithms, discoveries, procedures, processes, methods, techniques, formulae, results, and any other knowledge, information or know-how, each in whatever form;

"**Major Investors**" means each Investor who together with its Permitted Transferees holds at least [•] [per cent of the] Equity Shares [subject to adjustment in the event of any Bonus Issue or Reorganisation (as defined in the Articles) so that no Investor is in any better or worse position as a result of such Bonus Issue or Reorganisation (as defined in the Articles)];[[7]](#footnote-7)

"**member of the same Fund Group**" has the same meaning as set out in the Articles;

"**member of the same Group**" has the same meaning as set out in the Articles;

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

"**New Shares**" means the Shares subscribed by the Participating Investors pursuant to the Subscription Agreement;

"**Ordinary Shares**" means ordinary shares of £[•][[8]](#footnote-8) each in the capital of the Company from time to time having the rights set out in the Articles;

"**Participating Investors**" means those Investors subscribing for New Shares pursuant to the terms of the Subscription Agreement;

“**Patents**” means (a) all national, regional and international patents and patent applications, including provisional patent applications; (b) all patent applications filed either from such patents or patent applications, or from an application claiming priority to any of these, including divisionals, continuations, continuations-in-part, provisionals, and continued prosecution applications; (c) any and all patents that have issued or in the future issue from the foregoing patent applications (a) and (b), including author certificates, inventor certificates, utility models, petty patents and design patents and certificates of invention; (d) any and all extensions or restorations by existing or future extension or restoration mechanisms, including revalidations, reissues, re-examinations and extensions (including any supplementary protection certificates and the like) of the foregoing patents or patent applications (a), (b) and (c), and (e) any similar rights, including so-called pipeline protection, or any importation, revalidation, confirmation or introduction patent or registration patent or patent of additions to any such foregoing patent applications and patents.

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

"**Permitted Transferees**" has the same meaning as set out in the Articles;

["**Prior Agreement**" means the shareholders’ agreement relating to the Company dated [•];]

"**Requisite Parties**" has the meaning given in Recital (B);

* 1. "**Restricted Member**" has the same meaning as set out in the Articles;
  2. "**Restricted Shares**" has the same meaning as set out in the Articles;

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

"**Sanctions Laws**" means those trade, economic and financial sanctions laws, regulations, embargoes, and restrictive measures (in each case having the force of law) administered, enacted or enforced from time to time by:

(a) the United States of America (including the Department of Treasury, Office of Foreign Assets Control);

(b) the European Union and its member states;

(c) the United Kingdom (including the Office of Financial Sanctions Implementation);

(d) the United Nations; or

(e) any other similar governmental bodies with jurisdiction over the Company or any Group Company from time to time;

"**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 Articles;

"**Service Agreements**" means the service agreements entered into between the Company and each of the Founders on [or prior to the date of this agreement][•], or such other equivalent agreements subsequently entered into by the Company and each of the Founders from time to time in accordance with clause 6 (*Consent Matters*) and Part 2 of Schedule 2 (*Consent Matters*);

"**Service Provider**" has the same meaning as set out in the Articles;

"**Share Incentive Plan(s)**" means (i) the share option plan(s) of the Company from time to time (ii) any agreement in respect of the award of shares including restricted shares (including restricted unit awards) and growth or hurdle shares, or share option agreements of the Company, in each case as amended from time to time;

"**Shareholder**" means any holder of Equity Shares from time to time who is a party to this agreement;

"**Shares**" has the same meaning as set out in the Articles;

"**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 Service Providers (and/or Workers), any potential Service Provider (and/or Worker) and/or any trade unions and/or (ii) the health and safety of its Service Providers; and

(b) any agreements or arrangements between any Group Company and its Service Providers and/or any trade union or other organisation which represents some or all of its Service Providers;

["**State Aid Funding**" means any aid which was received by the recipient pursuant to a measure approved by the European Commission as compatible with Article 107 of the Treaty on the Functioning of the European Union in accordance with the principles laid down in the European Commission’s Guidelines on state aid to promote risk finance investment (as those guidelines may be amended or replaced from time to time);]

"**Subscription Agreement**" means a subscription agreement between (1) the Investors (as defined therein) and (2) the Company, dated on or around the date of this agreement;

"**Subsidiary**" means any subsidiary of the Company as defined in section 1159 of the Act from time to time, and together the "**Subsidiaries**";

"**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);

"**Sustainability Impact Plan**" has the meaning given in paragraph 16 of Schedule 3 (Undertakings);

"**TCGA**" means the Taxation of Chargeable Gains Act 1992;

"**Termination Date**" means the date upon which the Founder concerned ceases to be a Service Provider;

"**Territory**" means [*insert geographical area*] [and any other territory where the Company carries on its business [or where it is anticipated that the Company will carry on its business]] [in each case] as at the Termination Date;

"**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;

"**UK GDPR**" means Regulation (EU) 2016/679 as applicable as part of UK domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended); [and]

["**VCT Investors**" means [•];]

["**VCT Manager**" means [•];]

["**VCT Provisions**" means the provisions of Part 6 ITA and sections 151A and 151B TCGA (in each case as inserted and/or amended by the FA); and]

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

# **Interpretation**

## 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.

## References to an Investor Director shall include any alternate appointed to act in such Investor Director’s place from time to time.

## References to persons shall include bodies corporate, unincorporated associations and partnerships, in each case whether or not having a separate legal personality.

## References to the time of day or date shall unless otherwise specifically stated be construed as references to the time or date prevailing in London, England.

## Reference to a “**party**” or “**parties**” is to a party or parties of the agreement and any person that has entered into an Adherence Agreement.

## References in this agreement to certain numbered article(s) of the Articles shall, if the Articles are amended so as to change the numbering of such article(s), be deemed to refer to any equivalent or substantially similar numbered article(s).

## 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.

## References to those of the parties that are individuals include their respective legal personal representatives.

## References to "**writing**" or "**written**" includes any non-transitory form of visible reproduction of words.

## The words "**include**", "**including**" and "**in particular**" (or any similar term) are to be construed as being by way of illustration or emphasis only and not to be construed so as to limit generally any words preceding them 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.

## Unless expressly stated to the contrary, any reference in this agreement to any class of shares in the capital of the Company or the holders of any class of shares in the capital of the Company, shall exclude Treasury Shares or the Company holding Treasury Shares from time to time.

## References to statutory provisions or enactments shall include references to any amendment, modification, extension, consolidation, replacement or re-enactment of any such provision or enactment (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 or enactment unless any such change imposes upon any party any liabilities or obligations which are more onerous than as at the date of this agreement.

## Section 1122 of the CTA 2010 shall apply to determine whether one person is connected with another for the purposes of this agreement.

## References in clause 1 (*Definitions*) (in so far as they are used in the clauses and schedules referred to in this clause), clauses 4 (*The Board*), 5 (*Information rights*), 6 (*Consent Matters*), 7 (*Undertakings*), 10 (*Founder covenants*), 11 (*Other investments and business opportunities*), 12 (*Confidentialit*y), Schedule 2 (*Consent Matters*) and Schedule 3 (*Undertakings*) to the Company and the Board shall include, where appropriate in the context, each of the Subsidiaries[, any Subsidiary Undertakings of the Company] and any Successor Entity and the directors for the time being of those Subsidiaries[, Subsidiary Undertakings] and any Successor Entity respectively.

## [In respect of any actions or matters requiring or seeking the acceptance, approval, agreement, consent or words having similar effect of any [Founder] [Service Provider] or holder of Shares under this agreement in any capacity, if at any time there are any Restricted Members and/or Restricted Shares, such Restricted Members and/or Restricted Shares shall be disregarded. If no voting [Founder] [Service Provider] or holder of such Shares remain, such acceptance, approval, agreement or consent shall not be required.]

## In respect of this agreement, a person shall be deemed to not cease to be a Service Provider if upon cessation of their engagement as a Service Provider they are immediately re-engaged as a Service Provider.

# **[Amendment, restatement and execution]**

## [This document shall be dated and be duly executed and delivered when it has been executed and delivered by those parties to the Subscription Agreement and the Requisite Parties, notwithstanding that this document may not then have been executed by each person specified as a signatory to this agreement.]

## [With effect from [the date this document] is signed by those parties identified in clause 3.1, and in consideration of the obligations of the parties to each other under this document, in accordance with clause [•] of the Prior Agreement each of the Requisite Parties agrees that this document amends, restates and replaces the Prior Agreement in its entirety on the terms set out in this document and each of the Requisite Parties accepts the rights created pursuant to this document in lieu of, and to the exclusion of, the rights granted to them under the Prior Agreement. Each of the parties to the Prior Agreement shall stand released and discharged from all obligations arising under or resulting from the Prior Agreement and 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 amendment, restatement and replacement, providing that nothing in this clause shall release any party from liability to the Company for any antecedent breach of the Prior Agreement. Pursuant to the variation of the Prior Agreement under this clause, the provisions of this document are binding on each of the parties to the Prior Agreement in substitution for the terms of the Prior Agreement and shall be enforceable against them, in accordance with its terms notwithstanding that one or more of the parties to the Prior Agreement may not have executed this document.

