|  |  |
| --- | --- |
| DATED | 20[●●] |
| **THE INVESTORS**  **and**  **THE COMPANY** | |
| **SUBSCRIPTION AGREEMENT**  **relating to [●] [Limited/Ltd]** | |
|  | |

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**DATE** 20[●●]

**PARTIES**

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

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

**INTRODUCTION**

(A) The Company is a private company limited by shares, brief particulars of which are set out in [Part 1 of] Schedule 2.

(B) Details of the legal ownership of the share capital of the Company are set out in Schedule 3.

(C) The Investors wish to subscribe for shares in the capital of the Company on and subject to the terms of this agreement.

**AGREED TERMS**

# **Definitions**

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

"**Accounts**" means [the [audited] [balance sheet / statement of financial position] and [profit and loss account / income statement and statement of other comprehensive income / statement of comprehensive income] of the Company]] [a consolidation of the [audited] [balance sheets / statements of financial position] and [profit and loss accounts / income statements and statements of other comprehensive income / statement of comprehensive income] of the Company and the Subsidiary Undertakings] for the period ended on the Accounts Date in the agreed form;[[1]](#footnote-1)

"**Accounts Date**" means [●] 20[●●];

"**Act**" means the Companies Act 2006;

["**Additional New Shares**" means up to [●] additional Series A Shares to be subscribed for by one or more additional investors at a price at least equal to the Subscription Price pursuant to clause 3.4;]

"**Adherence Agreement**" has the meaning given in the Shareholders' Agreement;

"**Affiliate**" means, with respect to any Investor, any other person who, directly or indirectly, controls, is controlled by, or is under common control with such Investor, including, any general partner, managing member, officer or director of such Investor or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management or advisory company with, such Investor;

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

"**Business**" means [●], as more fully described in the Initial Business Plan;

"**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);

"**Claim**" means any claim for breach of a Warranty;

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

"**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;

"**Disclosed**" means fairly disclosed to the Investors in the Disclosure Letter with sufficient detail to enable the Investors to identify the nature and scope of the matters disclosed;

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

[“**EIS Investors**” means [●];]

[“**EIS Manager**” means [●];[[2]](#footnote-2)]

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

[“**EIS Shares**” means the [●][[3]](#footnote-3) 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 Securities Agreement**" means the [●] agreement[s] entered into between the Company and the Equity Securities Holders on [●] in the principal aggregate amount of £[●];[[4]](#footnote-4)

"**Equity Securities Holders**" means the persons whose names and addresses are set out, and are described as Equity Securities Holders in, Schedule 1;

"**Execution Conditions**" means the conditions set out in Schedule 4;

**"Execution Date"** means the date of this agreement;

[“**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;

"**Founders**" means [●] and [●];

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

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

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

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

[**“Indemnification Agreement”** means the indemnification agreement in the agreed form between the Company and the Investor Director;]

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

**"Initial Completion"** has the meaning given in clause 4.2;

**"Initial Threshold"** has the meaning given in clause 4.2;

"**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 meaning given in the New Articles;

["**IP Assignments**" means the assignments of Intellectual Property in the agreed form to be entered into between the Company and each Founder;]

"**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;

“**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;

["**Lead Investor**" means [●];][[5]](#footnote-5)

"**Longstop Date**" means 5:00 p.m. on the date which is [5] Business Days following the Execution Date (or such later time and date as may be agreed in writing by the Company and [the Lead Investor][the Subscriber Majority]);

"**Management Accounts**" means the management accounts of the Company for the period starting on the day after the Accounts Date and ending on the Management Accounts Date, in the agreed form;

"**Management Accounts Date**" means [●] 20[●●];

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

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

"**New Shares**" means the Shares subscribed by the Investors pursuant to clause 3.1 [and clause 3.2] [and shall include the Additional New Shares if applicable];

"**New Shares Majority**" means [those Investors holding at least [●] per cent of New Shares from time to time];[[6]](#footnote-6)

[**"NSIA"** means the National Security and Investment Act 2021;]

“**Open Source Code**” means any software code that is distributed as “free software” or “open source software” or is otherwise distributed publicly in source code form under terms that permit modification and redistribution of such software, which Open Source Code includes software code that is licensed under the GNU General Public License, GNU Lesser General Public License, Mozilla License, Common Public License, Apache License, BSD License, Artistic License, or Sun Community Source License;

"**Ordinary Shares**" means ordinary shares of £[●][[7]](#footnote-7) each in the capital of the Company from time to time having the rights set out in the New Articles;

“**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.

"**Properties**" means the properties described in Schedule 6;

"**Sanctions**" means any laws or regulations relating to economic or financial sanctions, export controls, trade embargoes or restrictive measures from time to time imposed, administered or enforced by a Sanctions Authority;

"**Sanctions Authority**" means [the UK, the European Union and the United Nations] and in each case their respective governmental, judicial or regulatory institutions, agencies, departments and authorities, including the UN Security Council, His Majesty’s Treasury and the UK’s Office of Financial Sanctions Implementation and Department of International Trade;[[8]](#footnote-8)

"**Sanctions List**" means any of the lists issued or maintained by a Sanctions Authority designating or identifying individuals or entities that are subject to Sanctions, in each case as amended, supplemented or substituted from time to time, including the UK Sanctions List, Consolidated List of Financial Sanctions Targets in the UK, the Consolidated List of Persons, Groups and Entities Subject to EU Financial Sanctions and the Consolidated United Nations Security Council Sanctions List;

"**Sanctions Target**" means a person or entity that is either listed on, or owned or controlled by (whether directly or indirectly) or acting on behalf of a person listed on, a Sanctions List;

"**Series A Shares**" means series A shares of £[●][[9]](#footnote-9) each in the capital of the Company from time to time having the rights set out in the New Articles;

["**Service Agreements**" means the service agreements in the agreed form to be entered into between the Company and each Founder;]

["**Share Incentive Plan(s)**" shall have the meaning given to such expression in the Shareholders’ Agreement;]

"**Shareholder**" means any shareholder of the Company from time to time (but excludes the Company holding Treasury Shares from time to time) and the term "**Shareholders**" shall be construed accordingly;

"**Shareholders' Agreement**" means the shareholders' agreement between (i) the Investors; (ii) the Founders; (iii) the Existing Shareholders (as defined therein); and (iv) the Company, dated on or around the Execution Date, as amended or varied from time to time;

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

"**Social Obligations**" means:

(a) any common or statutory law, regulation, directive, code of practice or other law in any jurisdiction relating to (i) the relationship between any Group Company and its employees (and/or Workers), any potential employee (and/or Worker) and/or any trade unions and/or (ii) equality, diversity and inclusion in the Company’s workplace; and (iii) the health and safety of the Company's employees and Workers; and

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

[“**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);]

"**Subscriber Majority**" means [those Investors subscribing for at least [●] per cent of New Shares under clause[s] 3.1 [and 3.2]];

"**Subscription Adherence Agreement**" means the subscription adherence agreement substantially in the form set out in Schedule 7;

"**Subscription Price**" means £[●] per Series A Share;

**"Subsequent Completion"** has the meaning given in clause 4.2;

"**Subsidiary**" means any subsidiary of the Company as defined in section 1159 of the Act from time to time [which as at the Execution Date includes those, brief particulars of which, are set out in Part 2 of Schedule 2] and the term "**Subsidiaries**" shall be construed accordingly;

"**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 and disregarding any changes to classes of share made in connection with such IPO);

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

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

[“**TCGA**” means the Taxation of Chargeable Gains Act 1992;]

"**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);

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

"**VATA**" means the Value Added Tax Act 1994;

[“**VCT Investor**” 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);]

"**Warranties**" means the warranties given pursuant to clause 5 (references to a particular warranty being to a statement set out in Schedule 5) and “**Warranty**” shall be construed accordingly; and

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

# **Interpretation**

## Unless otherwise defined in this agreement or the context otherwise requires, words and expressions defined in the New Articles have the same respective meanings in this agreement.

## Words and expressions which are defined in the Act (to the extent applicable) shall have the meanings attributed to them therein when used in this agreement unless otherwise defined (in this agreement or in the New Articles) or the context otherwise requires.

## Clause and paragraph headings and the table of contents are used for convenience only and shall not affect the construction or interpretation of this agreement.

## 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 individuals, bodies corporate, unincorporated associations, trusts, joint ventures and partnerships, in each case whether or not having a separate legal personality.

## Reference to a "**party**" or "**parties**" is to a party or parties to the agreement and any person that has entered into a Subscription Adherence Agreement.

## References to documents "**in the agreed form**" are to documents in terms agreed on behalf of the Company and the [Subscriber Majority] [Lead Investor].

## 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.

## Reference to “**issued Shares**” of any class shall exclude any Shares of that class held as Treasury Shares from time to time, unless stated otherwise.

## Reference to the “**holders**” of Shares or a class of Share shall exclude the Company holding Treasury Shares from time to time, unless stated otherwise.

## Words denoting the singular include the plural and vice versa and reference to one gender includes the other gender and neuter and vice versa.

## 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 Execution Date), 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 Execution Date.

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

## Reference to a time of day is unless otherwise specifically stated a reference to the time in England.

## 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.

## References in clause 1 (Definitions) (in so far as they are used in the clauses and schedules referred to in this clause), clause 5 (Warranties) and Schedule 5 (Execution Date Warranties) to the Company and the Board shall include, where appropriate in the context, each of the Subsidiaries and any Successor Entity and the directors for the time being of those Subsidiaries and any Successor Entity respectively.

# **Subscriptions**

## Subject to the provisions of clauses 4.1 to 4.5 (inclusive), the Investors set out below apply for the allotment and issue to them at Initial Completion or the relevant Subsequent Completion (as applicable) of the following Shares as set out in the table below at the Subscription Price and the Company accepts such applications:[[10]](#footnote-10)

| **Investor** | **No. of**  **[*Note: insert class of shares*]** | **Total subscription monies (£)** |
| --- | --- | --- |
| ● | ● | ● |
| Total | ● | ● |

## [Subject to the provisions of clauses 4.1 to 4.5 (inclusive), the Equity Securities Holders shall be issued at the Initial Completion with such number of Shares as set out in the table below at a price of £[●] per share on conversion of the amount owing under the Equity Securities Agreement in satisfaction of the Company’s obligations under such Equity Securities Agreement:]

| **Equity Securities Holder** | **No. of**  **[*Note: insert class of shares*]** | **Principal amount [plus accrued interest] (£)** |
| --- | --- | --- |
| ● | ● | ● |
| Total | ● | ● |

## [[Subject to clause 16.3(c), each] [Each Equity Securities Holder confirms and agrees that it irrevocably waives, releases and relinquishes all rights such Equity Securities Holder may have under the Equity Securities Agreement other than to convert the amounts owing under such Equity Securities Agreement into (and irrevocably applying the redemption monies in subscribing for) New Shares pursuant to clause 3.2 with effect from Initial Completion, and that following Initial Completion the Company’s obligations under such Equity Securities Agreement shall have been satisfied in full and the Equity Securities Agreement shall be of no further force or effect.][[11]](#footnote-11)

## [No later than [●][[12]](#footnote-12) (unless the Company and [Lead Investor][New Shares Majority] have agreed in writing to extend such date), the Company may allot and issue the Additional New Shares to one or more additional investors that have been approved by the Company [and the [Lead Investor][New Shares Majority] [where any such person is not an existing shareholder of the Company]] at one or more additional completions where meeting(s) of the Board shall be held (or written resolutions of the Board shall be passed) to approve the allotment and issue of such Additional New Shares subject to receipt of funds, provided that any such additional investor(s) execute a Subscription Adherence Agreement together with an Adherence Agreement to become a party to the Shareholders' Agreement as an Investor (if not already a party to the Shareholders’ Agreement in that capacity), prior to the issue of such Additional New Shares.]

## Each Investor shall be entitled to direct that its New Shares be issued and registered in the name of any nominee or custodian holding such New Shares on its behalf as bare nominee and the provisions of clauses 3.1, [3.2], [3.3] and 4 (Completion) shall be interpreted accordingly.

*[Restrictions on use of EIS/VCT funds*

## No sums subscribed by the [EIS Investors and the VCT Investor] will be used for the purpose of the acquisition of any shares, business, trade, intangible assets employed for the purposes of a trade or goodwill employed for the purposes of a trade by the Company and/or any Subsidiary, or for repaying any loan, borrowing or other indebtedness.]

