

ADV SUBSCRIPTION AND SHAREHOLDERS AGREEMENT AND ARTICLES OF ASSOCIATION USER GUIDE

This guide has been provided to help investee companies and founders understand the key terms of the ADV Subscription and Shareholders Agreement (**SSHA**) and Articles of Association (**Articles**).

Although this guide provides a summary of key terms, it's not a substitute for legal advice. Always consult your own legal advisors if you have any questions on the specific terms of the SSHA and the Articles relating to your Company.

Where we've capitalised legal terms in the text below, we're referring to those terms as defined in the SSHA or the Articles.

Articles of Association

1 ARTICLE 4 - DIVIDENDS

1.1 Article 4 regulates when the Company can pay profits out as dividends to shareholders. As ADV is investing to accelerate your growth and scale, we don't expect companies to pay dividends; if you do want to pay dividends, you must first obtain our consent.

1.2 If dividends are paid, then they will be paid to shareholders according to the number of shares held.

2 ARTICLES 5 AND 6 – LIQUIDATION AND EXIT

2.1 These articles confirm how the value generated by the Company will be shared amongst the shareholders if the Company is sold or its assets liquidated.

2.2 As ADV invest alongside founders for ordinary shares, the value generated by the Company is shared amongst all shareholders according to the number of shares held.

3 ARTICLE 10 – ISSUE OF NEW SHARES

3.1 Article 10 sets out the procedure the Company follows to issue any new shares following ADV's investment.

3.2 Under Article 10.2 new Shares won't be issued to anyone unless the Company has first offered these new Shares to all existing shareholders on the same terms as the Company proposes to issue the new Shares. This article gives all shareholders the opportunity to participate in any further issue of Shares, so their percentage shareholding is not reduced (so-called anti-dilution).

3.3 There are some exceptions in Article 10.6 to the requirement to offer new Shares to existing shareholders; for example, where new Shares are being issued pursuant to a Share Option Scheme that rewards employees.

4 ARTICLE 11 - SHARE TRANSFERS

4.1 Shares in the Company can't be transferred unless the transfer is made in accordance with the Articles (Article 11.2), so you'll need to consult the articles to see

if a potential transfer of shares is permitted.

- 4.2 The Directors are responsible for ensuring that transfers of the Company's Shares are made in accordance with the Articles, and may request information from shareholders who wish to transfer their Shares to ensure they're complying with the Articles (Article 11.8).

5 **ARTICLE 12 – PERMITTED TRANSFERS**

- 5.1 Article 12 confirms which transfers can be made without restriction under the Articles. This includes transfers by individuals to family members; if a shareholder, that is a company, transfers to other group companies; and if a shareholder, that is an investment fund, transfers to other funds related to it.
- 5.2 If a Founder wants to carry out a Transfer of Shares, they must first obtain Board approval and Investor Consent.
- 5.3 Permitted Transfers are not subject to the pre-emption rights on transfer of Shares that are described below.

6 **ARTICLE 13 – PRE-EMPTION ON SHARE TRANSFERS**

- 6.1 Article 13 covers the situation where a shareholder wishes to transfer any Shares not covered under the permitted transfer provisions above; these Shares must be offered to the remaining shareholders first, as described in this Article.
- 6.2 A shareholder wishing to transfer Shares must give written notice to the Company with details of how many Shares he or she wishes to transfer, at what price, and whether there is a proposed purchaser for the Shares. If no price is specified, then the price needs to be agreed with the Board. If no agreement can be reached, an independent expert will establish the Fair Value for the Shares.
- 6.3 Once the price is set, the Company must first offer the Shares to each of the existing shareholders of the Company. This is so existing shareholders have the opportunity to purchase the Shares before any third party.
- 6.4 If the remaining shareholders don't buy all the Shares, the seller of the Shares may transfer the Shares to a third party at the same price offered to the remaining shareholders (some transfers to third parties are still prohibited, such as to competitors of the Company).

7 **ARTICLE 14 – VALUATION OF SHARES**

- 7.1 If the price for the Sale Shares offered for sale under Article 13 can't be agreed, or the seller of the Shares is a Good Leaver (referred to below), an independent expert will be appointed under Article 14 to value the Sale Shares and determine the Fair Value of the Sale Shares.
- 7.2 The Fair Value of the Sale Shares will be determined by the expert on the assumptions and bases set out in Article 14.3 (such as, no discount being applied to the Sale Shares as they are a minority shareholding, and on the basis the Company is being sold as a going concern).

8 **ARTICLE 15 – COMPULSORY TRANSFERS OF SHARES**

Article 15 deals with circumstances upon which a shareholder will be required to transfer his or her Shares. This includes when a shareholder who is an individual is declared bankrupt, or when a shareholder who is a company is insolvent or ceases to be controlled by the individuals who controlled that company when it first became a shareholder of the Company.

9 **ARTICLE 17 – TRANSFER OF DEPARTING FOUNDER AND EMPLOYEE SHARES**

9.1 This article sets out how departing Employees' (including Founders') Shares are treated if they leave the Company. This treatment depends on whether the Employee/Founder is a Good Leaver, a Bad Leaver or an Early Leaver. The provisions are designed to be fair to both ADV, the Founders and to the Company.

9.2 A four year vesting period applies from the date ADV invests in the Company, in which an Employee/ Founder is required to continue to work for the Company so that an increasing proportion of their shareholding is treated as having accrued value (i.e. become "vested"). "Unvested shares" have no accrued value and are in effect worthless until they become "vested" through the Employee/Founder's accrued employment. The longer an Employee/ Founder is employed by the Company, the greater the proportion of vested Shares they will hold, and after four years all of their Shares will have vested.