## [Reference to “**this agreement**” means a reference to the Prior Agreement as amended, restated and replaced by the terms of this document in accordance with clause 3.2. References to the “**date of this agreement**” (and similar terms) shall (save where expressly provided to the contrary) be construed as a reference to the date this document is executed by the parties identified in clause 3.1.]

## [If the circumstances contemplated by clause 3.1 apply and without prejudice to clauses 3.1 and 3.2:

## each such party that has then executed and delivered this agreement agrees and acknowledges that the provisions of this agreement shall be valid and binding upon them and enforceable against them, in accordance with its terms; and

## the Company agrees to use its reasonable endeavours to procure that all those persons who have not executed this agreement enter into Adherence Agreements (in the capacity attributed to them in Schedule 1 (*Parties*)) or execute a counterpart signature to this agreement as soon as reasonably practicable after the date of this agreement.]

## [If the Subscription Agreement is terminated in accordance with clause 4.5 of the Subscription Agreement, this agreement shall be automatically amended and restated in its entirety to revert to the Prior Agreement and each of the parties to the Prior Agreement (the "**Prior Parties**") shall accept the rights under the Prior Agreement in lieu of, and to the exclusion of, the rights granted to them under this agreement and shall stand released and discharged from all obligations arising under or resulting from this agreement and none of the parties to this agreement shall be entitled to exercise (and each such party waives) any rights to make any claim against any of the Prior Parties under or in relation to this agreement or its amendment, restatement and replacement under this clause, providing that nothing in this clause shall release any Prior Parties from liability to the Company for any antecedent breach of this agreement. Pursuant to the variation of this agreement under this clause:

## the provisions of the Prior Agreement shall then be binding on each of the Prior Parties in substitution for the terms of this agreement and shall be enforceable against them, in accordance with its terms; and

## each of the parties to this agreement other than the Prior Parties (the "**New Parties**") shall cease to be parties to this agreement, save that the New Parties shall continue to be bound by clause 12 (*Confidentiality*) of this agreement which shall continue to be enforceable against them by the Company.]

# **The Board**

## The appointment, dismissal and conduct of Directors shall be regulated in accordance with Article [•] (*Appointment of Directors*) of the Articles.

## [For so long as] [name of Investor][[9]](#footnote-9) and its Permitted Transferees] [holds fully paid shares representing not less than [•] per cent of the Equity Shares in issue][[10]](#footnote-10) they 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 who will be entitled to speak at any such meetings but will not be entitled to vote.

## Unless otherwise determined by the Board with Investor Director Consent, Board meetings will be held at intervals of not more than [•] weeks and at least [•] Board meetings will be held in each calendar year.[[11]](#footnote-11)

## The Company shall send to the Investor Directors, any Investor Observer, or any Investor entitled to appoint an Investor Director or Investor Observer but who has failed to do so (in electronic form if so required) 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.

## The Company will reimburse the Investor Directors [and any Investor Observer] 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 in accordance with the Company's expenses policy from time to time.

## An Investor (or, if applicable, a group or class of Investors) who have appointed an Investor Director and/or an Investor Observer shall procure that such Investor Director and/or Investor Observer shall comply with clause 12 (*Confidentiality*) save that such Investor Director and/or Investor Observer shall be at liberty from time to time to make full disclosure to their appointing Investor(s) of any information relating to the Company[, other than where the Board (acting reasonably and in good faith) resolves, and expressly instructs such Investor Director and/or Investor Observer, that such information should not be so disclosed because:

* + 1. that information concerns a particular matter on which there is a conflict of interest between the intended recipient of that information (or any of its Permitted Transferees or persons otherwise associated with the such recipient (or any of its Permitted Transferees)) and the bona fide interests of the Company;
    2. such disclosure is of advice provided by legal counsel to the Company in contemplation of any legal dispute and such disclosure could reasonably be expected to jeopardise, or result in the loss of, protection or preservation of attorney client based privilege;
    3. such disclosure is of highly sensitive scientific data, or any discovery or invention, that constitutes unpublished confidential Intellectual Property and such disclosure could reasonably be expected to jeopardise, or result in the loss of patentability or loss of confidentiality in respect of that information;
    4. such disclosure is prohibited by applicable law; or
    5. such disclosure would result in any Group Company being in material breach of obligations of confidentiality owed by it to a third party[, and such disclosure of that information would be detrimental to the interests of the Company].] [[12]](#footnote-12)

## 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 such Investor Director expressly in their capacity as a Director.

## [A [remuneration]/[audit][[13]](#footnote-13) committee shall be established by the Board as soon as practicable following the date of this agreement/ [•][[14]](#footnote-14) shall be members of the[[15]](#footnote-15) committee [and [Investor Director][[16]](#footnote-16) shall be the chairperson of such committee(s).]

*Director Indemnification*

## [The Company undertakes to each Investor Director and each Investor that has appointed such Investor Director that it shall, with effect from the date of each Investor Director’s appointment, [enter into an indemnification agreement, in the form agreed on behalf of the Company and the appointing Investor] / [indemnify each Investor Director against any liability in connection with such Investor Director’s negligence, default, breach of duty or breach of trust in relation to the Company or any Subsidiary, but only to the extent permitted by section 234 of the Act so that such indemnity is a qualifying third party indemnity provision as defined in section 234 of the Act.]]

## The Company agrees that it is the indemnitor of first resort and that its indemnification obligations to the Investor Directors in clause 4.9 are primary notwithstanding that the Investor Directors may have certain rights to indemnification, advancement of expenses and/or insurance provided by their appointee and/or its affiliates.

## If the Company or any of its successors or assignees consolidated with or mergers into any other person and is not the continuing or surviving entity of such consolidation or merger, then to the extent necessary the Company shall procure that the successors and assignees of the Company assume the obligations of the Company with respect to indemnification of the Investor Directors as in effect immediately before any such transaction subject to such modifications as are required to comply with applicable law.

## An Investor Director shall be entitled to enforce the provisions of clauses 4.9 to 4.12 as if he were a party to the Agreement.

*[Restricted information*

* 1. Notwithstanding any other provision of this agreement, if the Board [including Investor Director Consent] resolves that any information should not be disclosed because:
     1. that information concerns a particular matter on which there is a conflict of interest between the intended recipient of that information (or any of its Permitted Transferees or persons otherwise associated with such recipient (or any of its Permitted Transferees)) and the bona fide interests of the Company;
     2. such disclosure is of advice provided by legal counsel to the Company in contemplation of any legal dispute and such disclosure could reasonably be expected to jeopardise, or result in the loss of protection or preservation of attorney client privilege;
     3. such discourse is of highly sensitive scientific data or any discovery or invention, that constitutes unpublished confidential Intellectual Property and such disclosure could reasonably be expected to jeopardise, or result in the loss of patentability or loss of confidentiality in respect of that information;
     4. such disclosure is prohibited by applicable law; or
     5. such disclosure would result in any Group Company being in material breach of obligations of confidentiality owed to it by a third party[ and such disclosure of that information would be detrimental to the interests of the Company],

then the Board shall be entitled to withhold, redact or restrict such information otherwise required to be disclosed under this agreement, provided that the Company (if so permitted by law) then gives written notice to the party entitled to receive such information that such information is being so withheld and applicable reason (within (a) to (e) above).

This clause 4.13 shall not apply to information to be provided under clauses 5.1 to 5.4 (inclusive)[ or clause 31].][[17]](#footnote-17)

# **Information rights**

## The Company shall for each [month]/[quarter] prepare management accounts (which reasonably reflect the financial affairs of the Group Companies 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 [Major] Investors within [21] days after the end of each [month]/[quarter]. [The first management accounts shall be delivered to the [Major] Investors within [21] days after the end of the [month]/[quarter] in which this agreement is dated].

## The Company shall prepare a Budget and deliver it to each [Major] Investor at least [30] days prior to the end of the Company's preceding Financial Year.

## 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 (if any), shall be completed and approved by the Board and delivered to the [Major] Investors within [four] months after the end of the accounting period to which such [audited] accounts relate.

## 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, option holder, 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 [Major] Investors within [21] days after the end of each [quarter] in the Company’s Financial Year.

## The Company shall send to the [Major] Investors as soon as practicable after each meeting of the Board (or committee of the Board) a copy of the minutes together with all relevant Board papers.

## The Company shall provide each [Major] Investor promptly with such other information concerning the Company and its business as that [Major] Investor may reasonably require from time to time.

## The Company shall keep the [Major] Investors reasonably informed in a timely manner of all material developments concerning the affairs, business and prospects of the Group Companies.

## [Each of the Founders (for so long as they are a Service Provider) shall promptly provide the Board [and each of the Major Investors] with full details of any formal offer from any person wishing to enter into any Sale which may from time to time be brought to their attention.]

## [If the Company and/or the Founders (as applicable) does not comply with their obligations in clauses 5.1 to 5.8,] an Investor Majority shall be entitled to nominate a firm of accountants at the Company’s expense and such firm of accountants will be entitled to attend the Company’s premises to examine the books and accounts of the Company and to discuss the affairs, finances and accounts of the Company or each or any Group Company with its directors, officers and senior employees. Each Founder and the Company separately undertakes to the Investors to co-operate with any accountants nominated by an Investor Majority pursuant to this clause 5.9.