# **Completion**

## Upon and with effect from the Execution Date, the parties acknowledge and agree that the Execution Conditions have been satisfied or waived in full and that subject to clauses 4.2 to 4.5 (inclusive), each Investor subscribing for New Shares pursuant to clause 3.1 shall, on or prior to the Longstop Date, pay the sum set out against its name in column 3 of the table in clause 3.1 (being the aggregate Subscription Price for its New Shares) [less any fees and disbursements referred to in clause 8.1] by electronic funds transfer to the bank account of the Company as set out below and payment made in accordance with this clause 4.1 shall constitute a good discharge for such Investor of its obligations under this clause 4.1:

## Account name : [●]

## Bank : [●]

## Account number : [●]

## Sort code : [●]

## IBAN : [●]

## Swift Code : [●]

### Upon receipt by the Company of subscription monies paid in accordance with clause 4.1 [from [●]][for [●]][[13]](#footnote-13) [(or such lesser amount as may be determined by the Company [and the [Lead Investor][Subscriber Majority]])][[14]](#footnote-14) (the "**Initial Threshold**") the Company shall issue [(i)] the New Shares listed in the table in clause 3.1 to each Investor whose subscription monies have been received by the Company [and (ii) the New Shares listed in the table in clause 3.2 to each Equity Securities Holder][[15]](#footnote-15) credited as fully paid and enter its name in the register of members in respect of such New Shares and execute and deliver to such Investor a certificate in respect of such New Shares ("**Initial Completion**"). The Company shall issue the remaining New Shares listed in the table in clause 3.1 to each remaining Investor credited as fully paid and enter its name in the register of members in respect of such New Shares and execute and deliver to such Investor a certificate in respect of such New Shares upon receipt by the Company of the relevant subscription monies paid by such Investor in accordance with clause 4.1 (each, a "**Subsequent Completion**").

### In addition to and without prejudice to all other rights and remedies available to the parties, including the right to bring a claim for breach of contract, the Board shall be entitled to determine that any Investor who fails to pay a subscription amount due under clause 4.1 on or prior to the Longstop Date shall be deemed not to have made any application for New Shares under clause 3.1 (but without prejudice to the applications made by the other Investors under that clause) and upon such determination this agreement[[16]](#footnote-16) shall be deemed varied, without the consent of any other party, or action required, so as to remove all references to such Investor who shall cease to be a party to this agreement [(provided such Investor is not otherwise subscribing for [New Shares under clause 3.2], in which case this agreement shall be deemed varied only so as to remove the references to such Investor applying for New Shares under clause 3.1)] and to make any associated changes, and the Company may instead allot and issue such New Shares [in accordance with clause 3.4 as if they were Additional New Shares] / [to one or more additional investors that have been approved by the Company [and the [Lead Investor][Subscriber Majority]] [where any such person is not an existing shareholder of the Company][[17]](#footnote-17).] The Board may in its sole discretion and without the consent of any party to this agreement, take such action to amend and/or restate this agreement to reflect such deemed variation(s) as it deems necessary or desirable.

## The Company undertakes to the Investors that it shall:

## hold any subscription funds received prior to Initial Completion pursuant to clause 4.1 from an Investor in connection with that Investor's application for New Shares to its strict order on behalf of that Investor pending Initial Completion; and

## in the event that this agreement terminates in accordance with clause 4.5, return any subscription funds received by the Company from any Investor pursuant to clause 4.1 to the relevant Investor as soon as reasonably practicable following termination, to such account as that Investor may in writing direct (without needing to account for any interest).

### Without prejudice to all other rights and remedies available to the parties, including the right to bring a claim for breach of contract, if the Initial Threshold is not satisfied by the Longstop Date, [the Company [and [the Lead Investor][the Subscriber Majority]] shall be entitled to determine that this agreement shall terminate with effect from such determination (or such other specified date) and the parties shall have no further rights or obligations under this agreement, other than (i) accrued rights and obligations at that time; and (ii) the Company's obligations pursuant to clause 4.4(b).

[*NOTE: ALTERNATIVE TO CLAUSES 4.2 – 4.5*:

*Upon receipt by the Company of all of the subscription monies to be paid in accordance with clause 4.1 the Company shall issue [(i)] the New Shares listed in the table in clause 3.1 to each Investor [and (ii) the New Shares listed in the table in clause 3.2 to each Equity Securities Holder][[18]](#footnote-18) credited as fully paid and enter the relevant Investor’s name in the register of members in respect of such New Shares and execute and deliver to such Investor a certificate in respect of such New Shares (“****Initial Completion****”). If an Investor has not complied with its obligations under clause 4.1 by the Longstop Date (each such Investor being a “****Defaulting Investor****”), the Company and [the Lead Investor][Subscriber Majority] may agree to proceed to Initial Completion as between all parties other than the Defaulting Investor(s), with completion between the Company and the Defaulting Investor(s) occurring once the Defaulting Investor(s) has complied with its obligations (each, a "****Subsequent Completion****")*. *The Company may immediately by written notice terminate a Defaulting Investor’s right to invest after the Longstop Date*.][[19]](#footnote-19)

### Within 30 days following Initial Completion ([and][or] the final Subsequent Completion (if applicable)), the Company shall deliver to each Investor who has completed their subscription for New Shares a capitalisation table of the Company as of the last such completion including details of all: (i) issued Shares; (ii) options, both allocated and unallocated under the Share Incentive Plan(s); (iii) warrants; and (iv) any and all other rights to subscribe for shares or convertible securities, if any.

### [If any transaction contemplated by this agreement is called-in under the NSIA, or is the subject of any other regulatory investigation, or if [an Investor]/[a Subscriber Majority] reasonably believes the Company should take any action in relation to the NSIA or in connection with any other regulatory investigation, the Company undertakes to the Investors to, and shall procure that the Founders shall (so far as it lies within their respective power to do so), promptly execute and deliver such documents, provide such assistance to the Investors and perform such acts as may reasonably be required by the Investors or requested by any regulatory body in relation to such matters.]

# **Warranties****[[20]](#footnote-20)**

## The Company warrants to the Investors that each and every Warranty is true, accurate and not misleading at the Execution Date subject only to:

### the matters Disclosed; and

### any exceptions expressly provided for under this agreement.

## Each Warranty is a separate and independent warranty, and, save as otherwise expressly provided, no Warranty shall be limited by reference to any other Warranty or by the other terms of this agreement and the Disclosure Letter. [The Investors who subscribe for Additional New Shares pursuant to clause 3.4 after the Execution Date shall benefit from the Warranties as if they were parties to this agreement on the Execution Date.]

## The rights and remedies of the Investors in respect of any breach of any of the Warranties shall not be affected by Initial Completion or any Subsequent Completions [or any additional completions pursuant to clause 3.4], any investigation made by or on behalf of the Investors into the affairs of the Company or any other event or matter whatsoever which otherwise might have affected such rights and remedies except a specific and duly authorised written waiver or release.

## [No information relating to the Company of which the Investors have knowledge (actual or constructive) other than by reason of it being Disclosed in accordance with clause 5.1(a) shall prejudice any Claim which the Investors shall be entitled to bring or shall operate to reduce any amount recoverable by the Investors under this agreement.]

## Where any Warranty is qualified by the expression "**so far as the Company is aware**" or words having similar effect, such Warranty shall be deemed to include a statement that such awareness means the actual knowledge of each Founder and each executive director of the Company (who is not a Founder) [and also such knowledge which the Company would have had if it made reasonable enquiry of each of [●], [●] and [●]].

## The Investors agree among themselves that the following provisions shall (unless they subsequently agree amongst themselves to the contrary acting by way of [a New Shares Majority]) apply in relation to the bringing of any Claim:

### no Claim shall be brought by any of the Investors without the prior written consent of the [Lead Investor][New Shares Majority];

### the costs incurred by any Investors in bringing a Claim shall be borne by all of the Investors proportionately to the amounts subscribed by each of them for New Shares pursuant to this agreement; and

### any damages obtained as a result of any Claim will, after deduction of all costs and expenses, be divided amongst the Investors in such proportions.

Any Investor shall be entitled to waive its right to bring and/or participate in a Claim at any time prior to the issue of proceedings with the consequence that it shall not be liable to bear its proportion of the costs referred to in (b) above (which costs per Investor shall increase rateably for the remaining Investors) nor entitled to any of the damages referred to in (c) above. In such circumstances, the aggregate limitation of liability of the Company for such Claim under clause 6.3 shall be reduced by an amount equal to the amount subscribed for the New Shares by such Investor.

# **Limitations on Claims**

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

### the consequence of fraud, dishonesty, wilful concealment or wilful misrepresentation by or on behalf of the Company; or

### which is a result of a breach of the Warranties set out in paragraphs 1.1 or 1.2 of Schedule 5.

## No Claim may be made against the Company unless written notice of such Claim is served on the Company, giving reasonable details of the Claim, within the [18] month period after the Warranties were last given.

## The aggregate liability of the Company in respect of all and any Claims shall be limited (subject to clause 5.6) to an amount equal to the aggregate amount subscribed for the New Shares by the Investors pursuant to this agreement [together with the proper and reasonable costs of recovery in respect of any Claim incurred by or on behalf of the Investors.]

## Without prejudice to the overall cap set out in clause 6.3 above, in respect of any Claim(s) that is or are brought by only some Investors, the aggregate liability of the Company in respect of all such Claims shall be limited to an amount equal tothe aggregate amount subscribed for the New Shares pursuant to this agreement by those Investors bringing the Claim(s) [together with the proper and reasonable costs of recovery in respect of any Claim incurred by or on behalf of such Investors.]

## No liability of the Company in respect of any breach of any Warranty shall arise:

### if such breach occurs [or to the extent that the liability is increased] by reason of any matter which would not have arisen but for the coming into force of any legislation not in force at the Execution Date or by reason of any change to existing legislation, HMRC’s practice (or that of any other Taxing Authority) or in rates of Taxation occurring after the Execution Date;

### to the extent that specific allowance, provision or reserve has been made in the Accounts or in the Management Accounts in respect of the matter to which such liability relates; and/or

### to the extent that such breach or claim arises as a result of any change in the accounting bases or policies in accordance with which the Company values its assets or calculate its liabilities or any other change in accounting practice from the treatment or application of the same used in preparing the Accounts (save to the extent that such changes are required to correct errors or because relevant generally accepted accounting principles have not been complied with).

## The Investors shall be entitled to make a Claim in respect of liability which is contingent or unascertained provided that written notice of the Claim (giving as far as practical the amount and details of the Claim) is given to the Company before the expiry of the relevant periods specified in clause 6.2 and the Company shall not be liable to make any payment in respect of such Claim unless and until the liability becomes an actual liability or (as the case may be) becomes capable of being quantified.

## Nothing in this agreement shall prejudice each Investor’s duty under common law to mitigate any loss or liability which is the subject of a Claim.

# **Announcements**

## Except in accordance with clause 7.2, the parties shall not make any public announcement or issue a press release or respond to any enquiry from the press or other media concerning or relating to this agreement or its subject matter (including but not limited to the Investors' investment in the Company) or any ancillary matter.

## Notwithstanding clause 7.1, any party (or in the case of an Investor, the general partner or investment manager of such Investor) may:

### make any press release to the effect that it has made an investment in the Company and/or that it is a shareholder in the Company without obtaining the prior approval of any other parties [(provided the Company has first made a press release announcing the round)];

### make or permit to be made an announcement concerning or relating to this agreement or its subject matter or any ancillary matter with: (A) the prior written approval of a New Shares Majority and the Board or (B) if and to the extent required by:

#### law;

#### any securities exchange on which such party’s securities are listed or traded;

#### 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

#### any court order.

# **Costs and expenses**

## The Company shall pay [on the date of Initial Completion][after the date of Initial Completion and within two Business Days of having received copies of relevant invoices] all legal, accounting and due diligence fees and disbursements of [the Lead Investor][[21]](#footnote-21) in relation to the negotiation, preparation, execution, performance and implementation of this agreement and each document referred to in it and other agreements forming part of the transaction [up to a maximum aggregate amount of £[●] [plus VAT and disbursements, in each case, to the extent applicable]].[[22]](#footnote-22)

## Save as set out in clause 8.1, the parties shall bear their own costs and disbursements incurred in the negotiations leading up to and in the preparation of this agreement and of matters incidental to this agreement.