# **Consent Matters**

## Each of the Shareholders severally undertakes to the Company and the Investors that they shall exercise all voting rights and powers of control available to such Shareholder in relation to the Company to procure, in so far as they are thereby so able to do so, that:

### save with Investor Majority Consent, the Company shall not effect any of the matters referred to in Part 1 of Schedule 2 (*Consent Matters*); and

### save with Investor Director Consent, the Company shall not effect any of the matters referred to in Part 2 of Schedule 2 (*Consent Matters*).

## As a separate obligation, severable from the obligations in clause 6.1, the Company undertakes to Investors that (to the extent permitted by law):

### save with Investor Majority Consent, it shall not effect, and will procure that no Group Company will effect, any of the matters referred to in Part 1 of Schedule 2 (*Consent Matters*); and

### save with Investor Director Consent, the Company shall not effect, and will procure that no Group Company will effect, any of the matters referred to in Part 2 of Schedule 2 (*Consent Matters*).

## 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 they consider that providing such consent gives rise or may give rise to a conflict of interest to their duties as a Director, [such action or matter shall require an Investor Majority Consent]/[the Investor(s) entitled to appoint such Investor Director(s) shall instead be entitled to give such consent and the threshold to meet such Investor Director Consent shall be interpreted accordingly].

## No claim shall be made by any Investor against the Company or any Shareholder in respect of any breach of this clause 6 without Investor Majority Consent.

# **Undertakings**

## Each Founder undertakes to the Company and the Investors that they 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, in each case if and for so long as it is within their power and authority to do so.

## The Company will apply the proceeds of the subscription by the Investors for the New Shares in the furtherance of the Business in accordance with the Business Plan and the Budget.

## Each of the Founders and (to the extent permitted by law) the Company each severally undertake to the Investors (and, in the case of the Founders, undertake to the Company) to procure, if and in so far as it lies within their respective power and authority to do so, that the Founders and the Company will comply with the requirements set out in Schedule 3 (*Undertakings*).

## No claim shall be made by any Investor against the Company or any Founder in respect of any breach of any of clause 7.1, 7.2 or 7.3 without Investor Majority Consent.

* 1. [The Company and its Subsidiaries shall not[, so far as reasonably practicable in all the circumstances and subject always to the fiduciary duties of the Directors and the directors of its Subsidiaries (including without limitation the duty to promote the success of the Company or its Subsidiaries for the benefit of its members as a whole),] knowingly (unless agreed by the Board and the [EIS/VCT] Manager) contravene any of the VCT Provisions or the EIS Provisions.] OR
  2. [The Company and its Subsidiaries will not[, so far as reasonably practicable in all the circumstances and subject always to the fiduciary duties of the Directors and the directors of its Subsidiaries (including without limitation the duty to promote the success of the Company or its Subsidiaries for the benefit of its members as a whole),] knowingly do anything or omit to do anything, and will procure that each member of the Group will not knowingly (unless agreed by the Board and the [EIS/VCT] Manager) do anything or omit to do anything, which may result in the [*insert class*]Shares issued to the VCT Investor to cease to be "qualifying holdings" under Chapter 4 of Part 6 of ITA and/or to cease to be "eligible shares" as defined in section 285(3A) ITA or impact HMRC’s ability to authorise the Company to issue compliance certificates under section 204 ITA in relation to the EIS Shares[, and in particular will:
     1. not seek and will not accept any investment from any person which is or may be State Aid Funding or investment from a venture capital trust (as defined in Part 6 of ITA) or an investor seeking to claim tax relief pursuant to either the Seed Enterprise Investment Scheme (under Part 5A of ITA), the Enterprise Investment Scheme (under Part 5 of ITA) or Tax Relief for Social Investments (under Part 5B of ITA) subsequent to [Completion][[18]](#footnote-18);
     2. not carry on any excluded activity (as set out in sections 290, 291 and 300-310 ITA);
     3. use the sums subscribed by the EIS Investors and the VCT Investor solely for the purposes of the Business and within the period of 24 months beginning on the date of Completion employ all such sums in the Business;
     4. not enter into negotiations, or execute any agreement (whether conditional or otherwise), for the provision of finance, which is or maybe, State Aid Funding; and
     5. excluding in relation to (i) any investment taking place pursuant to this Agreement and (ii) any future funding by a person who is a shareholder of the Company at the time of Completion, not submit to HMRC by the Company, or any subsidiary, of any form certificate or document seeking to claim tax relief on an investment in the Company pursuant to either the Seed Enterprise Investment Scheme (under Part 5A of ITA) or the Enterprise Investment Scheme (under Part 5 of ITA) or Tax Relief for Social Investments (under part 5B of ITA).]The Company will, for so long as the EIS Investors and the VCT Investor hold any [*insert class of share*] and unless the obligations in this clause have been waived in writing by the [EIS/VCT] Manager, maintain a permanent establishment in the UK which satisfies the requirements of sections 180A and 302A ITA (a “**Permanent Establishment**”). No change to any of the arrangements which are required to constitute a Permanent Establishment and which the Company has in place as at Completion shall be made without the prior written consent of the [EIS/VCT] Manager.]]
  3. [Immediately after Completion, the Company will make such applications as may be required to enable the holders of the EIS Shares to obtain the EIS Reliefs in respect of the EIS Shares and will distribute to such holders of EIS Shares the certificates confirming such reliefs have been obtained as soon as practicable after their receipt from HMRC.]
  4. Each party shall comply with its respective obligations under Data Protection Legislation to the extent that it processes any personal data (including personal data relating to any directors, shareholders or investors) in connection with the performance of its obligations under this agreement.
  5. In particular, the Company shall:
     1. not do anything or omit to do anything which would cause another party to be in breach of Data Protection Legislation;
     2. only process such personal data to fulfil its obligations set out in this Agreement including for the purpose of due diligence or KYC exercises, management and administration of the Company and any investments and any corporate documentation (e.g. completing the register of members and Companies House forms) and compliance with applicable laws, regulations and procedures;
     3. process any such personal data fairly, lawfully and transparently and shall provide (and update as appropriate) privacy notices to applicable data subjects which comply with all applicable requirements of the Data Protection Legislation;
     4. implement and maintain appropriate data protection policies and procedures concerning the collection, use, storage, retention and security of personal data and implement regular staff training, use testing, audits or other documented mechanisms to ensure and monitor compliance with such policies and procedures;
     5. promptly inform, and provide such assistance as is reasonably requested by any other party in respect of any complaint, notice, request, communication, claim, enforcement action (including any fine or other sanction), investigation or other correspondence from any supervisory authority, data subjects, or any other person, relating to a breach or alleged breach of Data Protection Legislation;
     6. promptly notify any other party in writing upon it becoming aware of any actual or suspected personal data breach in relation to any personal data supplied by that other party and shall, within such timescale to be agreed by the affected party (acting reasonably and in good faith) (i) take action to investigate the personal data breach and implement any reasonable measures necessary to prevent, mitigate or rectify the effects of the personal data breach and to remedy the personal data breach; and (ii) provide reasonable support the other party to make any required notifications to a supervisory authority and affected data subjects;
     7. only transfer personal data to another party located outside of the UK or the European Economic Area in connection with this agreement provided that either:
        1. the transfer is to a country, territory, sector or international organisation in respect of which a valid adequacy decision has been issued by the European Commission or adequacy determined in another valid method under applicable Data Protection Legislation;
        2. the recipient party participates in a valid cross border transfer mechanism (such as standard contractual clauses) under the Data Protection Legislation so that the recipient party can ensure that appropriate safeguards are in place to ensure an adequate level of protection with respect to the privacy rights of individuals as required by Article 46 of the GDPR; or
        3. the transfer otherwise complies with the requirements of the GDPR;
     8. treat any personal data provided to it by another party or which comes into its possession in connection with this agreement as Confidential Information (as defined in clause 12.3); and
     9. ensure that appropriate operational and technical measures are in place to safeguard against any unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to the personal data and where requested provide to the other parties, evidence of its compliance with such requirement and shall put in place an adequate data breach response plan that enables the Company to comply with the related requirements of the Data Protection Legislation.
  6. Subject to clause 7.11, each Shareholder hereby irrevocably and unconditionally undertakes to exercise all voting rights and powers of control available to them in relation to the Company to procure that, in the event that (i) the Board, (ii) the holders of [a majority of the] Equity Shares in issue, and (iii) an Investor Majority have each voted in favour of an amendment to or replacement of the Articles (the “**Amendment**”), then each such Shareholder shall vote (including by way of written consent and/or resolution) all of the Shares eligible to vote then held by them, or otherwise under their control, in favour of such Amendment.
  7. If and to the extent any Amendment:
     1. is subject to any contractual consent required under this agreement being obtained;
     2. would impose any new obligations on a particular Shareholder (as opposed to the holders of a class of Shares as a whole) or vary an express, named right particular to a Shareholder under the Articles; and/or
     3. changes the rights or obligations of any class of Shares or group of Shareholders in a manner that does not so affect the rights or obligations of all Shareholders,

then in each case, the Amendment shall not be effected in accordance with this clause without (i) in the case of a contractual consent required under clause 7.11(a), such consent being obtained, (ii) in the case of clause 7.11(b), the consent of the affected Shareholder to such change being obtained, and (iii) in the case of clause 7.11(c), the prior written consent of the holders of a majority of the Shares so affected being obtained, provided in all cases that the creation of a new class of shares in the capital of the Company which has preferential rights to one or more existing classes of Shares shall not constitute a variation of the rights of any existing classes of Shares or group of Shareholders.

* 1. Nothing in clauses 7.10 to 7.11 shall prevent the Articles being amended or replaced in accordance with the Articles and/or the Act.
  2. Each Shareholder hereby acknowledges they are bound by the Articles, and irrevocably and unconditionally undertakes to take such action as required by the provisions of Articles [22] (Drag-Along), [33] (Lock-up) and [34] (New Holding Company) of the Articles and to take all such actions and execute all such documents as are necessary in accordance with those provisions in order to give effect to them.
  3. To secure the undertakings provided for in clauses 7.10 and 7.13 (the “**Undertakings**”), each Director and the Company shall be constituted the agent for and on behalf of each Shareholder to take such actions and enter into such documents as are necessary to give effect to the Undertakings.

# **Sale or IPO**

## It is the parties’ intention to effect a Sale or IPO as soon as practicable [and in any event within [five] years of [the date of this agreement][the date of the Prior Agreement][*insert date of original shareholders' agreement.*]

## The Shareholders undertake, on an IPO, to comply with the provisions of Article [33] (*Lock-Up*) of the Articles and 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 to make such determination with a view to ensuring the success of the IPO.

## [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 [Major] Investors shall be entitled to registration rights (on terms of the model registration rights agreement, if any, then available from the British Private Equity & Venture Capital Association (or successor body) or otherwise on customary market terms to be agreed) which shall include:

### two demand registration rights commencing six months after the Company’s initial public offering;

### unlimited shelf and piggy back registrations on all registrations by the Company for its own account;

### unlimited Form S-3 or Form F-3 (as applicable) registrations after the Company's initial public offering; and

### 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.][[19]](#footnote-19)

# **Further issue and transfer of shares**

## None of the Shareholders shall effect any transfer, mortgage, charge or other disposal of the whole or any part of their interest in, or grant any option, Encumbrance or other rights over, any shares in the capital of the Company to any person nor shall the Company issue any shares or equity securities (as defined in section 560 of the Act), to any person who is not a party without first obtaining from the transferee or subscriber an Adherence Agreement [save in respect of the grant or exercise of an option pursuant to the Share Incentive Plan] unless otherwise approved by the Board.

## The Adherence Agreement shall be in favour of the parties to this agreement and shall be delivered to the Company at its registered office [and to the Investors]. Subject to clause 9.1, no share transfer or issue of shares shall be registered by the Board unless such Adherence Agreement has been delivered in accordance with this clause 9 (*Further issue and transfer of shares*).

# **Founder covenants**

## *Restrictive covenants*

## For the purpose of assuring to the Investors and the Company of the value of the Business and the full benefit of the goodwill of the business of the Company, each of the Founders undertakes and covenants with the Investors and the Company that (save for (i) 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 (ii) any interest in the shares or other securities of any other undertaking so long as such interest does not extend to more than [0.1][[20]](#footnote-20) per cent of the issued share capital of the undertaking or the class of securities concerned or (iii) save with Investor Majority Consent) they shall not:

### while they are a Director or a Service Provider 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 Group Companies as carried on at the time or, in relation to any trade or business of the Group Companies that they have been engaged or involved in, at any time during a period of two years immediately preceding that time; or

### during the period of [*insert number of months*] commencing on the Termination Date:

#### within the Territory 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 Group Companies in which they shall have been engaged or involved at any time during the Period;

#### either on their 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 (or any other Group Company) on substantially the same terms as previously (or at all);

#### either on their own behalf or in any other capacity whatsoever directly or indirectly endeavour to entice away from the Group Companies or solicit any person, firm or company who was a client, customer, supplier, agent or distributor of any Group Company during the Period with whom they shall have been engaged or involved by virtue of their duties during the Period in competition with or to the detriment of the Group Companies;

#### either on their 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 any of the Group Companies during the Period with whom they shall have been engaged or involved by virtue of their duties during the Period in competition with or to the detriment of any if the Group Companies; or

#### either on their own behalf or in any other capacity whatsoever directly or indirectly employ, engage or induce, or seek to induce, to leave the service of any Group Company any person who is or was a Key Service Provider with whom they shall have had dealings during the Period whether or not such person would commit any breach of their contract of employment or for services by reason of so leaving the service of any Group Company or otherwise; or

### at any time after the Termination Date represent themself as being in any way currently connected with or interested in the business of the Group Companies (other than as a Shareholder or Director if and to the extent that be the case).

## Each of the restrictions contained in each paragraph of clause 10.1 is separate and distinct and is to be construed separately from the other such restrictions. Each of the Founders acknowledges that they consider 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 Shares subscribed by them takes into account and adequately compensates them for any restriction or restraint imposed in clause 10.1. However, if any such restriction shall be found to be void or unenforceable but would be valid or enforceable if some part or parts of the restriction were deleted or the period or area of application reduced, each of the Founders agrees that such restriction shall apply with such modification as may be necessary to make it valid and enforceable.

## *Intellectual property*

## Any discovery, invention, secret process or improvement in procedure made or discovered by any Founder while a Service Provider in connection with or in any way affecting or relating to the business of any Group Company 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. This agreement shall not operate as a transfer instrument and any transfer of Intellectual Property rights shall be effected under a separate agreement.

## Each Founder (whether before or after their ceasing to be a Service Provider) 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 10.3 enter into Intellectual Property assignments and execute all instruments and do all things necessary for vesting Intellectual Property or 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 by a Founder*

## A Founder shall have no claim against any Group Company in respect of the valid termination of their contract of employment or consultancy in relation to any provision in the 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 their interest in any shares or other equity 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 them to become prematurely exercisable or lapse.

*No claim against a Founder*

* 1. No claim shall be made by any Investor against any Founder in respect of any breach of this clause 10 without Investor Majority Consent.

# **Other investments and business opportunities**

* 1. The Company acknowledges that [each Investor] is in the business of venture capital investing and therefore may have previously made investments in and may review business plans and related proprietary information for many enterprises including enterprises which may have products or services which compete directly or indirectly with those of the Company. Nothing in this agreement shall preclude or in any way restrict such Investor from continuing to hold investments or from entering into discussions with, investing or participating in any particular enterprise whether or not such enterprise has products or services which compete with those of the Company so long as such Investor does not disclose any Confidential Information in connection with any such discussions or investment.
  2. Without prejudice to an Investor Director’s statutory and/or fiduciary duties, neither the Investors nor any of their respective Permitted Transferees shall be obligated to present any particular investment opportunity to the Company even if such opportunity is of a character that, if presented to the Company, could be taken by the Company, and the Investors (together with their respective Affiliates) shall each have the right to take for such its own account or to recommend to others any such particular investment opportunity.

# **Confidentiality**

* 1. Subject to clause 12.1 each of the parties agrees and undertakes to the Company and the Investors 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 information relating to a Group Company disclosed, divulged or made available for the purposes of a Group Company's business) any Confidential Information.
  2. Each Investor shall be at liberty from time to time to make such disclosure:

### 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 and/or to their respective directors, partners and employees for the purposes of, but not limited to, reviewing existing investments and investment proposals;

### to any lender to the Company and/or to any shareholder of the Company;

### 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;

### to the Company’s auditors and/or any other professional advisers of the Company;

### 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 12.1,

in relation to the business affairs and financial position of the Company as it may in its reasonable discretion think fit, provided that the proposed recipient of the Confidential Information in question:

### will be obliged to keep the Confidential Information so disclosed confidential on substantially the same basis as is required by the Investor; or

### is already bound by a duty of confidentiality pursuant to the rules or codes of practice of any supervisory or regulatory authority,

and the Investor shall procure that the use and disclosure of Confidential Information by such recipient is in compliance with the restrictions applicable to the Investor under this clause 12.

* 1. 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:

### any information regarding this agreement and the investment by the Investors in the Company pursuant to the Subscription Agreement;

### 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;

### in the case of the Company, information concerning:

#### its finances and financial data, business transactions, dealings and affairs and prospective business transactions;

#### any operational model, its business plans and sales and marketing information, plans and strategies;

#### its customers, including customer lists, customer identities and contact details and customer requirements;

#### any existing and planned product lines, services, price lists and pricing structures (including discounts, special prices or special contract terms offered to or agreed with customers);

#### 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;

#### its computer systems, source codes and software, including software and technical information necessary for the development, maintenance or operation of websites;

#### its current and prospective Intellectual Property;

#### its directors, officers, employees and shareholders (including salaries, bonuses, commissions and the terms on which such individuals are employed or engaged and decisions or contents of board meetings);

#### 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;

#### information concerning or provided to third parties, in respect of which the Company (or any other Group Company) owes a duty of confidence (in particular, the content of discussions or communications with any prospective customers or prospective business partner); and

#### 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:

##### 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;

##### is, at the time of disclosure, already known to the receiving party without restriction on disclosure;

##### is, or subsequently comes, into the possession of the receiving party without violation of any obligation of confidentiality;

##### is independently developed by the receiving party without breach of this agreement;

##### is explicitly approved for release by the written consent of an authorised representative of the disclosing party; or

##### 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.

* 1. Subject to clause 12.5, clause 12.1 shall not prevent a party from disclosing Confidential Information if and to the extent it is required to disclose such Confidential Information by any applicable law rule or regulation; by the rules of any securities exchange to which such party is subject (whether by reason of its securities being listed or traded on such exchange or otherwise), by (or by the rules of) 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 or the procedural rules of any court or arbitral process to which the party is subject.
  2. If disclosure is to be made pursuant to clause 12.4 then, if permitted by law, the party making such disclosure shall consult with the Company reasonably in advance of such disclosure so as to permit the Company reasonable opportunity to review and comment on such disclosure. If so desired by the Company, the Company shall be entitled to seek any injunction, or take any other reasonable action, to prevent or restrict such disclosure (in whole or in part).