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

## 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**

## 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 it has 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 and the documents referred to or incorporated in this agreement.

## Without limiting the generality of the foregoing, each of the parties irrevocably and unconditionally waives any right or remedy it may have to claim damages and/or to rescind this agreement by reason of any misrepresentation (other than a fraudulent misrepresentation) having been made to it by any person (whether party or not) and upon which it has relied in entering into this agreement.

## Each of the parties acknowledges and agrees that the only cause of action available to it under the terms of this agreement and the documents referred to or incorporated in this agreement in respect of a Claim shall be for breach of contract.

## Other than in respect of a Claim, each of the parties acknowledges and agrees that damages alone may not be an adequate remedy for the breach of any of the undertakings or obligations as set out in this agreement. Accordingly, without prejudice to any other rights and remedies the parties may have, the parties shall be entitled to seek the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement.

## 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**

## [Subject to clause 4.3,][[23]](#footnote-23) all and any of the provisions of this agreement may be deleted, varied, supplemented, amended and restated or otherwise changed in any way at any time with the prior written consent of the Company and the [Lead Investor][New Shares Majority], in which event such change(s) shall be binding against all of the parties hereto provided that if any such change would impose any new obligations on a party, vary or remove an express contractual right of a party under this agreement or increase any existing obligation under this agreement on a party, the consent of any affected party to such change shall be specifically required.

## This agreement may be terminated with the prior written consent of the Company and the [Lead Investor][New Shares Majority], in which event such termination shall be binding against all of the parties hereto save that nothing in this clause shall release any party from liability for breaches of this agreement which occurred prior to its termination provided that if a party has an express contractual right under this agreement that is not incorporated into any replacement or successor subscription agreement, that party's consent shall be specifically required for the termination of that right.

# **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 clause 14.3, 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 14.1 shall be ineffective.

## An Investor may assign the whole or part of any of its rights in this agreement to any person who has received a transfer of New Shares from such Investor in accordance with the New Articles and has executed a Subscription Adherence Agreement.

# **Rights of third parties**

## Subject to clause 15.2, this agreement does not confer any rights on any person or party (other than the parties to this agreement) pursuant to the Contracts (Rights of Third Parties) Act 1999.

## The general partner of an Investor (or any Member of the same Fund Group (as defined in the Articles) of an Investor) or the management company authorised from time to time to act on behalf of that Investor or another person or persons nominated by that Investor, shall be entitled to enforce all of the rights and benefits of such Investor under this agreement at all times as if party to this agreement.

# **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.

## [This agreement [shall][may, by agreement of the Company and the [Lead Investor][New Shares Majority]] be dated and be duly executed and delivered and become legally binding when it has been executed and delivered by the Company and the Investors subscribing for New Shares under clause 3.1 (the "**Requisite Parties**"), notwithstanding that this agreement may not then have been executed by each person specified as a signatory hereto.

## If the circumstances contemplated by clause 16.2 apply and without prejudice to clause 16.4:

## 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;

## the New Shares listed in the table in clause 3.2 shall be issued to the Equity Securities Holders upon Initial Completion in accordance with clause 4.2 and the terms of the Equity Securities Agreements notwithstanding that this agreement may not then have been executed by each Equity Securities Holder;

## each Equity Securities Holder shall become a party to this agreement as an Investor and among other things be bound by the waiver set out clause 3.3 and receive the benefit of the Warranties given pursuant to clause 5 upon entering into a Subscription Adherence Agreement or such other agreement (agreeable to the Company) pursuant to which such Equity Securities Holder agrees to become a party to this agreement (provided that, for the avoidance of doubt, the Warranties shall be given only as of the Execution Date and not the date of entry into such Subscription Adherence Agreement or other agreement); and

## the Company agrees to use its reasonable endeavours to procure that all those Equity Securities Holders who have not executed this agreement enter into Subscription Adherence Agreements or execute a counterpart signature to this agreement or such other agreement (agreeable to the Company) pursuant to which such persons agree to be become parties to this agreement as soon as reasonably practicable after the date of this agreement.][[24]](#footnote-24)

## The exchange of [a fully executed version of] this agreement [executed by 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 email address] shown in Schedule 2; or

### to an Investor at the address [or to the email address] of that Investor shown in Schedule 1,

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

## A communication sent according to clause 17.1 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 9:30 am on the second of such Business Days.

# **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 Investors**

## 21.1 Each Investor acknowledges to the other Investors that such Investor is not relying upon any person, firm, or corporation, other than the Company and its officers and directors (other than the Investor Directors), in making its investment or decision to invest in the Company. Each Investor agrees that no Investor, no respective Affiliates of any Investor and no Investor Directors shall be liable to any of the other Investors, or any of the Investors in the case of the Investor Directors, for any action taken or omitted to be taken by any of them in connection with the transactions described or contemplated in this agreement.

21.2 [Each Investor confirms to the Company that it falls within one of the exemptions contained in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (as amended) relating to the experience or wealth of the Investor (such as are contained in articles 19(5), 48 or 49(2) of such Order) and acknowledges and agrees that this agreement is only directed at and may be acted upon only by such persons, or, to the extent the Investor is based outside of the United Kingdom, confirms that it is not subject to such restrictions.]

# **Regulatory matters**

No Investor or general partner of any Investor or management company authorised from time to time to act on behalf of any Investor is acting for or advising any other party to the transaction that is the subject of this agreement or undertaking any other activity in relation to that other party that implies in any way that the other party is a client and accordingly no such Investor, general partner of any Investor and/or management company of any Investor (as appropriate) shall be responsible to any other party for providing any protection afforded to any client (as defined in the Glossary to the FCA Handbook of rules and guidance) for any Investor.

**[*Note: See Appendix B if there are US Investors*]**

Schedule 1  
The Investors

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

\*being the Equity Securities Holders[[25]](#footnote-25)

Schedule 2  
Particulars

Part 1

Particulars of the Company

|  |  |
| --- | --- |
| Registered number: |  |
| Registered office: |  |
| [Email address for service of notices:] |  |
| Directors: |  |
| Secretary: |  |
| Accounting reference date: |  |
| Charges: |  |
| Auditors: |  |
| Issued share capital (including Treasury Shares): |  |

**Part** **2**

**Particulars of the [Subsidiary] [Subsidiaries]**

|  |  |
| --- | --- |
| Name of company: |  |
| Registered number: |  |
| Registered office: |  |
| Directors: |  |
| Secretary: |  |
| Accounting reference date: |  |
| Charges: |  |
| Auditors: |  |
| Issued share capital (including Treasury Shares): |  |

Schedule 3  
Members of the Company – pre - Initial Completion

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

Schedule 4  
Execution Conditions

* 1. The passing of directors’ and Shareholders’ resolutions in the agreed form at a duly convened Board meeting or by written resolutions of the Board and a general meeting of the Company or by Shareholders’ written resolution to:
     + 1. authorise the allotment of the New Shares [and the maximum number of [Ordinary Shares] reserved for issuance pursuant to the Share Incentive Plan(s)];
       2. waive pre-emption rights in respect of the allotment and issue of the New Shares; and
       3. adopt the New Articles.
  2. The Company will procure that a meeting of the Board be held or Board resolutions shall be passed at or in which the Board shall:
     + 1. approve and authorise the execution by the Company of this agreement, the Shareholders' Agreement, the Disclosure Letter[, the Service Agreements][, the IP Assignments] [and the Indemnification Agreement];
       2. subject to clauses 4.2 to 4.5 (inclusive), approve the issue to each Investor of the New Shares listed against its name in the table set out in clause[s] 3.1 [and 3.2] credited as fully paid and enter its name in the register of members in respect of such New Shares and execute and deliver to such Investor a certificate in respect of such New Shares;
       3. [accept the resignations of each of [●] and [●] as directors of the Company;]
       4. appoint [●] and [●] as Investor Directors;
       5. and
       6. pass any such other resolutions as may be required to carry out the obligations of the Company under this agreement.
  3. [The Company shall, and shall procure that each of the Founders shall, enter into the Service Agreements and the IP Assignments.]
  4. The Company and each of the Investors shall, and the Company shall procure that the Founders shall, enter into the Shareholders' Agreement.
  5. [The Company shall enter into the Indemnification Agreement.]
  6. The delivery to the Investors of the Accounts, the Management Accounts and the Initial Business Plan.
  7. [The delivery to the Investors of questionnaires in the agreed form relating to each of the Founders duly completed.]
  8. [The delivery to the [Lead Investor][Investors] of the requested checks duly completed for the purposes of their anti-money laundering requirements in respect of their investment pursuant to this agreement.]
  9. [Keyperson and critical illness insurance having been effected in the sum of £[●] for the benefit of the Company on the life and health of [●] on such terms as shall be approved by the [Lead Investor][Investors].][[26]](#footnote-26)
  10. [Directors’ and officers’ liability insurance having been effected in the sum of £[●] on such terms as shall be approved by the [Lead Investor][Investors].][[27]](#footnote-27)
  11. Delivery to the Investors of the Disclosure Letter.[[28]](#footnote-28)
  12. [Receipt by the [VCT Manager and/or EIS Manager] of an opinion from [●] that they expect HMRC would confirm that the Company is a qualifying company for the purpose of section 180 ITA, that HMRC would be able to authorise the Company to issue certificates under section 204 ITA in relation to the EIS Shares and that the [*Note:* *insert class*] Shares to be issued to the VCT Investor pursuant to this agreement ought, upon issue, to constitute qualifying holdings under Chapter 4 of Part 6 of ITA and be “eligible shares” as defined in section 285(3A) ITA];[[29]](#footnote-29)

Schedule 5  
Execution Date Warranties[[30]](#footnote-30)

* 1. **Share capital and authority**
     1. The Founders are the legal and beneficial owners of the number of Ordinary Shares set opposite their respective names in Schedule 3. All of the shares set out in Schedule 3 are fully paid and comprise the entire issued share capital of the Company.
     2. The Company has reserved [●] Ordinary Shares for issuance to its directors, employees, Workers and consultants pursuant to the Share Incentive Plan. Of such reserved Ordinary Shares, options over [●] Ordinary Shares have been granted and are currently outstanding or have agreed to be granted or have been promised (orally or in writing) and options over [●] Ordinary Shares remain available for grant to its directors, employees, Workers and consultants pursuant to the Share Incentive Plan.
     3. The options over Ordinary Shares held by each director, employee, Worker and consultant of the Company:
        1. [are subject to lapse or forfeiture in the event such director, employee, Worker or consultant is dismissed or terminated for gross misconduct, fraud, dishonesty or being convicted of any criminal offence (other than a road traffic offence which is not punishable by a custodial sentence);]
        2. vest over at least a period of four years from the date of grant, with no options vesting in the first 12 months following the date of grant;
        3. are not subject to any provisions for the acceleration of vesting or other changes in the vesting provisions applying to them upon the occurrence of any event or combination of events, including upon a change of control of the Company; and
        4. were granted pursuant to the Share Incentive Plan on materially the same terms as the relevant template share option agreement scheduled to the Disclosure Letter.
     4. Except as referred to in warranty statement 1.2:
        1. so far as the Company is aware, none of the issued share capital of the Company is subject to any Encumbrance;
        2. no options, warrants or other rights to subscribe for new shares in the Company have been granted or agreed to be granted or have been promised (orally or in writing), in each case by the Company; and
        3. no dividends or other rights or benefits have been declared, made or paid or agreed to be declared, made or paid by the Company.
     5. The execution and delivery by the Company of this agreement and the documents referred to in it, and compliance with their respective terms, shall not breach or constitute a default under the Company's articles of association, or any other agreement or instrument to which the Company is a party or by which the Company is bound, and shall not constitute a breach under any order, judgment, decree or other restriction applicable to the Company.
  2. **Information**
     1. The information contained in Schedules 2, 3 and 6 is true, complete and accurate and not misleading.
     2. The respective replies to the questionnaires referred to in paragraph 7 of Schedule 4 [and to the anti-money laundering checks referred to in paragraph 8 of Schedule 4] are, at the Execution Date true, accurate and not misleading.
  3. **Initial Business Plan**
     1. The Initial Business Plan has been diligently prepared and the Company believes that, as at the Execution Date, it represents a realistic plan in relation to the future progress, expansion and development of the Business.
     2. All factual information contained in the Initial Business Plan was when given and, so far as the Company is aware, is at the Execution Date, true and accurate in all material respects and not misleading.
     3. The financial forecasts, projections or estimates contained in the Initial Business Plan have been diligently prepared in good faith and, so far as the Company is aware, have not been disproved in the light of any events or circumstances which have arisen subsequent to the preparation of the Initial Business Plan up to the Execution Date.
  4. **Accounts**

The Accounts have been prepared in accordance with accounting principles, standards and practices which are generally accepted in the United Kingdom as at the Accounts Date [and on the same basis and in accordance with the same accounting policies as the corresponding accounts [for the preceding three financial years] [since the incorporation of the Company] (save as disclosed in the Accounts or such corresponding accounts)], comply with the requirements of the Act and give a true and fair view of the state of affairs of the Company at the Accounts Date and of the profits and losses for the period concerned.