# **Survival and cessation of obligations of the Founders**

The obligations on a Founder under clauses 10 (*Founder covenants*) and 12 (*Confidentiality*) shall survive any transfer by them of all or any Shares and shall survive such Founder ceasing to be a Director or a Service Provider but otherwise upon a Founder ceasing to hold Shares and ceasing to be a Director or a Service Provider they shall have no further obligation or liability under this agreement but without prejudice to the due performance by them of all obligations up to the date of such cessation.

# **Effect of ceasing to hold Equity Shares or defaulting for New Shares**

## Subject to clause 13 (*Survival and cessation of obligations of the Founders*), a party shall cease to be a party for the purpose of receiving benefits and enforcing their rights with effect from the date they cease to hold or beneficially own any Equity Shares (but without prejudice to any benefits and rights accrued prior to such cessation).

## A party who the Board determines is deemed not to have made any application for New Shares under clause [3.1] of the Subscription Agreement in accordance with clause [4.4] of the Subscription Agreement and who is not otherwise a Shareholder shall cease to be a party for the purpose of receiving benefits and enforcing their rights with effect from the date of such determination.

# **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.

# **Waiver**

## The express or implied waiver by any party 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.

## Any waiver of any breach of, or any default under, any of the terms of this agreement will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of this agreement.

## In no event will any delay, failure or omission (in whole or part) in enforcing, exercising or pursuing any right, power, privilege, claim or remedy conferred by or arising under this agreement or by law, be deemed to be or be construed as a waiver of that or any other right, power, privilege, claim or remedy in respect of the circumstances in question, or operate so as to bar the enforcement of that, or any other right, power, privilege, claim or remedy, in any other instance at any time or times subsequently.

# **Entire agreement[[21]](#footnote-21)**

## 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.

## Each of the parties acknowledges and agrees that they have not entered into this agreement in reliance on any statement or representation of any person (whether a party or not) other than as expressly incorporated in this agreement, the Subscription Agreement, or the documents referred to or incorporated in this agreement.

## Each of the parties irrevocably and unconditionally waives any right or remedy they 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 them by any person (whether a party or not) and upon which they have relied in entering into this agreement.

## 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.

## 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.

# **Variation and termination**

## 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 (i) the Company, (ii) the holders of [a majority of Equity Shares in issue], (iii) [•][[22]](#footnote-22), and (iv) an Investor Majority, in which event such change shall be binding against all of the parties to this agreement provided that, in addition:

## if such change would impose any new obligations on a party, or vary an express, contractual right particular to a party under clauses 4 (*The Board*) [or] 5 (*Information Rights*) [[or] 7.6] [or 31 (*US Tax Covenants*)] or increase any existing obligation, the consent of the affected party to such change shall be required; [and/or]

## [if such change amends the definition of Major Investor so that an Investor ceases to qualify as a Major Investor, the consent of each of the affected Investors to such change shall be required; and/or]

## [if such change would adversely affect the [Major] Investors otherwise than on a pari passu pro rata basis, and/or if the change concerns the removal of an Investor's right to appoint a Director or Investor Observer pursuant to this agreement, the consent of each of the affected [Major] Investors to such change shall be required].

## This agreement may be terminated with the prior written consent of (i) the Company, (ii) [the holders of a majority of Equity Shares in issue], (iii) [•][[23]](#footnote-23), and (iv) an Investor Majority, in which event such termination shall be binding against all of the parties provided that, in addition:

## nothing in this clause shall release any party from liability for breaches of this agreement which occurred prior to its termination; and/or

## if such termination concerns termination of an express contractual right particular to a party under clauses 4 *(The Board)* [or] 5 *(Information rights)* [[or] 7.6] [or 30 *(US Tax Covenants)*] of this agreement, the consent of that party to such termination shall be required; and/or]

## [if such termination amends the definition of Major Investor so that an Investor ceases to qualify as a Major Investor, the consent of each of the affected Investors to such termination shall be required[; and/or]

## if such termination would adversely affect the [Major] Investors otherwise than on a pari passu pro rata basis, and/or if the termination concerns the removal of an Investor’s right to appoint a Director or Investor Observer pursuant to this agreement, the consent of each of the affected [Major] Investors to such termination shall be required.

## [This agreement shall terminate and cease to have effect upon an IPO approved in accordance with clause 6 (*Consent Matters*) and Part 1 of Schedule 2 (*Consent Matters*) save that nothing in this clause shall release any party from liability for breaches of this agreement which occurred prior to its termination.]

## [If the Subscription Agreement is terminated in accordance with clause 4.5 of that agreement, this agreement shall terminate and cease to have effect, provided that:

## the provisions of clause 1 (*Definitions*) (in so far as they are used in the clauses and schedules referred to in this clause), clauses 2 (*Interpretation*), 12 (*Confidentiality*), 16 (*Waiver*), 17 (*Entire agreement*), this 18.4 and 19 (*No partnership*) to 28 (Jurisdiction) (inclusive) shall survive any such termination; and

## nothing in this clause shall release any party from liability for breaches of this agreement which occurred prior to its termination.][[24]](#footnote-24)

# **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.

# **Assignment and transfer**

## Subject to clauses 20.3 and 21.2, this agreement is personal to the parties and no party shall:

### assign any of its rights under this agreement;

### transfer any of its obligations under this agreement;

### sub-contract or delegate any of its obligations under this agreement; or

### charge or deal in any other manner with this agreement or any of its rights or obligations,

save that an Investor shall be entitled to delegate any of its obligations under this agreement to its general partner or the management company authorised from time to time to act on behalf of that Investor.

## Any purported assignment, transfer, sub-contracting, delegation, charging or dealing in contravention of clause 20.1 shall be ineffective.

## An Investor (or its Permitted Transferees who holds Shares) 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 (or its Permitted Transferees who holds Shares) in accordance with the Articles and has executed an Adherence Agreement.

# **Rights of third parties**

## Subject to clause 21.2 and save as expressly provided in this agreement, 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.

## The general partner of an Investor (or any Permitted Transferee of such 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.

## A person who executes an Adherence Agreement in accordance with clause 9 (*Further issue and transfer of shares*) shall be bound by, and shall be entitled to enforce, the terms of this agreement as though such person were signatory hereto and shall thereupon be a party hereto.

## The obligations of confidentiality in clause 12 and the Founders' undertakings and covenants in clause 10 are assumed for the benefit of each Group Company. Each Group Company may rely on and enforce the obligations of confidentiality in clause 12 and the undertakings and covenants in clause 10.

# **Conflict between agreements**

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

# **Counterparts; No originals**

## This agreement may be executed by each of the parties in any number of counterparts, each of which shall constitute an original counterpart of this agreement, and all the counterparts shall together constitute one and the same agreement.

## The exchange of a [fully executed] version of this agreement [executed by the Participating Investors and the Requisite Parties] (in counterparts or otherwise) by electronic means using DocuSign or other electronic transmission in PDF format shall be sufficient to bind the parties to the terms and conditions of this agreement and no exchange of originals is necessary.

# **Notices**

## 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, email or other electronic form:

### to the Company, at its registered office or to the following email address: [•]; or

### to an Investor[, to an Existing Shareholder] or to a Founder, at the address [or to the email address] of that person shown in Schedule 1 (*Parties*);

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

## A communication sent according to clause 24.1 shall be deemed to have been received:

### if delivered by hand, at the time of delivery;

### if sent by pre-paid first class post, on the second day after posting; or

### if sent by 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.

# **[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 acknowledged), and the investment by the Participating 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.][[25]](#footnote-25)

# **Severance**

## 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.

## 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.

# **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.

# **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.

# **Confirmation by Founders and Investors[ and Existing Shareholders]**

## 28.1. Each of the Founders and the Investors[ and the Existing Shareholders] confirms, for the purposes of entering into this agreement only that:

### they have entered into this agreement entirely on the basis of their own assessment of the risks and effect thereof;

### they are owed no duty of care or other obligation by any other party; and

### insofar as they are owed any such duty or obligation (whether in contract, tort or otherwise) by a party they waive, to the extent permitted by law, any rights (save in the case of any fraudulent misrepresentation) which they may have in respect of such duty or obligation.

28.2 Each of [the Founders and] the Investors [and the Existing Shareholders] confirms, for the purposes of entering into this agreement, that (to the extent applicable) in the case of the exercise of any right or discretion expressly provided for under this agreement or the Articles in respect of any reclassification, conversion, redesignation or redenomination of their Shares in accordance with Articles [9.1] or [9.2] (*Conversion of Series A Shares*) [and/or under Article [19.1] (*Departing [Founder][Service Provider]*) and/or the removal, suspension or variation of voting rights or economic rights in respect of its Shares in accordance with Article [19.3] or Article [19.4] (*Departing [Founder][Service Provider]*)], in each case where such exercise is in accordance with the terms of the relevant provisions (including having obtained all consents expressly required therein), such reclassification, conversion, redesignation or redenomination[ or removal, suspension or variation]:

* + 1. shall not constitute, nor be deemed to constitute, any variation, modification or abrogation of the rights of its Shares (as applicable)]; and
    2. shall not require any class or other additional consent to be obtained from the holder(s) of such Shares or any of them, save as expressly required under the Articles or this agreement,

and, in any event, to the extent that any such class or other additional consent is required from such [Founder or] Investor [or Existing Shareholder], each such [Founder or] Investor [or Existing Shareholder] hereby irrevocably consents to and approves such reclassification, conversion, redesignation or redenomination[ or removal, suspension or variation].

# **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 any matter 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.

# **[US Tax Covenants]**

## [Not later than ninety (90) days following the end of the Company's taxable year, the Company shall provide the US Tax Investors a report, prepared by the Company’s US tax advisors, regarding the CFC status of the Company and any of its non-US Subsidiaries. If the Company or any of its non-US Subsidiaries is, in the reasonable opinion of the Company's US tax advisors or a US Tax Investor, a CFC, the Company shall provide the US Tax Investors with a report setting out details of the aggregate amount of any income of the Company or its Subsidiaries of a character that would be includible under Section 951 ("**Subpart F Income**") or Section 951A ("**GILTI**") of the Code in the gross income of "United States shareholders" within the meaning of Section 951(b) of the Code. In addition, the Company shall provide the US Tax Investors with access to other information of the Company or its Subsidiaries as may be required to (x) verify the CFC status of the Company and its non-US Subsidiaries, (y) verify the Company’s determination of its Subpart F Income and GILTI and (z) determine whether a US Tax Investor or a US Tax Investor’s Partners are required to include any amount of the Company’s or its Subsidiaries’ undistributed earnings in their gross income for US federal income tax purposes. If the Company is, in the reasonable opinion of its US tax advisors or a US Tax Investor, a CFC, the Company shall use commercially reasonable efforts to avoid generating Subpart F Income.

## The Company shall use commercially reasonable efforts to avoid being a PFIC for any taxable year in which the Company or a US Tax Investor reasonably expects the Company or its Subsidiaries to have net earnings and profits. The Company shall, not later than ninety (90) days following the end of each taxable year of the Company provide each US Tax Investor with an annual PFIC information statement in the form set out in Schedule 4, as well as any other information reasonably necessary for such US Tax Investor or a US Tax Investor’s Partners to make or maintain a "qualified electing fund" election pursuant to Section 1295 of the Code with respect to its direct or indirect investment in the Company.

## The Company will use commercially reasonable efforts to comply with all record-keeping, reporting, and other reasonable requirements necessary to comply with any applicable US tax law and to allow the US Tax Investors and each US Tax Investor's Partners to comply with the applicable provisions of US tax law with respect to their direct or indirect ownership of the Company. The Company will provide the US Tax Investors and each US Tax Investor's Partners with any information available to the Company and reasonably requested by any of them to allow the US Tax Investors and/or each US Tax Investor's Partners to comply with US tax law with respect to the direct or indirect ownership of the Company.

## The Company will not withhold any tax against any amounts payable or distributable to any US Tax Investor without first providing notice of such withholding and a reasonable opportunity for such US Tax Investor to obtain reduced rates of withholding or other available exemptions, if any.

## The Company shall take such actions as is reasonably necessary (including making an election to be treated as a corporation or refraining from making an election to be treated as a partnership) to ensure that the Company is, at all times, treated as a corporation for US federal income tax purposes.

## In this clause 31:

### "**CFC**" means a "controlled foreign corporation" within the meaning of Section 957 of the Code;

### "**Code**" means the US Internal Revenue Code of 1986, as amended;

### "**PFIC**" means a "passive foreign investment company" within the meaning of Section 1297 of the Code;

### "**US Tax Investor**" means [•] / [each Investor who is a "United States person" within the meaning of Section 7701(a)(30) of the Code or who has direct or indirect owners who are such United States persons]; and

### "**US Tax Investor's Partners**" means each shareholder, partner, member or other equity holder of a US Tax Investor, any person holding an option to acquire a share, partnership interest, membership interest or other equity interest in a US Tax Investor and any direct or indirect equity owner of such shareholder, partner, member, other equity holder or optionholder.][[26]](#footnote-26)

1. Parties

Part 1

The Investors

| **Name** | **Address [(postal and email)]** |
| --- | --- |
|  |  |

**Part 2**

**The Founders**

| **Name** | **Address [(postal and email)]** |
| --- | --- |
|  |  |

**[Part 3**

**The Existing Shareholders]**

| **Name** | **Address [(postal and email)]** |
| --- | --- |
|  |  |

1. Consent Matters[[27]](#footnote-27)

Part 1

Matters requiring Investor Majority Consent

* 1. ***Fundraising and Share capital:***
     + 1. Permit or cause to be proposed any alteration to its share capital 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, offer, buy-in or redeem any share or loan capital or grant or agree to grant any options [other than pursuant to the Share Incentive Plan], warrants or securities convertible into shares, except as expressly authorised in this agreement or the Subscription Agreement.
       3. Permit a transfer, mortgage, charge or other disposal of the whole or any part of an interest in, or the grant of any option or other rights over, any shares in the capital of the Company to any person, or an agreement to do any of the foregoing, except where permitted or required so to do pursuant to the Articles or this agreement.
       4. Directly or indirectly (i) sell, issue, sponsor, support, accept, create or distribute any digital tokens, coins, blockchain-based assets, digital assets or cryptocurrency ("**Tokens**"), including through any agreement, pre-sale, initial coin offering, token distribution event or crowdfunding, or develop or deploy a computer network, "smart contract" or protocol either incorporating Tokens or permitting the generation of Tokens by network participants or provide services or receive proceeds in connection with the foregoing.
  2. ***Share Incentive Plan:[[28]](#footnote-28)***
     + 1. [Adopt or amend a Share Incentive Plan.]
       2. Increase the number of Shares available under the Share Incentive Plan [from [•]].
  3. ***Distributions:***
     + 1. Propose or pay any dividend or propose or make any other distribution (as defined under section 1000 or section 1064 of the CTA 2010).
  4. ***Acquisitions and Disposals***
     + 1. Subscribe or otherwise acquire, or dispose of any shares in the capital of any other company or any part of the undertaking of any other person [other than [the incorporation of and subscription for shares in] wholly-owned subsidiaries].
       2. Dispose of the whole or part of the undertaking of the Company (including dealing in any way with the Company's or any other Group Company’s intellectual property other than in the ordinary course of business) or merge the Company (or permit, consent to or facilitate any such merger in respect of any other Group Company) or any part of its business with any other person or propose to do so.
       3. Permit the disposal of shares in the Company amounting to a Sale or IPO.
       4. 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.
  5. ***Insolvency:***
     + 1. 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:
          1. wind up the Company, save where it is insolvent (within the meaning of section 123 of the Insolvency Act 1986);
          2. 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);
          3. 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
          4. invite the appointment of a receiver or administrative receiver over all or any part of the Company’s assets or undertaking.
  6. ***Amendments to the Articles:***
     + 1. Effect or permit any amendment to the Articles.].

**Part 2**

**Matters requiring Investor Director Consent[[29]](#footnote-29)**

* 1. ***Share Incentive Plan awards:***
     + 1. [Grant any options or issue any shares [to Key Service Providers]/[in excess of [•] [Ordinary Shares]] pursuant to the Share Incentive Plan.]
       2. Permit, or vary any existing vesting with respect to options granted or restricted shares issued to provide for a vesting schedule other than (A) with respect to twenty five percent (25%) or less of the shares subject to grant or issue, one (1) year after the date of such grant or issue; and (B) with respect to the remaining shares subject to such issue or purchase, on a [quarterly]/[monthly] basis over a period of three (3) or more years thereafter.
       3. Permit the acceleration of any vesting with respect to options granted or restricted shares issued on the occurrence of a Sale or an IPO.
  2. ***Proceedings of the Board:***
     + 1. Transact any business at any meeting of the Board (or committee of the Board) save for that specified in the agenda referred to in clause 4.4.
       2. Increase the maximum number of directors permitted pursuant to the Articles.
       3. [Vary the frequency of Board meetings set out in clause 4.3.]
       4. Engage any broker, advisor (including financial, accounting, auditing or legal), investment bank or similar party to provide any services for a Sale or IPO.
       5. Establish or approve the terms of reference for any [remuneration] [audit] [other][[30]](#footnote-30) committee established by the Board from time to time.
  3. ***Business:***
     + 1. 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 or do any act or thing outside the ordinary course of the business carried on by the Company.
  4. ***Accounts and expenditure:***
     + 1. Approval of the Company's operating and capital budget and cash flow forecast in respect of each Financial Year.
       2. Approve or adopt the Budget, or make any change to the Budget or the Business Plan.
       3. Incur any capital expenditure (including obligations under hire-purchase and leasing arrangements) which exceeds the amount for capital expenditure in the Budget [by more than [•] per cent] or (where no items were specified but a general provision made) in relation to any item exceeding £[•].
       4. 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 £[•].
  5. ***Employment:***
     + 1. Engage any employee or consultant on terms that either their contract cannot be terminated by three months' notice or less or their 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 they will, or are likely to earn) more than £[•] per annum.
       2. Vary or make any binding decisions on the terms of employment and service of any Director, increase or vary the salary or other benefits of any such Director, or appoint or dismiss any such Director.
  6. ***Loans and charges***
     + 1. Make any loan or advance or give any credit (other than in the ordinary course of business) to any person or enter into or give any guarantee of 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].
       2. Permit the creation of or suffer to subsist any Encumbrance (other than a lien arising by operation of law) over the whole or any part of its undertaking, property or assets.
       3. 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).
  7. ***Adherence Agreements:***
     + 1. Permit the transfer, mortgage, charge or other disposal of any interest in Shares described in clause 9.1 or issue of any shares or equity securities (as defined in section 560 of the Act), to any person who is not a party to this agreement without first obtaining from the transferee or subscriber an Adherence Agreement [save in respect of the grant or exercise of an option pursuant to the Share Incentive Plan].
  8. ***Litigation:***
     + 1. 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.
  9. ***Contracts and related party transactions***
     + 1. 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.