* 1. **Management Accounts**

The Management Accounts:

* + - 1. have been prepared in accordance with good accounting practice on a basis consistent with that upon which the management accounts of the Company for the period to the Accounts Date were prepared;
      2. (having regard for the purpose for which they were prepared and the information known to the Company at the date on which they were prepared) reasonably reflect the financial affairs of the Company at the date to which they have been prepared and its results for the period covered by the Management Accounts; and
      3. are not inaccurate or misleading in any material respect.
  1. **Events since the Management Accounts Date**

Since the Management Accounts Date as regards the Company:

* + - 1. its business has been carried on in the ordinary course and so as to maintain the same as a going concern;
      2. it has not acquired or disposed of or agreed to acquire or dispose of any business or any material asset (other than trading stock in the ordinary course of the business carried on by it) or assumed or acquired any material liability (including a contingent liability);
      3. no dividend or other distribution (as defined by sections 1000, 1064 and 455, 459, and 460 of the CTA 2010) has been declared, made or paid to its members nor has it repaid any loan capital or other debenture;
      4. no change has been made (or agreed to be made) in the emoluments or other terms of employment of any of its directors nor has it paid any bonus or special remuneration to any of its directors;
      5. it has not borrowed monies (except in the ordinary course of the business carried on by it or from its bankers under agreed loan facilities);
      6. there has not been any material deterioration in the financial position or prospects of the Business (whether in consequence of normal trading or otherwise);
      7. no employee at management grade or in a senior capacity has been dismissed or made redundant nor has the Company taken or omitted to take any action which would entitle any such employee to claim that they have been constructively dismissed; and
      8. it has not incurred any material liabilities or obligations, contingent or otherwise, other than:
         1. liabilities and obligations incurred in the ordinary course of business since the Management Accounts Date; or
         2. liabilities and obligations that would not be required under accounting principles, standards and practices which are generally accepted in the United Kingdom to be disclosed on a balance sheet of the Company if one were prepared as of the Execution Date.
  1. **Taxation**
     1. The Company has properly, duly and punctually made all returns and given or delivered all notices, accounts and information, in each case relating to Taxation, which it was obliged to make, give or deliver and is not and has not been involved in any dispute with any Taxing Authority concerning any matter likely to affect in any way the liability (whether accrued, contingent or future) of it to Taxation and the Company is not aware of any matter which may lead to such dispute.
     2. The Company has duly paid or fully provided for all Taxation (including deferred tax) for which it is liable and the Company is not aware of any circumstances in which interest or penalties in respect of Taxation not duly paid could be charged against it in respect of any period prior to the Execution Date.
     3. All Taxation due in respect of payments made by the Company to any person, which ought to have been made under deduction or reduction of Taxation, has been properly deducted and accounted for to the appropriate Taxing Authority from all such payments made.
     4. All documents to which the Company is a party or which form part of the Company’s title to any asset owned or possessed by it or which the Company may need to enforce or produce in evidence in the courts of the United Kingdom have been duly stamped and (where appropriate) adjudicated.
     5. Save pursuant to and in accordance with the Share Incentive Plan, no directors, officers or employees of the Company have received any securities, interests in securities or securities options in the Company as defined in Part 7 of ITEPA.
     6. No directors, employees or officers of the Company have received any securities or interests in securities in a form which is or could be treated as a "**readily convertible asset**" as defined in section 702 of ITEPA.
     7. All directors, officers or employees of the Company who have received any securities or interests in securities falling within Chapter 2 of Part 7 of ITEPA have entered into elections jointly with the Company under section 431(1) of ITEPA within the statutory time limit and details of any such directors, officers or employees and the elections entered into are provided in the Disclosure Letter.
     8. No distribution within section 1064 of the CTA 2010 has been made by the Company and no loan or advance within sections 455, 459 and 460 of the CTA 2010 has been made (and remains outstanding) or agreed to, by the Company, and the Company has not, since the Accounts Date, released or written off the whole or part of the debt in respect of any such loan or advance.
     9. All acquisitions or disposals of assets by the Company and all supplies of services by and to the Company have occurred at arm’s length between unconnected persons and for a consideration in cash at market value.
     10. The Company is registered for the purposes of the VATA (and has not at any time been treated as a member of a group of companies for such purpose). The Company has complied with all statutory provisions, regulations and notices relating to VAT and all other revenue or sales-based Taxation in all jurisdictions in which it operates and has duly and punctually accounted for and/or paid the relevant Taxing Authority all amounts of VAT and other revenue or sales-based Taxation for which it was obliged to have so accounted and/or paid.
     11. The Company has not entered into or been a party to any schemes or arrangements designed partly or wholly for the purpose of it or any other person avoiding Taxation.
     12. So far as the Company is aware, no person acting in the capacity of an Associated Person (as defined in section 44(4) of the Criminal Finances Act 2017) of the Company has committed any UK tax evasion facilitation offence within the meaning of section 45(5) of the Criminal Finances Act 2017 or any foreign tax evasion facilitation offence within the meaning of section 46(6) of the Criminal Finances Act 2017.

*[United States Taxation**[[31]](#footnote-31)*

* + 1. The Company has never filed IRS Form 8832 (or any IRS successor form) with the United States Internal Revenue Service (the “**IRS**”) electing an “entity classification” for United States tax purposes;
    2. The Company is not, in its jurisdiction of tax residence, treated as a fiscally transparent entity.
    3. The Company has never filed United States federal income tax returns or state tax returns in any state in the United States.
    4. The Company does not have, and has never had, a Subsidiary that was formed in any state in the United States (a “**US Subsidiary**”) or if the Company has a US Subsidiary that US Subsidiary was formed by the Company and has, at all times, been wholly-owned by the Company.
    5. The Company has never filed an election with the IRS electing to become subject to United States tax.]
  1. **Litigation**
     1. Neither the Company [nor, so far as the Company is aware, any person for whose acts and defaults it may be vicariously liable,] is at present engaged whether as claimant, defendant or otherwise in any legal action, proceeding or arbitration which is either in progress or is threatened or, so far as the Company is aware, is pending (other than as claimant in the collection of debts arising in the ordinary course of the business carried on by it none of which exceeds £[1,000] and which do not exceed £[5,000] in aggregate) or is being prosecuted for any criminal offence and no governmental, regulatory or official investigation or inquiry concerning the Company is threatened or in progress or, so far as the Company is aware, pending.
     2. There are no circumstances known to the Company likely to lead to any such claim or legal action, proceeding or arbitration, prosecution, investigation or inquiry.
     3. Neither the Company nor, so far as the Company is aware, any of the Founders or any person acting for or on behalf of the Company is being prosecuted for an offence, nor, so far as the Company is aware, are they or have they been the subject of any investigation, or inquiry by, or on behalf of, any governmental, administrative or regulatory authority, in respect of any offence or alleged offence, under the Bribery Act 2010 or under applicable anti-corruption laws or regulations of any other jurisdiction, and there are no circumstances known to the Company likely to give rise to any such prosecution, investigation or inquiry.
  2. **Properties**
     1. Other than occupancy pursuant to short-term lease or licence arrangements entered upon normal market terms, the Company does not have any interest in any real property.
     2. Schedule 6 sets out the following details in respect of any real property the Company leases or licenses: (i) the name of the lessor or licensor; (ii) the title and date of the lease agreement or license; (iii) the postal address of the property; and (iv) the monthly rent or licence fee.
     3. The Company is in material compliance with all leases and licences in respect of the Properties and holds a valid leasehold interest or licence (as applicable) free of any Encumbrances other than those of the lessors of such properties.
     4. There are no outstanding liabilities (actual, anticipated or contingent) in relation to any of the Properties (including, outstanding rent reviews and future duties to reinstate alterations) or in relation to any property formerly owned or occupied by the Company.
  3. **Intellectual Property**

In this agreement:

"**Business IP**"means all Intellectual Property which has been used, or which is held by the Company and intended to be used in, or in connection with, the Business conducted by the Company;

“**Company’s Know How**” means all Know How owned or controlled by the Company or used by the Company in, or in connection with, the Business conducted by the Company;

"**IP Agreements**" means all material licences, agreements and arrangements relating to the Business IP entered into by the Company in respect of which the Company is a licensor, a licensee or otherwise a party;

"**License Patents**" means all Patents licensed to the Company; and

"**Owned Business IP**" means all Business IP owned by the Company or which the Company purports to own.

* + 1. The Company has taken all reasonable steps necessary or reasonably desirable (given the stage and resources of the Company) for the protection of the Company Know-How and Owned Business IP.
    2. The Company has not granted any license or other rights to third parties which would permit such third party to commercially exploit (other than for the benefit of the Company) any Owned Business IP or Company Know-How, other than non-exclusive rights granted in respect of commercially available products under standard end-user license terms.
    3. So far as the Company is aware:
       1. there is no Intellectual Property within the ownership or control of any Founder [or [*other names, if relevant*]] that is necessary for the Company to conduct the Business in the manner in which the Business is currently conducted and as proposed to be conducted in accordance with the Initial Business Plan;
       2. the activities proposed to be conducted by the Company in accordance with the Initial Business Plan are not expected to infringe or make unauthorised use of the Intellectual Property owned or controlled by any person; and
       3. no person has infringed, misappropriated or made unauthorised use of, or is infringing, misappropriating or making unauthorised use of, the Business IP or other Intellectual Property, including the Business IP, owned or controlled by the Company or the Licensed Patents.
    4. The Company has not infringed or made unauthorised use of, or is infringing or making unauthorised use of, the Intellectual Property owned or controlled by any person.
    5. The Company has not received any written notice (nor has it otherwise received express and specific notice not in writing) alleging that the Company has infringed or made unauthorised use of the Intellectual Property of any other person.
    6. The Business IP comprises all rights and interests in Intellectual Property necessary for the carrying on of the Business of the Company in the manner and to the extent to which it is presently conducted by the Company or[, subject to the acquisition by the Company (whether through the conduct of research and development activities, in-license, purchase or otherwise) of further Intellectual Property as contemplated by the Initial Business Plan,][[32]](#footnote-32) which, to the best of the Company’s reasonable belief, are likely to be material to the Business of the Company in order for it to carry on the Business in the manner contemplated in the Initial Business Plan.
    7. All Business IP:
       1. is (or in the case of applications will be, subject to the same being granted) legally and beneficially vested exclusively in the Company; or
       2. is licensed to the Company by third parties by way of a written agreement and/or licence which enables the Company to use, commercialize and otherwise exploit the Intellectual Property as it requires in the ordinary course of its Business; or
       3. in the case of Company Know-How, has been made available to the Company on terms that permit the Company to use, commercialize and otherwise exploit such Company Know-How as it requires in the ordinary course of its Business.
    8. Each employee, Worker and consultant of the Company has entered into agreements with the Company, which assign to the Company the ownership of any and all Intellectual Property created by the employee, Worker or consultant in the course of and during the term of the employee's employment or the Worker or consultant's engagement with the Company and require the employee, Worker or consultant to assign the ownership of all such Intellectual Property to the Company in so far as ownership of such Intellectual Property is not already vested in the Company.
    9. All Owned Business IP which is registered in the name of the Company, or in respect of which the Company has made application for registration, is:
       1. legally and beneficially vested in the Company; and
       2. so far as the Company is aware, valid and enforceable and not subject to any claims of opposition from any third party.
    10. All renewal fees in respect of any Owned Business IP registered or applied for in the name of the Company, and as far as the Company is aware in respect of any Licensed Patents, have been duly paid on or before the date due for payment, and all other steps required for the maintenance and protection of such Owned Business IP and Licensed Patents have been taken, in any jurisdiction in which it is registered.
    11. So far as the Company is aware:
        1. nothing has been done or omitted to be done by any person whereby any Business IP has ceased or might cease to be valid and enforceable or whereby any person is or will be able to seek cancellation, rectification or any other modification of any registration of any Business IP; and
        2. no person has registered or applied to register in any country any invention, topography, copyright work, design, trade or service mark or name, Know-How or other Intellectual Property, made, or claimed to be owned, by the Company.
    12. None of the Owned Business IP and, so far as the Company is aware, any Licensed Patents is subject to any re-examination or opposition (challenging any claim of validity, enforceability or otherwise), interference, entitlement, revocation or other proceedings nor, so far as the Company is aware, have any threats of such proceedings been, or do grounds exist which, so far as the Company is aware, are reasonably likely to result in any such proceedings being, made.
    13. None of the Owned Business IP, Company Know-How and, so far as the Company is aware, any Licensed Patents is subject to any Encumbrance, licence, estoppel or authority or similar right in favour of any other person which right does (or would if enforced) prevent the Company from using, commercializing and/or otherwise exploiting such Intellectual Property in the ordinary course of its Business, except as set out in the Disclosure Letter, no written claims have been received by the Company, and so far as the Company is aware, the Company’s licensees and/or licensors which might be material to the truth and accuracy of any of the above.
    14. So far as the Company is aware, no moral rights have been asserted which would affect the use of any Owned Business IP.
    15. All IP Agreements have been entered into in the ordinary course of business, are in full force and effect and no notice has been given on either side to terminate any of them; and, so far as the Company is aware, the obligations of all parties under each of the same have been materially complied with and no disputes exist in respect of any of them.
    16. No written notice (or so far as the Company is aware, other form of notification, if valid for the purposes of the relevant IP Agreement) has been given by any person to terminate any IP Agreement and the Company is not in material breach of any IP Agreement and, so far as the Company is aware, nor is any other party under an IP Agreement, and no material disputes exist in respect of any IP Agreement.
    17. So far as the Company is aware, neither entering into nor compliance with this agreement, is likely to result in a breach of, or give any third party a right to terminate or vary any IP Agreement.
    18. The Company has not misused or knowingly disclosed or permitted to be misused or disclosed to any person (other than disclosure to the Investors and to their agents, employees or professional advisers) any Company Know-How, trade secrets, confidential information or lists of customers or suppliers, except properly and in the ordinary course of business to recipients who are under a duty owed to the Company, and on the basis that such disclosure is to be treated as confidential.
    19. So far as the Company is aware, there are no third party claims that any domain name registered by the Company is in infringement of a third party’s domain name or other Intellectual Property rights.
  1. **Business Systems**