1. Undertakings
   1. The Company shall maintain in full force and effect keyperson insurance (for the exclusive benefit of the Company) and directors’ and officers’ liability insurance of the Company 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 an 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 an Investor Majority, to protect its Intellectual Property rights and/or other property and assets.
   4. All new business opportunities relevant to the Company shall only be taken up through the Company or a wholly-owned subsidiary of the Company.
   5. The Company and each of the Founders shall comply with the terms of this agreement, the Articles and the Service Agreements.
   6. The Company shall comply with all applicable laws and regulations [including 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.
   7. 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.
   8. 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.
   9. The Company has and shall maintain in place procedures, practices and policies which are designed to prevent any Associated Person of the Company from undertaking any conduct that would give rise to an offence under the Proceeds of Crime Act 2002, as amended, any rules and regulations thereunder, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 or any other applicable anti-money laundering laws or regulations of any other jurisdiction.
   10. The Company has and shall maintain in place procedures, practices and policies which are designed to prevent any Associated Person of the Company from undertaking any conduct that would give rise to an offence under the Part 3 of the UK Criminal Finances Act 2017 (Corporate Offences of Failure to Prevent Facilitation of Tax Evasion), any guidance, rules and regulations thereunder, or any other applicable anti-tax evasion laws or regulations of any other jurisdiction.
   11. The Company has and shall maintain in place procedures, practices and policies which are designed to prevent any Associated Person of the Company from undertaking any conduct that would give rise to an offence under Sanctions Laws.
   12. The Company has and shall maintain in place appropriate governance and managerial policies, practices and procedures and financial and treasury controls, policies, practices and procedures, which in each case are designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the Company's prevailing accounting policies, practices and methods.
   13. [The Company shall enter into an election under section 431(1) of ITEPA, jointly with each of the Shareholders who are Service Providers in respect of any securities acquired by such Service Providers which are "**restricted securities**" as defined in Chapter 2 of Part 7 of ITEPA.]
   14. Each of the Shareholders who are Service Providers shall enter into an election pursuant to section 431(1) of ITEPA, jointly with the Company, in respect of any securities acquired by such Service Providers which are "**restricted securities**" as defined in Chapter 2 of Part 7 of ITEPA.
   15. [Each of the Shareholders who are Service Providers appoints any other director of the Company to be their true and lawful attorney to execute on their 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.][[31]](#footnote-31)
   16. The Company shall comply with its Social Obligations.
   17. Within six months of the date of this agreement the Company shall adopt and maintain in effect (a) a code of conduct governing appropriate workplace behaviour (b) a diversity policy and (c) an anti-harassment and discrimination policy prohibiting discrimination and harassment at the Company, in each case reviewed and approved the Board and in a form to be agreed with [the Investor Majority].[[32]](#footnote-32)
   18. [[If requested by the [Major Investors/Investors/Investor Majority], t][T]he Company undertakes to: (i) conduct a [UK] data protection compliance audit against its data processing activities, and determine a remediation plan for any [material risks/gaps] identified, within [90] days of [such request][the date of this agreement]; and (ii) to implement the measures set out in the remediation plan as soon practicable thereafter.
   19. *ESG*

Within [six] months from Completion, the Company shall:

* + - 1. adopt a climate policy in a form approved by an Investor Majority, as defined by measuring the Company’s emissions footprint, and setting clear actions and steps to achieve climate neutral operations by [2030] at the latest through reductions where reasonably possible and offsetting what is not reduced;
      2. adopt a diversity and inclusion policy in a form approved by an Investor Majority, which means ensuring that the Company is totally inclusive across gender, ethnicity, age, sexual orientation, disabilities, socio-economic background and national origins;
      3. evaluate and implement best practices (for a company at this stage and level of resources) of its business activities with respect to Environment, Social and Governance (ESG) aspects. This includes the Company’s internal practices including but not limited to sustainability and climate risk reporting, external impact of the business model, services/products including but not limited to carbon equivalent emissions.

Such policies and practices will be discussed with and reported to the Board, including the Investor Director to an extent which allows for the Investors to be compliant with applicable regulations and its reporting obligations towards their investors. The Company shall disclose results and progress on (a), (b) and (c) annually. The Investors will support the management with the above-mentioned commitments.

* 1. *Sustainability Impact Plan*
     + 1. Within six months from Completion, the Company shall in collaboration with the Investors prepare and thereafter maintain in effect a policy and plan on how to define, measure and report on the sustainability impact of the Company’s technology (“**Sustainability Impact Plan**”) in a form approved by an Investor Majority.
       2. Management of the Company shall hereinafter and on a regular basis evaluate the Sustainability Impact Plan and suggest to the Board reasonable actions to be taken to ensure the Sustainability Impact Plan is sufficiently implemented and followed by the Company. Management of the Company shall report to the Board bi-annually on any measures taken by the Company and on the actual sustainability impact of its technology as measured pursuant to the Sustainability Impact Plan. Management of the Company shall include the defined impact metrics in the Company’s KPI reports. The Company will share the bi-annual reports with the Investors before the end of February and end of August, respectively.
       3. The Board shall discuss the Sustainability Impact Plan at least once a year, and management shall hereinafter update the Company’s Sustainability Impact Plan where necessary.][[33]](#footnote-33)

1. PFIC Annual Information Statement

[Company][[34]](#footnote-34)

1. This Information Statement is for the taxable year of [Company] (the "**Company**") beginning on [1 January 20[●] and ending on 31 December 20[●]] (the "**Taxable Year**") and is issued to [[Investor] Partners] ("**Investor**").
2. For the Taxable Year, the Company:

\_\_\_ was a passive foreign investment company ("**PFIC**").

\_\_\_ was not a PFIC (Skip Sections 3 and 4).

1. The Investor’s pro-rata share of the Company’s ordinary earnings and net capital gain (as determined under US federal income tax principles) for the Taxable Year follows:

Ordinary Earnings: US $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Net Capital Gain: US $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. The amount of cash and fair market value of other property distributed or deemed distributed by the Company to the Investor during the Taxable Year was:

Cash: US $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Fair Market Value of Property: US $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Company will permit the Investor, its direct or indirect owners to inspect and copy the Company’s permanent books of account, records, and such other Company documents as are necessary to establish that the Company’s ordinary earnings and net capital gain are computed in accordance with US income tax principles.

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Company]

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: Chief Executive Officer

1. Adherence Agreement

**THIS AGREEMENT** is made on 202[••]

[(1) [**•**] [**LIMITED/LTD**] (company number [•] incorporated under the laws of [England]) whose registered office is at [•] (the "**Company**"); and

(2) [•] of [•].

**INTRODUCTION**

(A) By a [transfer]/[subscription for shares] dated [the same date as this agreement] [*insert name*] [(the "**Transferor**") transferred to [*insert name of* new shareholder] (the "**Transferee**")]/[(the "**Subscriber**") subscribed for] Series A/Ordinary Shares of £[•] each in the capital of [*insert Company name*] (the "**Company**") (together the ["**Transferred Shares**"]**/**["**Subscribed Shares**"]).

(B) This agreement 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 "**Shareholders’ Agreement**").

**AGREED TERMS**

* 1. Words and expressions used in this agreement shall have the same meaning as is given to them in the Shareholders’ Agreement unless the context otherwise expressly requires.
  2. The [Transferee]/[Subscriber] agrees to assume the benefit of the rights [of the Transferor] under the Shareholders’ Agreement in respect of the [Transferred]/[Subscribed] Shares) and agrees to assume and assumes the burden of the [Transferor’s] obligations under the Shareholders’ Agreement to be performed after the date hereof] in respect of the [Transferred]/[Subscribed] Shares.
  3. The [Transferee]/[Subscriber] agrees to be bound by the Shareholders’ Agreement in all respects as if the [Transferee]/[Subscriber] were a party to the Shareholders’ Agreement as one of the [[Major] Investors]/[Existing Shareholders]/[Founders] and to perform [:
     + 1. all the obligations of the Transferor in that capacity under the Shareholders’ Agreement; and
       2. ]all the obligations expressed to be imposed on such a party to the Shareholders’ Agreement[;]

[in both cases], to be performed or on or after [the date of this agreement] and shall assume and enjoy [the rights of the Transferor and] all [other] rights expressed to be for the benefit of a [[Major] Investor]/[Existing Shareholder]/[Founder] under the Shareholders' Agreement.