For the purposes of this paragraph 11:

**"Cloud Infrastructure"** means any information technology services and/or systems provided to or accessed by the Company over the internet which are necessary for the Company to conduct its business;

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

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

"**Computer Software**" means the computer programs owned by or licensed to the Company; and

**"Computer System**" means the Computer Hardware, Computer Data and Computer Software, but in each case excluding the Cloud Infrastructure.

* + 1. Together, the Computer System and the Cloud Infrastructure comprise all computer hardware, firmware, and software (including source code and object code) which are necessary to enable the Company to carry on its business.
    2. The Company is the legal and beneficial owner free from Encumbrances of the Computer System and, so far as the Company is aware, no other person has any claims or rights in respect of any element of the Computer System, and no such claims have been asserted in writing to the Company. The Company has in place adequate back-up, disaster recovery and other systems and procedures to enable its business to continue without material adverse change in the event of a failure of the Computer System. The Computer System:
       1. is not wholly or partly dependent on any facilities which are not under the exclusive ownership or control of the Company;
       2. has been and is being properly and regularly maintained and replaced and has the benefit of appropriate maintenance and support agreements; and
       3. has the capacity and is of a suitable technical specification necessary to fulfil the present requirements of the business of the Company and any reasonably foreseeable requirements contemplated in the Initial Business Plan.
    3. No Company Product contains, is derived from, is distributed with, or is being or was developed using Open Source Code that is licensed under any terms that:
       1. impose a requirement or condition that any Company Product or part thereof:
          1. be disclosed or distributed in source code form;
          2. be licensed for the purpose of making modifications or derivative works; or
          3. be redistributable at no charge; or
       2. otherwise impose any other material limitation, restriction, or condition on the right or ability of the Company to use or distribute any Company Product or to enforce Intellectual Property.
    4. The Cloud Infrastructure:
       1. is provided to the Company by a reputable provider of the relevant services on generally available commercial terms;
       2. has not suffered any material outages, material periods of unscheduled downtime or other material periods of unavailability; and

has not, so far as the Company is aware, been affected by any breach or compromise in security or any incident where the Company’s data has been lost, destroyed, degraded, corrupted, accessed, transferred, processed or disclosed accidentally or in an unauthorised or unlawful way.

* 1. **Artificial Intelligence**

For the purposes of this paragraph 12:

“**AI Legislation**” means any applicable legislation relating to the use of AI Technologies[, including to the extent applicable, the EU AI Act].

“**AI Technologies**” means software that can for a given set of human-defined objectives, generate outputs such as content, predictions, recommendations, or decisions influencing the environments they interact with, and any machine learning, deep learning or other artificial intelligence technologies.

“**Company AI Activities**” means all activities undertaken (including the conduct of the Business and all services provided, or made available, to third parties) by the Group Companies that employ or make use of AI Technologies (and the term “**Company AI Activity**” shall be construed accordingly);

[“**EU AI Act**” means the regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828;]

“**Scraped Data**” means Training Data that was collected or generated using web scraping, web crawling, or web harvesting software or any software, service, tool or technology that turns the unstructured data found on the web into machine readable, structured data that is ready for analysis;

“**Third Party AI Product**” means any product or service of a third party that employs or makes use of AI Technologies; and

“**Training Data**” means training data, validation data, and test data or databases used to train or improve an algorithm.

* + 1. In respect of the Company AI Activities, [so far as the Company is aware], it is currently in compliance with AI Legislation in all material respects. Without limiting the foregoing:
       1. the Company AI Activities do not breach any applicable law, including the AI Legislation and Data Protection Legislation; and
       2. the Company has obtained and maintained with all permissions, registrations, consents, approvals and licences (including as appropriate, any conformity assessments);
    2. The Company has implemented, and complies with, appropriate policies and procedures to ensure that the Company AI Activities: (a) do not (i) produce inaccurate, biased or unfair results, (ii) pose a risk to any individual, or (iii) cause actual or suspected harm to individuals; and (b) are subject to appropriate human oversight.
    3. In respect of decisions made or facilitated by the relevant Company AI Activity, the Company: (a) retains information in human-readable form that explains or could be used to explain the decisions made or facilitated by the relevant Company AI Activity, and the Company maintains such information in a form that can be provided to regulators upon request; and (b) has complied in all material respects with the AI Legislation, and industry standards applicable to that Company AI Activity.
    4. The Group Companies have complied in all materially respects with all licence terms applicable to all third-party Training Data that is material to (a) the development of AI Technologies employed or used in Company AI Activities, or (b) the ongoing use, operation or improvement of such AI Technologies, including (i) the end user licence agreement or other terms that govern the Company's use of any application programming interface used to collect Training Data, and (ii) the website terms or other terms that govern the Group Companies’ collection and use of each Scraped Data.
    5. For each Third-Party AI Product that is used in the business of the Group Companies, the Group Companies have complied in all material respects with all license terms applicable to such Third-Party AI Product.
  1. **Assets, debts and stock**
     1. The Company has not granted any security over any part of its undertaking or assets.
     2. The assets and rights owned by, leased or licensed to the Company, together with any assets held under a finance lease, hire purchase agreement, rental agreement or credit sale agreement, comprise materially all of the assets and rights necessary for the Company to operate its business, as carried on at the Execution Date, and to fulfil all of its existing agreements and material commitments.
     3. All assets used by and all debts due to the Company or which have otherwise been represented by the Company as being its property or due to it or used or held for the purposes of its business are at the Execution Date its absolute property and none is the subject of any Encumbrance (save in respect of liens arising in the normal course of trading) or the subject of any factoring arrangement, hire-purchase, retention of title, conditional sale or credit sale agreement and, so far as the Company is aware, there are no material debts owing to the Company which are unlikely to be realised for their full value, subject to the Company’s ordinary course allowance for doubtful accounts.
     4. The present stock and work-in-progress of the Company is in good condition and is (or will be once completed) capable of being sold profitably.
     5. Each asset needed for the proper conduct of the Business is in good repair and working order (fair wear and tear excepted).
  2. **Contracts with connected persons**
     1. There are no loans made by the Company to any of its directors or Shareholders and/or any person connected with any of them and no debts or liabilities owing by the Company to any of its directors or Shareholders and/or any person connected with them as aforesaid.
     2. There are no existing or proposed contracts or arrangements (including any side letters) to which the Company is a party and in which any of its directors or Shareholders or proposed Shareholders and/or any person connected with any of them is interested (other than the Shareholders Agreement, such directors' contracts of employment and the Share Incentive Plan (in each case, as Disclosed)).
     3. There are no agreements between any of the Founders or between any of the Founders and the Company other than this agreement, the Shareholders' Agreement[, the Service Agreements and the IP Assignments] (in each case, as Disclosed).
     4. No Founder nor any person connected with a Founder owns any property used by the Company.
  3. **Employment and consultancy arrangements**
     1. A list of the jurisdictions in which the Company's employees, Workers and consultants are (so far as the Company is aware) ordinarily resident is Disclosed.
     2. Each employee, Worker and consultant of the Company is engaged on materially the same terms as the Company's relevant template agreement for such employee's, Worker's or consultant's respective employment classification and country of residence, copies of which are Disclosed.
     3. There are no agreements or other arrangements (binding or otherwise) or outstanding or anticipated claims or disputes between the Company and any trade union or other body representing all or any of the employees of the Company.
     4. The Company does not owe any amount to, nor does it have any outstanding obligations in respect of, any of its present or former directors, employees, Workers or consultants other than remuneration accrued during the month in which this agreement has been entered into.
     5. Save as set out in warranty statement 1.2 in relation to the Share Incentive Plan, there is not in existence nor is it proposed to introduce any share incentive, share option, profit sharing, bonus or other incentive arrangements for or affecting any employees, Workers or consultants of the Company, or any former employees, Workers or consultants of the Company.
     6. The engagement of each of the Company's employees, Workers and consultants may be terminated by [not more than [12] weeks' notice in the UK or] not more than the applicable statutory minimum notice period [elsewhere] given at any time without liability for any payment, compensation or damages. No gratuitous payment has been made or promised in connection with the actual or proposed termination or suspension of employment or variation of any contract of employment or of any contract for services of any present or former director, employee, Worker or consultant of the Company.
     7. No notice to terminate the contract of any employee, Worker or consultant of the Company (whether given by the Company or by the employee, Worker or consultant) is pending, outstanding or has been threatened in writing.
     8. [So far as the Company is aware,] No person has been or is employed as an employee or engaged as a Worker or consultant by the Company in breach of any applicable immigration law.
     9. The Company has obtained legal advice on the appropriate classification of its employees, Workers and consultants and has at all times acted in accordance with such advice.
     10. The Company does not engage any of its Workers or consultants via personal services companies.
     11. The Company does not engage any of its employees, Workers or consultants (directly or indirectly) using any employer-of-record or similar services.
     12. There are no outstanding or ongoing:
         1. proceedings or live disciplinary warnings in place whether or not brought under the Company’s grievance and disciplinary policy in relation to any of the Company’s directors, employees, Workers or consultants;
         2. actual or pending allegations, complaints or claims of workplace misconduct (including bullying, harassment, sexual harassment, theft, fraud) received or made by the Company concerning any of its directors, employees, Workers or consultants; or
         3. grievances, complaints, disputes, claims or legal proceedings brought or threatened [in writing] against the Company by any person currently or previously employed or engaged by the Company,

and there are no current facts or circumstances which, so far as the Company is aware, could lead to any of the above.