* 1. The [Transferee]/[Subscriber] confirms each appointment or purported appointment by the [Transferee]/[Subscriber] under the Articles and/or the Shareholders Agreement of another person as his or her agent as if the relevant provisions relating to such appointment were set out in full in this paragraph 4 with appropriate modifications.
  2. This agreement is made for the benefit of:
     + 1. the parties to the Shareholders’ Agreement; and
       2. any other person or persons who may after the date of the Shareholders’ Agreement (and whether or not prior to or after the date of this agreement) assume any rights or obligations under the Shareholders’ Agreement and be permitted to do so by the terms of the Shareholders’ Agreement,

and this agreement shall be irrevocable without the consent of the Company acting on their behalf in each case only for so long as they hold any Equity Shares.

* 1. [Nothing in this agreement shall release the Transferor from any liability in respect of any obligations under the Shareholders’ Agreement due to be performed prior to[the date of this agreement].]
  2. None of the Investors nor the Founders[ nor the Existing Shareholders]:
     + 1. makes any representation or warranty or assumes any responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of any of the Shareholders’ Agreement (or any agreement entered into pursuant to the Shareholders’ Agreement);
       2. 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
       3. assumes any responsibility for the financial condition of the Company [or any Subsidiary] or any other party to the Shareholders’ Agreement or any other document or for the performance and observance by the Company or any other party to the Shareholders’ Agreement or any other document (save as expressly provided in the Shareholders’ Agreement or such other document),

pursuant to this agreement and any and all conditions and warranties, whether express or implied by law or otherwise, are excluded from this agreement.

* 1. This agreement (including non-contractual disputes or claims) shall be governed by, and construed in accordance with the laws of England and Wales. The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this agreement or its subject matter (including non-contractual disputes or claims).

This adherence agreement has been executed on the date shown on the first page.

**EXECUTED** by ) ………………………….

[*TRANSFEREE / SUBSCRIBER*] ) [Director][Authorised signatory]

[acting by a [director][authorised signatory]] )

**EXECUTED** by )

[THE COMPANY] ) ………………………….

acting by a director ) Director

[[35]](#footnote-35)This agreement has been executed and delivered as a deed [by the Participating Investors and the Requisite Parties] on the date shown on the first page.

**EXECUTED AS A DEED** by )

[*insert name*] [**LIMITED/LTD]** ) ………………………….

acting by a director ) Director

acting as [general partner/manager] )

of [THE INVESTOR] )

in the presence of: )

Signature of witness: ………………………….

Name of witness: ………………………….

Address of witness: ………………………….

**EXECUTED AS A DEED** by )

[THE COMPANY] ) ………………………….

acting by a director ) Director

in the presence of: )

Signature of witness: ………………………….

Name of witness: ………………………….

Address of witness: ………………………….

**EXECUTED AS A DEED** by )

[EXISTING SHAREHOLDER] ) ………………………….

acting by a director ) Director

in the presence of: )

Signature of witness: ………………………….

Name of witness: ………………………….

Address of witness: ………………………….

**SIGNED AS A DEED** by [FOUNDER] ) ………………………….

in the presence of: )

Signature of witness: ………………………….

Name of witness: ………………………….

Address of witness: ………………………….

**SIGNED** **AS A DEED** by [FOUNDER] ) ………………………….

in the presence of: )

Signature of witness: ………………………….

Name of witness: ………………………….

Address of witness: ………………………….

**EXECUTED AS A DEED** by )

[*overseas company*]) ………………………….which is incorporated or organised ) Authorised signatory  
under the laws of ……………………… )

acting by ………………………………… )   
being a person who, in accordance )   
with the laws of that jurisdiction, is )

authorised to do so)

[[36]](#footnote-36)This agreement has been executed [by the Participating Investors and the Requisite Parties] on the date shown on the first page.

**EXECUTED** by )

[*insert name*] [**LIMITED/LTD]** ) ………………………….

acting by a director ) Director

acting as [general partner/manager] )

of [THE INVESTOR] )

**EXECUTED** by )

[THE COMPANY] ) ………………………….

acting by a director ) Director

**EXECUTED** by )

[EXISTING SHAREHOLDER] ) ………………………….

acting by a director ) Director

**SIGNED** by [FOUNDER] ) ………………………….

**SIGNED** by [FOUNDER] ) ………………………….

**EXECUTED** by )

[*overseas company*]) ………………………….which is incorporated or organised ) Authorised signatory  
under the laws of ……………………… )

acting by ………………………………… )   
being a person who, in accordance )   
with the laws of that jurisdiction, is )

authorised to do so)

1. [*Note: this agreement assumes an amendment and restatement of a prior shareholders' agreement. Use background paras (B) and (C), with operative clause 3 (Amendment, restatement and execution) if this is appropriate. If a completely new agreement is being put in place (and an amendment and restatement is not appropriate) consider entering into a deed of termination to any prior agreements in parallel with this agreement.*] [↑](#footnote-ref-1)
2. [*Note: insert relevant details.*] [↑](#footnote-ref-2)
3. *[Note: Where an investor has a VCT and an EIS fund, the manager will be the same for both – consider combining the definitions of EIS Manager and VCT Manager.]* [↑](#footnote-ref-3)
4. *[Note: insert definition if appropriate.*] [↑](#footnote-ref-4)
5. *[Note: amend as appropriate.*] [↑](#footnote-ref-5)
6. *[Note: amend as appropriate.*] [↑](#footnote-ref-6)
7. [*Note: to be personalised on each deal.*] [↑](#footnote-ref-7)
8. [*Note: insert par value.*] [↑](#footnote-ref-8)
9. [*Note: insert name.*] [↑](#footnote-ref-9)
10. [*Note: amend as appropriate*.] [↑](#footnote-ref-10)
11. [*Note: insert details.*] [↑](#footnote-ref-11)
12. [*Note: To be considered for inclusion in relation to strategic (i.e. non-financial) investors only.*] [↑](#footnote-ref-12)
13. [*Note: complete as appropriate.*] [↑](#footnote-ref-13)
14. [*Note: insert details.*] [↑](#footnote-ref-14)
15. [*Note: insert details.*] [↑](#footnote-ref-15)
16. [*Note: inset name.*] [↑](#footnote-ref-16)
17. [*Note: To be considered for inclusion in relation to strategic (i.e. non-financial) investors only.*] [↑](#footnote-ref-17)
18. [*Note: “Completion” to be defined as appropriate. Consider using definitions of Initial Completion or Subsequent Completion in the Subscription Agreement*] [↑](#footnote-ref-18)
19. [*Note: consider whether a long form registration rights agreement might be more appropriate (a form for consideration is available on the BVCA website)*.] [↑](#footnote-ref-19)
20. [*Note: Consider appropriate threshold*.] [↑](#footnote-ref-20)
21. [*Note: see comments in introductory paragraphs regarding prior agreements.*] [↑](#footnote-ref-21)
22. [*Note: Founder variation threshold to be considered and inserted as appropriate. Consider (for example) whether the consent of a Founder should be required for so long as they are a Service Provider.*] [↑](#footnote-ref-22)
23. [*Note: Founder termination threshold to be considered and inserted as appropriate. Consider (for example) whether the consent of a Founder should be required for so long as they are a Service Provider.*] [↑](#footnote-ref-23)
24. [*Note: Only include this clause 17.3 if there is no Prior Agreement and so clause 3 (Amendment, restatement and execution) is not being included.*] [↑](#footnote-ref-24)
25. [*Note: To be included if agreement to be signed under hand.*] [↑](#footnote-ref-25)
26. [*Note: Insert if required by investors who are subject to US taxation.*] [↑](#footnote-ref-26)
27. [*Note: scale back of consent matters to be considered for early stage investments*.] [↑](#footnote-ref-27)
28. [*Note: undertakings on adoption of new share incentive plan to be added to the Subscription Agreement if required.*] [↑](#footnote-ref-28)
29. [*Note: scale back of consent matters to be considered for early stage investments.*] [↑](#footnote-ref-29)
30. [*Note: complete as appropriate*.] [↑](#footnote-ref-30)
31. [*Note: this paragraph must be deleted or entered into separately if this agreement is not a deed.*] [↑](#footnote-ref-31)
32. [*Note: see the following link for a guide:* [*www.inclusionintech.com*](https://protect-us.mimecast.com/s/9JisCrk91JS5J2w6tztExX?domain=inclusionintech.com)*.*] [↑](#footnote-ref-32)
33. [*Note: include undertakings 18-20 as appropriate*.] [↑](#footnote-ref-33)
34. [*Note: include this schedule only if US tax covenants will be included.*] [↑](#footnote-ref-34)
35. *[Note: To be used where the agreement is executed and delivered as a deed. See below for alterative where signed under hand.*] [↑](#footnote-ref-35)
36. *[Note: To be used where the agreement is signed under hand.*] [↑](#footnote-ref-36)