* + 1. So far as the Company is aware, the Company has at all times complied with its obligations under all applicable pensions laws and regulations and the documentation governing any pension schemes to which it contributes and/or participates.
    2. Save for defined contribution pension schemes for its employees, to which the Company contributes the minimum employer contributions required by law, the Company does not contribute to or participate in any pension scheme, nor has the Company incurred, will it incur or could it incur any liability or responsibility for or in relation to the provision of any pensions, allowances, lump sums gratuities or other like benefits on redundancy, retirement, withdrawal from service or on death or during periods of sickness or disablement or accident for or in respect of any director, former director, employee or former employee of the Company or any person who has at any time agreed to provide services to the Company or any dependents of any such persons and no proposals or announcements have been made about the introduction, continuance, variation of, or payment of any contribution towards the same.
  1. **Statutory and legal requirements**
     1. All statutory, municipal, governmental, court and other requirements applicable to the carrying on of the business of the Company, the formation, continuance in existence, creation and issue of securities, management, property or operation of the Company have been complied with, and all material permits, authorities, licences and consents have been obtained and all conditions applicable thereto complied with and so far as the Company is aware there are no circumstances which might lead to the suspension, alteration or cancellation of any such permits, authorities, licences or consents, nor is there any agreement which materially restricts the fields within which the Company may carry on its business.
     2. The Company has obtained all export licences required for all products, technology or services exported by or on behalf of the Company to or from any part of the world.
     3. The Company has not committed and is not liable for any criminal, illegal, unlawful, ultra vires or unauthorised act or statutory duty.
     4. No Founder:
        1. has been convicted of a criminal offence (except any road traffic offence not punished by a custodial sentence);
        2. has been disqualified from being a company director;
        3. has given, or offered to give, a disqualification undertaking under section 1A of the Company Directors Disqualification Act 1986;
        4. has been the subject of any bankruptcy or analogous proceeding and the Company is not aware of any facts or matters which it believes might give rise to any such proceedings; or
        5. is interested directly or indirectly in any business competing with the trade or business of the Company.
     5. No person, not being a director of the Company, has any actual or ostensible authority, whether under a power of attorney, agency agreement or otherwise, to commit the Company to any obligation other than an obligation of a nature which it is usual for it to incur in the ordinary course of its business.
     6. In respect of any Grant Funding provided to the Company, a summary of which is set out in the Disclosure Letter:
        1. the Company has complied in all respects with the terms and conditions on which any Grant Funding has been provided to the Company;
        2. the entry into this agreement and the fulfilment of the Initial Business Plan will not:
           1. breach any terms or conditions of any Grant Funding; and
           2. alter or abrogate any rights of the Company under any Grant Funding; and
        3. no Grant Funding will be terminated or be required to be repaid as a result of the entry into this agreement or the fulfilment of the Initial Business Plan.
  2. **Data protection**
     1. In respect of any personal data processed by the Company, [so far as the Company is aware], it is currently in compliance with the Data Protection Legislation in all material respects. In particular, the Company:
        1. has provided data subjects with appropriate privacy notices explaining its processing activities as required under the Data Protection Legislation and ensures that it processes personal data in a manner consistent with those notices;
        2. has a lawful basis for processing the personal data and if consent is being relied on, it ensures that such consent is freely given, specific, informed and clear and that the data subject has the ability to easily withdraw their consent in accordance with the Data Protection Legislation;
        3. has maintained records of all its personal data processing activities as required by the Data Protection Legislation;
        4. has implemented (and procured that any parties to which it transfers the personal data have implemented) appropriate measures to ensure the security of the personal data and to protect it from unauthorized or unlawful processing or accidental loss, destruction or damage (including the implementation of a security breach and disaster recovery plan made in accordance with good industry practice);
        5. has appointed a data protection officer, where required under Data Protection Legislation, and notified such appointment to the Information Commissioner’s Office;
        6. has in place appropriate measures to comply with any data subject requests submitted to it and has complied with and responded to all such requests within the time frame stipulated in the Data Protection Legislation;
        7. does not send unsolicited electronic marketing messages other than in accordance with the Data Protection Legislation and all other applicable codes of practice including obtaining any necessary consents;
        8. does not (and procures that any parties to which it transfers the personal data do not) transfer personal data outside of the European Economic Area or the United Kingdom other than as permitted under the Data Protection Legislation; and
        9. has paid the data protection fee to the Information Commissioner, where required under the Data Protection Legislation.
     2. With respect to Data Protection Legislation:
        1. the Company has not received and is not aware of a fact or circumstance that may lead to 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 applicable Data Protection Legislation; and
        2. so far as the Company is aware, there has not been any accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to any personal data processed by or on behalf of the Company ("**personal data breach**") which is not fully described in the Company’s record of personal data breaches, maintained in accordance with Data Protection Legislation which is available on request to the Investors.
     3. For the purpose of this paragraph 17, the terms "**personal data**", "**data subject**", "**processing**", "**controller**", "**processor**", "**personal data breach**" and "**supervisory authority**" have the meanings given to them in the GDPR.
  3. **Records and registers**
     1. The statutory books, registers and minute books of the Company are duly written up and maintained in accordance with all legal requirements applicable thereto and contain accurate records of all matters required to be dealt with therein and all such books and all records and documents (including documents of title) which are its property are in its possession or under its control.
     2. The Company is not aware of any outstanding matter required to be entered in any of its statutory books, registers or minute books which has not been so entered at the Execution Date.
     3. All accounts, documents and returns required to be delivered or made to the Registrar of Companies have been duly and correctly delivered or made. There has been no notice of any proceedings to rectify the register of members of the Company or the Company's PSC register and, so far as the Company is aware, there are no circumstances which might lead to any application for rectification of the register of members or the PSC register, in each case, which would lead to a successful application for rectification.
     4. [Save as set out in the Relevant Change Letters, no relevant change (as defined by section 790E(3) of the Act) will occur in relation to any registrable person in relation to the Company as a [direct] result of Initial Completion or any Subsequent Completions.]
     5. The Company has not made (or withdrawn) an election to keep information in its register of members, PSC register, register of directors, register of directors’ residential addresses or register of secretaries on the central register at Companies House.
     6. The Company has not issued any warning notice [or restrictions notice] under Schedule 1B of the Act.
  4. **Insurance**

The Disclosure Letter contains accurate details of all insurance policies held by the Company. In respect of such insurances:

* + - 1. all premiums have been duly paid to date;
      2. all the policies are in full force and effect and are not voidable on account of any act, omission or non-disclosure on the part of the insured party nor could they be declared null and void or as a consequence of which any claim might be rejected; and
      3. there are no circumstances which would or might give rise to any claim and no insurance claim is outstanding.
  1. **Group structure**
     1. The Company does not have any Subsidiaries nor has it at any time been the holding company of any company or a member of or the beneficial owner of any shares, securities or other interest in any company or other person.
     2. The Company is not, in relation to any company [(other than a Subsidiary [Undertaking]), limited liability partnership or United Kingdom Societas registered in the United Kingdom], a registrable relevant legal entity (as defined in section 790C of the Act).
  2. **Agreements and capital commitments**
     1. The Company:
        1. is not a party to any agreement that involves:
           1. obligations (contingent or otherwise) of, or payments to, the Company in excess of £[●];
           2. the license of any Business IP to or from the Company, other than (x) Open Source Code licensed to the Company or (y) rights granted to the Company in respect of commercially available software products under standard end-user object code licence agreements; or
           3. the grant of rights to manufacture, produce, assemble, license, market, or sell any Company Product to any other person that limit the Company’s exclusive right to develop, manufacture, assemble, distribute, market or sell any Company Product;
        2. is not a party to any agreement which is or may become terminable as a result of the entry into of this agreement or Initial Completion or any Subsequent Completions;
        3. is not bound by any guarantee or contract of indemnity or suretyship under which any liability or contingent liability is outstanding;
        4. has not entered into any agreement which requires or may require, or confers any right to require, the sale (whether for cash or otherwise) or the transfer by it of any asset;
        5. is not a party to any joint venture, consortium, partnership, unincorporated association or profit sharing arrangement or agreement;
        6. is not a party to or enjoys the benefit of any agreement requiring registration or notification under or by virtue of any statute; or
        7. is not in default of any agreement or arrangement to which it is a party.
     2. The Company has not been and is not a party to any contract or arrangements binding upon it for the purchase or sale of property or the supply of goods or services at a price different to that reasonably obtainable on an arm's length basis.
  3. **Borrowings and facilities**

Full details of all limits on the Company's bank overdraft facilities and all borrowings of the Company are set out in the Disclosure Letter and the Company is not in breach of any of their terms and none of such facilities or terms of borrowing will be terminated as a result of the entry into of this agreement.

* 1. **ESG**
     1. The Company has adopted[, and actively monitors compliance (including relevant training of employees and Workers) with,] the following policies: [an anti-harassment policy, an anti-discrimination policy, an anti-slavery and human trafficking policy, a corporate and social responsibility policy and an anti-bribery and anti-corruption policy] (the "**Group ESG Policies**").
     2. [There has been no material breach by the Company or any of its directors, officers or employees of any of the Group ESG Policies].
     3. So far as the Company is aware, the Company has during the three years ending on the Execution Date complied with all its Social Obligations and it continues to do so.
     4. No person has in the last 12 months notified the Company of any alleged breach of its Social Obligations and there are no disputes between the Company and its employees or any trade union or other body representing all or any employees of the Company.
  2. **[National security legislation]**
     1. [So far as the Company is aware, [having taken legal advice, ]the business of the Company as at the Execution Date, does not fall within the scope of any of the 17 sectors set out in The National Security and Investment Act 2021 (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021.][[33]](#footnote-33)
     2. [The Company has no operations in the US or, to the extent the Company has operations in the US, so far as the Company is aware, [having taken legal advice,] it is not a TID U.S. Business as defined in [the 31 CFR 800.248].]
  3. **Sanctions**
     1. Neither the Company nor, so far as the Company is aware, any of its directors, officers or employees is or has, in relation to the Business, in the period of two years prior to the Execution Date been engaged or involved in, or otherwise subject to, any of the following matters (the "**Sanctions Proceedings**"):
        1. any litigation, arbitration, settlement or other proceedings (including alternative dispute resolution, criminal and administrative proceedings) in any jurisdiction; or
        2. any investigation, inquiry, enforcement action (including the imposition of fines or penalties) by any governmental, administrative, regulatory or similar body or authority in any jurisdiction,

in each case relating to, or in connection with, any actual or alleged contravention of applicable Sanctions.

* + 1. So far as the Company is aware, no Sanctions Proceedings have been threatened or are pending against the Company or any of its directors, officers or employees and so far as the Company is aware, there are no circumstances likely to give rise to any such Sanctions Proceedings.
    2. Neither the Company nor, so far as the Company is aware, any of its directors, officers, or employees is:
       1. a Sanctions Target; or
       2. engaging, or has engaged, in any conduct, operations, transactions or dealings that could reasonably be expected to result in it becoming a Sanctions Target.
    3. Neither the Company nor, so far as the Company is aware, any of its directors, officers or employees, has conducted or engaged, or is currently conducting or engaging, (in each case directly or indirectly) in any operations, activities, transactions or dealings with, or for the benefit of, a Sanctions Target.
  1. **Insolvency**
     1. No compromise or arrangement (by way of a scheme of arrangement under Part 26 of the Act, restructuring plan under Part 26A of the Act, voluntary arrangement or otherwise) with any of its creditors or any class of its creditors has been entered into or proposed with respect to the Company.
     2. No moratorium is in force under Part 1 or Part A1 of the Insolvency Act 1986 with respect to the Company and no step has been taken to obtain such a moratorium.
     3. No notice has been given and no resolution has been passed for the winding up of the Company.
     4. No liquidator, administrator, administrative receiver or similar officer has been appointed in relation to the Company or any of its assets, and no notice has been served, document(s) filed, application made, petition presented or order made by a court in relation to the appointment of such an officer.
     5. No step has been taken to strike off or dissolve the Company.
     6. No distress, distraint, charging order, execution or other process has been levied or applied for in respect of the whole or any part of the property, assets or undertaking of the Company.
     7. No step or procedure analogous to those set out in warranty statements 26.1 to 26.6 (inclusive) has been taken or commenced in any jurisdiction outside England and Wales in relation to the Company or any of its assets or undertaking.
  2. **[VCT/EIS Warranties**
     1. Except as Disclosed:
        1. no monies have been invested in the Company or any Subsidiary (whether or not it was a subsidiary of the Company at the time of investment) or any company which is a former subsidiary of the Company (at a time when it was a subsidiary of the Company) or any company or person who has previously operated a trade which has been transferred to the Company or any Subsidiary or any former subsidiary of the Company:
           1. in respect of which the investor has claimed, or is intending to claim, tax relief on that investment under the Seed Enterprise Investment Scheme (under Part 5A of the ITA) or the Enterprise Investment Scheme (under Part 5 of the ITA) or the Tax Relief for Social Investments (under Part 5B of the ITA); or
           2. by a venture capital trust (as defined in Part 6 of the ITA); and
        2. neither the Company nor any Subsidiary (whether or not it was a subsidiary of the Company at the time of receipt of any State Aid Funding) nor any company which is a former subsidiary of the Company (where such State Aid Funding was received at a time when it was a subsidiary of the Company) nor any company or person who has previously operated a trade which has been transferred to the Company or any Subsidiary or any former subsidiary of the Company has received any State Aid Funding.
     2. [The information provided by the Company to [●] by email on [●] 20[●] in response to the document entitled "VCT/EIS Information Request" dated [●] 20[●] circulated by [●] to the Company was, at the time given, and remains, accurate in all respects and the Company knows of no inaccuracy or relevant material omission.][[34]](#footnote-34)

Schedule 6  
The Properties

|  |  |  |  |
| --- | --- | --- | --- |
| **Name of lessor / licensor** | **Title and date of lease agreement / licence** | **Postal address of Property** | **Monthly rent / licence fee** |
| [●] | [●] | [●] | [●] |

Schedule 7  
Subscription Adherence Agreement

**THIS AGREEMENT** is made on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

(2) [●] of [●].

**Subscription Agreement dated [●] between (1) the Investors and (2) the Company (each as defined therein) (the "Agreement"**)

* + 1. This is a subscription adherence agreement entered into in compliance with the terms of clause [3.4] of the Agreement.
    2. Words and expressions defined in the Agreement (expressly or incorporated by reference) have the same meaning in this agreement unless given a different meaning in this agreement.
    3. [I]/[We] apply for the allotment and issue to [me/us] of such number of Additional New Shares as set out in the table (the "**Subscription Shares**") below at a subscription price per share of £[●] (the "**Subscription Price**"):

|  |  |
| --- | --- |
| **(1)** | **(2)** |
| **No. of Subscription Shares** | **Aggregate Subscription Price (£)** |
| [●] | [●] |

* + 1. [I]/[we] shall pay the aggregate Subscription Price set out in the table above by electronic funds transfer to the bank account of the Company as set out below:

Account name : [●]

Bank : [●]

Account number : [●]

Sort code : [●]

IBAN : [●]

Swift Code : [●]

* + 1. [I]/[We] acknowledge that this application is made on the basis that [I]/[we] will hold all Subscription Shares issued to [me]/[us] subject to the terms of the Shareholders' Agreement and the Company's articles of association as may be amended from time to time.
    2. In consideration for the issue of the Subscription Shares, [I]/[we] hereby agree to be bound by the Agreement in all respects as if [I]/[we] were a party thereto as an Investor and to perform all the obligations expressed to be imposed on such a party to the Agreement. [I]/[We] further agree to assume the benefit of the rights which the Agreement confers on Investors. This agreement is made for the benefit of:
       - 1. the parties to the Agreement; and
         2. any other person or persons who may after the date of the Agreement (and whether or not prior to or after the date hereof) assume any rights or obligations under the Agreement and be permitted to do so by the terms thereof.
    3. The parties agree that the allotment and issue of the Subscription Shares for the aggregate Subscription Price shall be completed following the execution of this agreement by the parties and the receipt by the Company of the aggregate Subscription Price in cleared funds.
    4. [I]/[We] acknowledge receipt of the Disclosure Letter.
    5. 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 agreement has been executed 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

This agreement has been executed 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

**Appendix A – Second Completion[[35]](#footnote-35)**

[“**First Tranche Shares**” means the [●]Shares subscribed by the Investors pursuant to clause 3.1 [and shall include the Additional New Shares if applicable]];

[“**Further Disclosure Letter**” means the letter in the agreed form from the Company to the Investors executed and delivered immediately before Second Completion];

[“**Milestone Date**” means [●] 20[●] [or such later date as agreed by the Company and New Shares Majority in writing];]

[“**Milestone Determination**” has the meaning given in clause [4.6];

[“**Milestones**” means the milestones to be satisfied by the Company by the Milestone Date, as set out in schedule 10];

[“**Second Completion**” means completion by the parties of their respective obligations in accordance with clauses [4.6] to [4.10] (inclusive)];

[“**Second Completion Conditions**” means the conditions set out in part 2 of Schedule 4];

[“**Second Completion Date**” means the date which is [15] Business Days following the Milestone Determination (or if such date is not a Business Day, the next Business Day) or such other date as agreed by the Company and New Shares Majority in writing;

[“**Second Tranche Shares**” means the [●] Shares subscribed by the Investors pursuant to clause 3.2];

[*Subscription*]

3.2 Subject to the provisions of Clauses [4.6] to [4.10] (inclusive), the Investors set out below apply for the allotment and issue to them at Second Completion of the following Shares as set out in the table below and the Company accepts such applications:

|  |  |  |
| --- | --- | --- |
| **Investor** | **No. of [*Note: insert class of shares*]** | **Total subscription monies (£)** |
| [●] | [●] | [●] |
| Total | [●] | [●] |

*[Second Completion]*

## 4.6 Subject to (a) the Milestones having been satisfied or waived by [the Investors] [a New Shares Majority] by the Milestone Date (the “**Milestone Determination**”) and (b) the remaining Second Completion Conditions having been satisfied or waived by [the Investors] [a New Shares Majority], Second Completion shall take place on the Second Completion Date once the events set out in clause [4.9] have occurred. [For the avoidance of doubt, if a New Shares Majority has determined that the Second Completion Conditions have been satisfied or waived, all Investors shall be obliged to subscribe simultaneously for their respective Second Tranche Shares on the Second Completion Date and the provisions of clauses [4.6] to [4.10] (inclusive) shall apply equally to all Investors.]

## 4.7 [Notwithstanding clause [4.6], each Investor may at its option (by written notice to the Company copied to each other Investor) require the Company at any time prior to the Milestone Date to accept its subscription for its allocation of the Second Tranche Shares irrespective of whether the Second Completion Conditions have been satisfied, in which event the Company shall effect Second Completion for that Investor on the date so specified by that Investor, and the requirements of clause [4.9] shall apply in respect of that Investor for such Second Completion.]

## 4.8 The Company shall notify the Investors as soon as it becomes aware of any fact or circumstance which has caused or will or is likely to cause any of the Second Completion Conditions not to be satisfied.

## 4.9 At Second Completion the following events shall occur:

### each Investor shall pay the sum listed against its name in column 3 of the table set out in clause 3.2 (being the subscription price for the Second Tranche Shares subscribed by each Investor) by electronic funds transfer to the bank account of the Company and payment made in accordance with this clause [4.9] shall constitute a good discharge for each Investor of its obligations under clauses [4.6] to [4.10] (inclusive);

### the Company will procure that a meeting of the Board be held or Board resolutions shall be passed at or in at which the Board shall:

#### issue the Second Tranche Shares credited as fully paid to the Investors and enter their names in the register of members in respect thereof;

#### execute and deliver to the Investors certificates for the Second Tranche Shares; and

#### pass any such other resolutions as may be required to issue the Second Tranche Shares.

## 4.10 [If an Investor does not subscribe for its Second Tranche Shares (the “**Surplus Shares**”) on the Second Completion Date in accordance with the requirements of clauses [4.6] and [4.9] or under clause [4.7] (a “**Defaulting Investor**”) (the date of such default being the “**Default Date**”), then the following shall apply:

### Each of the Investors (other than the Defaulting Investor) shall have the right (but not the obligation) within [30 days] of the Default Date to subscribe for the Surplus Shares pro rata to its participation in Second Completion (excluding the Defaulting Investor) and shall be entitled (but not required), with the consent of the other such Investors, within this period to subscribe for any excess Surplus Shares if any of the other Investors do not wish to subscribe for their pro rata amount of Surplus Shares, which excess Surplus Shares shall be apportioned in the amounts so subscribed, unless there are insufficient excess Surplus Shares to satisfy all such subscriptions, in which case such excess Surplus Shares shall be allotted to those subscribing Investors pro rata to the participation in Second Completion by those subscribing Investors, which procedure shall be repeated until all Surplus Shares have been allocated but no allocation shall be made for more than the amounts that have been so subscribed.

### [In addition to and without prejudice to all other rights and remedies available to the parties, including the right to bring a claim for breach of contract, a Defaulting Investor shall be deemed (unless the Company and the New Shares Majority (which shall not include the Defaulting Investor) have determined that this clause will not apply), upon the Default Date, to have served an irrevocable and unconditional written notice to the Company of the conversion of all of its holdings of Series A Shares into Ordinary Shares in accordance with article [9.1] of the New Articles and shall be required to comply with the requirements set out in article [9] the New Articles in respect of the conversion of such shares.]

[*Warranties*]

## 5.2 [Immediately before the Investors subscribe for the Second Tranche Shares, the Company warrants to those Investors subscribing for Second Tranche Shares that each and every Warranty set out in part 2 of Schedule 5 is true, accurate and not misleading as at the Second Completion Date subject only to:

### the matters Disclosed; and

### any exceptions expressly provided for under this agreement.

[*Schedule 4*]

**[Part** **2:**

**Conditions to Second Completion]**

* 1. Initial Completion having occurred in accordance with clauses 4.1 and 4.2.
  2. Each of the Milestones having been achieved by the Company to the reasonable satisfaction of [the Investors] [a New Shares Majority] (or waived in whole or in part by [the Investors] [a New Shares Majority]) by the Second Completion Date.
  3. [In the [reasonable] opinion of [a New Shares Majority] [the Investors], there having been no material adverse change in the financial position or prospects of the Company or its Business since Initial Completion.]
  4. In the [reasonable] opinion of [a New Shares Majority] [the Investors], there having been no material breach by the Company or the Founders of this agreement, the New Articles or any document referred to herein as being in the agreed form, which if capable of remedy, has not been remedied within [seven] Business Days of notification of such breach.
  5. There having been no material breach by any Founder of such Founder’s Service Agreement, which if capable of remedy has not been remedied within [seven] Business Days of notification of such breach.
  6. Each of the Founders continuing to be employed or engaged by the Company.
  7. The Company:
     + 1. not having entered into any composition or arrangement with its creditors generally;
       2. not being placed in voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) nor having any order made for its compulsory liquidation;
       3. not having an administrator or receiver or other Encumbrance appointed over the whole or any part of its assets or undertaking or suffering any similar act in consequence of debt; or
       4. not having ceased to carry on business and not having been deemed unable to pay its debts for the purposes of section 123 of the Insolvency Act 1986.
  8. [Delivery to the Investors of the Further Disclosure Letter.]

[*Schedule 5*]

**[Part** **2**

**Second Completion Warranties]**

* 1. **General**

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

* 1. **Financial**
     1. The Investors have been provided with the latest set of [audited] [consolidated] accounts of the Company and management accounts for the Company for the period ending on the last day of the month ending prior to the Second Completion Date.
     2. The accounts referred to in paragraph 2.1 above give a [true and fair] view as at the accounting reference date of such accounts, in the case of the [audited] accounts, and a fair and reasonable view, in the case of the management accounts, of the financial position of the Company [as at their date], having regard for the purpose for which such management accounts were prepared and the information known to the Company at the date on which they were prepared.
     3. Since the date to which the aforesaid accounts were drawn, there has been no material adverse change in the financial or trading position of the Company.
     4. [The Company has disclosed to the Investors in writing (other than where such items are set out or referred to in the accounts referred to in paragraph 2.1 above) all:
        1. commitments of an unduly onerous nature;
        2. litigation (including litigation known to be threatened);
        3. unusual or non-recurring items significantly affecting the financial position of the Company;
        4. debts known to be bad or doubtful;
        5. dividends paid or proposed; and
        6. any actual or potential Intellectual Property infringements by the Company of which the Founders are aware.]
  2. **[PSC register**

No relevant change (as defined by section 790E(3) of the Act) will occur in relation to any registrable person in relation to the Company as a [direct] result of Second Completion.]

**Appendix B – US Securities law requirements[[36]](#footnote-36)**

**23. US securities laws requirements**

Each of the Investors acknowledges and warrants separately for itself and in respect of its own position, to the Company, for the purpose of compliance with the United States Securities Act of 1933, as amended (the “**Securities Act**”) and state securities laws, as follows:

(a) each Investor acknowledges that the New Shares have not been registered under the Securities Act, or any state securities laws on the basis that the Company is relying on an exemption from registration under such laws that depends in part on the representations made by each Investor pursuant to this clause, and that the transferability of the New Shares is therefore subject to restrictions imposed by those laws;

(b) each Investor agrees not to sell or otherwise transfer the New Shares insofar as the Securities Act restricts such sale or transfer unless they are registered under the Securities Act and United States state securities laws of the applicable jurisdiction or unless an exemption from registration is available;

(c) each of the Investors has either a residence or business address as set out in Schedule 1; all offers of the New Shares were made to the Investors at that address or elsewhere outside of the United States; no offer or solicitation was made to the Investors in any jurisdiction other than that jurisdiction or elsewhere outside of the United States; and each of the Investors accepted the offer to purchase New Shares by executing this agreement or a Subscription and Adherence Agreement within that jurisdiction; and prior to such acceptance, the Investor did not accept the offer in any other jurisdiction, orally, in writing, or otherwise;

(d) in respect of each Investor, no 'bad actor' disqualifying events described in Rule 506(d)(1)(i)-(viii) promulgated under the Securities Act (each, a "**Disqualification Event**") is applicable to such Investor or any of its Rule 506(d) Related Parties, except, if applicable for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable. For the purposes of this agreement, “Rule 506(d) Related Party” shall mean a person or entity covered by the “Bad Actor disqualification” provision of Rule 506(d) of the Securities Act;

(e) in respect of each Investor, such Investor hereby agrees that it shall notify the Company promptly in writing in the event a Disqualification Event becomes applicable to such Investor or any of its Rule 506(d) Related Parties, except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable;

(f) each Investor that is a "U.S. Person" (within the meaning of Rule 902 of Regulation S promulgated under the Securities Act) is an "accredited investor" within the definition set forth in Rule 501(a) under the Securities Act;

(g) each of the Investors that is a “U.S. Person” acknowledges that such Investor has experience in making investments such as those in the Company and is able to bear the economic risk of the investment for an indefinite period of time because the New Shares have not been registered under the Securities Act, and therefore, must (to the extent the Securities Act restricts a transfer of New Shares) be held unless they are subsequently registered under the Securities Act or an exemption from such registration is available;

(h) each of the Investors acquired the New Shares for its own account for investment and not for the account of another nor with a view to, or for resale in connection with, any distribution or public offering thereof within the meaning of the Securities Act, the state securities laws of any applicable jurisdiction, or the rules and regulations promulgated thereunder and, if such Investor is an entity, such Investor was not formed for the specific purpose of acquiring the New Shares; and

(i) each Investor believes that it has received all the information it considers necessary or appropriate for deciding whether to purchase the New Shares pursuant to this agreement. Each Investor has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the issue of the New Shares and the business, properties and financial condition of the Company. The foregoing, however, does not in any way limit or modify the Warranties.

**Appendix C – Disclosure Letter**

To: The persons whose names and addresses are set out in Schedule 1 to this Disclosure Letter (together the "**Investors**").

From: **[●] [Limited/Ltd]** (company number [●], incorporated under the laws of [England]) whose registered office is at [●] (the "**Company**").

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 202[●]

Dear Investors,

**DISCLOSURE LETTER RELATING TO THE INVESTMENT IN** [●] **[LIMITED/LTD]**

* 1. **Introduction and interpretation**
     1. This letter is the Disclosure Letter referred to in the subscription agreement to be entered into on the date of this letter between the Investors and the Company relating to the subscription by the Investors for shares in the capital of the Company (the “**Subscription** **Agreement**”).
     2. Words and expressions defined in the Subscription Agreement have the same meaning when used in this Disclosure Letter. Without prejudice to the foregoing, the words and expressions set out below shall have the following meanings when used in this Disclosure Letter:

“**Disclosure Bundle**” means the documents listed in the index set out in Schedule 2 to this Disclosure Letter, each of which is referred to in paragraph [4] of this Disclosure Letter and copies of which have been made available by the Company to the Investors on or prior to the date of this Disclosure Letter [in folder [●] of the electronic data room hosted by [●]] / on a USB drive]; and

"**Disclosure Document**” means a document contained in the Disclosure Bundle, numbered by reference to the index set out in Schedule 2 to this Disclosure Letter.

* 1. **Preliminary**
     1. This Disclosure Letter discloses certain matters which are relevant to the Warranties.
     2. The disclosure of any matter or of any document pursuant to this Disclosure Letter shall not constitute or imply the existence of any representation, warranty, undertaking, assurance, covenant, indemnity, guarantee or other commitment of any nature whatsoever not expressly given in the Subscription Agreement and neither this Disclosure Letter nor any such disclosure shall have the effect of, or be construed as, adding or extending the scope of any of the Warranties.
  2. **General disclosures**
     1. The following matters are disclosed to the Investors, in each case to the extent they are Disclosed:
        1. all matters reasonably apparent from the face of a Disclosure Document to the extent that such matters reasonably relate to a disclosure set out in paragraph [4] of this Disclosure Letter which refers to such Disclosure Document (and in the event of any inconsistency between the contents of any Disclosure Document and the factual statements contained in paragraph [4] of this Disclosure Letter, then the terms of paragraph [4] of this Disclosure Letter shall prevail);[[37]](#footnote-37)
        2. all matters specifically referred to in the Subscription Agreement and/or any document in the agreed form (other than the Accounts [and the Management Accounts]); and
        3. all matters that would be revealed by an online search of the Company at Companies House on [the Business Day prior to] the date of this letter (other than for all accounts filed at Companies House).
  3. **Specific disclosures**

The following specific disclosures are made in relation to the Warranties. Without prejudice to paragraph [3.1(a)], for convenience certain disclosures are set out against particular paragraphs of schedule [5] to the Subscription Agreement, but any matter which is Disclosed, whether generally or by reference to a particular paragraph of schedule [5] to the Subscription Agreement, is disclosed for the purpose of all the Warranties to which they reasonably relate.

| **Warranty** | **Matter** |
| --- | --- |
| [●] | [●] |
| [●] | [●] |
| [●] | [●] |
| [●] | [●] |
| [●] | [●] |

**Schedule 1**

**The Investors**

| **Name** | **Address** |
| --- | --- |
| [●] | [●] |
| [●] | [●] |

**Schedule 2**

The Disclosure Bundle

**Index of Disclosure Documents**

| **Disclosure Document Number** | **Description of Disclosure Document** |
| --- | --- |
| [●] | [●] |
| [●] | [●] |

Please acknowledge receipt of this Disclosure Letter by signing where indicated on the enclosed copy of this Disclosure Letter and returning it to us.

Yours faithfully

On behalf of **[●] [Limited/Ltd]**

We acknowledge receipt of this Disclosure Letter:

**EXECUTED** by [●] )

) …………………………………..

**EXECUTED** by [●] )

) …………………………………..

1. [*Note: Amend as appropriate*] [↑](#footnote-ref-1)
2. [*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-2)
3. [*Note: Insert class of share.*] [↑](#footnote-ref-3)
4. [*Note: Insert relevant agreement (e.g. convertible note, advance subscription agreement, SAFE); date of agreement; and principal aggregate amount.*] [↑](#footnote-ref-4)
5. [*Note: Consider whether required.*] [↑](#footnote-ref-5)
6. [*Note: Amend as appropriate.*] [↑](#footnote-ref-6)
7. [*Note: Insert nominal value.*] [↑](#footnote-ref-7)
8. [*Note: To consider the appropriate jurisdictions to apply.*] [↑](#footnote-ref-8)
9. [*Note: Insert nominal value.*] [↑](#footnote-ref-9)
10. [*Note: See Appendix A if the investment is being made in more than one tranche.*] [↑](#footnote-ref-10)
11. [*Note: To ensure necessary approvals are in place for such conversion*.] [↑](#footnote-ref-11)
12. [*Note: Insert date.*] [↑](#footnote-ref-12)
13. [*Note: Insert required threshold.*] [↑](#footnote-ref-13)
14. [*Note: If including an option to lower the Initial Threshold after the Execution Date, care should be taken to ensure that any "Qualified Financing" thresholds under any Equity Securities Agreements are still met.*] [↑](#footnote-ref-14)
15. [*Note: This assumes that the Initial Threshold is greater than any "Qualified Financing" thresholds under any Equity Securities Agreements.*] [↑](#footnote-ref-15)
16. [*Note: To ensure the Shareholders' Agreement has the appropriate wording to allow for such variation.]* [↑](#footnote-ref-16)
17. [*Note For a situation where there are no planned additional completions.*] [↑](#footnote-ref-17)
18. [*Note: This assumes that the Initial Threshold is greater than any "Qualified Financing" thresholds under any Equity Securities Agreements.*] [↑](#footnote-ref-18)
19. [*Note: to consider shorter completion mechanics where the expectation is that 100% of funds will be received prior to Completion. Parties should always consider if the fuller protections in clauses 4.2-4.5 are required.*] [↑](#footnote-ref-19)
20. [*Note: This agreement is drafted on basis that only the Company is providing warranties. Consequential changes to draft are required if the warranties are also being provided by the Founders.*] [↑](#footnote-ref-20)
21. [*Note: Amend if other investors’ costs are also agreed to be reimbursed.*] [↑](#footnote-ref-21)
22. [*Note: if VAT is payable on the Lead Investor's invoice that will be irrecoverable by the Company.*] [↑](#footnote-ref-22)
23. [*Note: Consider amending reference to clause 4.2 instead where alternative mechanism to clauses 4.2-4.5 is used.*] [↑](#footnote-ref-23)
24. [*Note:* *Consider including clauses 16.2 and 16.3 if conversion of the Equity Securities Agreements would be automatic under their terms so that the Company does not need to procure the signature of each Equity Securities Holder in order to proceed to Initial Completion.*] [↑](#footnote-ref-24)
25. [*Note: to consider if these holders are to be included under this table to fall under definition of "Investors".*] [↑](#footnote-ref-25)
26. [*Note: it may be appropriate to make this requirement a post-closing undertaking.*] [↑](#footnote-ref-26)
27. [*Note: it may be appropriate to make this requirement a post-closing undertaking.*] [↑](#footnote-ref-27)
28. [*Note: insert any other required execution deliverables, such as, for example, management rights letter(s).*] [↑](#footnote-ref-28)
29. [*Note: These provisions will need to be tailored to reflect the funding that is being made available.*] [↑](#footnote-ref-29)
30. [*Note: This is an example warranty schedule only. Warranties will need to be tailored for each transaction. This warranty schedule has been prepared on the basis that it will generate a detailed disclosure process to fully inform the investors and there will be no general disclosure of any data room or due diligence documents under the Disclosure Letter. See Appendix C for pro-forma Disclosure Letter.*] [↑](#footnote-ref-30)
31. [*Note: This warranty is appropriate for consideration if any of the Investors are subject to US taxation.*] [↑](#footnote-ref-31)
32. [*Note: For R&D company which does not yet have commercialised product/services.*] [↑](#footnote-ref-32)
33. [*Note: Only to**be included where necessary if an Investor is considered to be acquiring a 25%+ (post-completion) shareholding in the Company, subject to context of each transaction and analysis as required.*] [↑](#footnote-ref-33)
34. [*Note: To be used if a VCT/EIS questionnaire has been completed*.] [↑](#footnote-ref-34)
35. [*Note: this does not cover all minor consequential edits needed to main document.*] [↑](#footnote-ref-35)
36. [*Note: insert the following after clause 22 if there are US investors.*] [↑](#footnote-ref-36)
37. [*Note: The intent is that a document should only be included in the Disclosure Bundle to the extent that it is relevant to a specific disclosure, and only the matters in a Disclosure Document which are relevant to the specific disclosures should be considered generally disclosed.*] [↑](#footnote-ref-37)