9.3 Vesting happens on a monthly basis, apart from during the first 12 months of the vesting period during which no Shares vest.

9.4 Good Leavers are those who leave the Company after the expiry of the 4-year vesting period, unless they leave for "Cause" (for example, having done something bad enough to merit summary dismissal).

9.5 Early Leavers are those who leave during the 4-year vesting period, for certain permitted reasons (such as death, incapacity or retirement, or if they are wrongfully or unfairly dismissed).

9.6 Bad Leavers are those who leave at any time and are not a Good Leaver or an Early Leaver.

9.7 Good Leavers may be permitted by the Board (acting with Investor Consent) to retain their Shares, or to transfer all or part of their Shares for Fair Value. Early Leavers may be permitted to retain their vested Shares, or may be required to transfer all or part of their vested Shares at Fair Value. Their unvested Shares are to be transferred for £1.

9.8 Bad Leavers must transfer all of their Shares for £1.

9.9 The Board (acting with Investor Consent) may designate a departing Employee or Founder as a Good Leaver.

9.10 If a departed Employee or Founder retains their Shares, those Shares don't have voting rights.

10 **ARTICLE 18, 19 AND 20 – TAG ALONG AND DRAG ALONG**

- 10.1 The tag-along provisions (Article 18 and 19) apply where a shareholder wishes to transfer Shares and give all shareholders the right to sell to the same buyer the same proportion of their Shares as the Seller proposes to sell. This allows minority shareholders to benefit from a sale of the Shares.
 - 10.2 The drag-along provisions in Article 20 allow a majority of the shareholders (with the consent of ADV) to require that all other minority shareholders sell their Shares in the Company to a buyer of all the Company's Shares. This ensures that a sale of all the Company's Shares can be made to a buyer.
- 11 **ARTICLES 25, 26 AND 28 – INVESTOR DIRECTOR AND OBSERVER**
- 11.1 Article 25 provides that the number of Directors shall not be fewer than two; the maximum number of Directors will be agreed with ADV.
 - 11.2 Article 26 provides ADV with the right to appoint a director to the Board of the Company, and to appoint an observer to attend Board meetings.
 - 11.3 Article 28 deals with the proceedings and meetings of the Directors such as quorum (the number of Directors that need to be present at a board meeting for the meeting to be valid); decision making of the Directors; and meetings that are held remotely. Article 28.1 provides that the quorum for board meetings shall be two Directors (one being an Investor Director if an Investor Director has been appointed).
- 12 **ARTICLE 29 – CONFLICTS OF INTEREST**
- Article 29 provides detailed provisions on the management of conflicts of interest, to ensure good governance at board meetings.

Subscription and Shareholders' Agreement ("SSHA")

1 **CLAUSE 3 - SUBSCRIPTIONS**

- 1.1 Clause 3 deals with ADV's investment in the Company, including how many Shares it is subscribing for, and the total amount to be invested by ADV.
- 1.2 If a second tranche of investment is to be provided by ADV, the terms are set out in Clause 3.2. Any second tranche investment by ADV will be subject to the Company achieving certain agreed milestones.

2 **CLAUSE 4 - COMPLETION**

- 2.1 Clause 4 sets out the parties' completion obligations (such as payment by ADV of its subscription funds and the requirement for a meeting of the Board to be held to approve ADV's investment and related matters, such as issuing share certificates to ADV).
- 2.2 Clause 4.3 deals with completion of ADV's second tranche investment, should the Milestones have been achieved by the Company.
- 2.3 Schedule 4 of the SSHA sets out the conditions that must be satisfied before ADV can

proceed to Completion of its investment (e.g. the passing of the necessary shareholders' resolutions, the Company convening a board meeting, the delivery to ADV of the agreed business plan and ADV completing required identification checks on the Founders).

3 **CLAUSES 5 AND 6 - WARRANTIES**

3.1 Clause 5 sets out the terms of the Warranties that are being provided to ADV by the Company and the Founders. These Warranties are contractual statements to confirm that certain matters and information given relating to the Company are correct. The full details of the matters to be warranted to ADV are set out in Schedule 5 of the SSHA.

3.2 In order to ensure that we are able to progress to completion of investments as quickly as possible following an approval of our investment committee we have designed a very focussed due diligence process, that allows us to obtain required information on the Company quickly and efficiently. Accordingly, the breadth and scope of the warranties in the SSHA are designed to complement our focussed due diligence process, so together we can progress very quickly to completion of an approved investment.

3.3 Clause 6 limits the liability of the Company and the Founders for any claim that may arise under the SSHA as a result of the Warranties being untrue. The Company and the Founders have the opportunity to inform ADV in a disclosure letter any facts that are inconsistent with the Warranties in the SSHA – to the extent such matters are appropriately disclosed to ADV there can be no claim against the Company or the Founders for breach of the Warranties. In the unlikely event that a claim for breach of warranty was made, the liability of a Founder is capped at an agreed monetary amount.

4 **CLAUSE 7 – ENTERPRISE CAPITAL FUND REQUIREMENTS**

Clause 7 sets out the Enterprise Capital Fund Requirements where ADV is investing via its Enterprise Capital Fund (see link for further info: <http://british-business-bank.co.uk/ourpartners/enterprise-capital-funds/>). This clause only needs to be included on Enterprise Capital Fund investments and deals with various undertakings to be given by the Founders and the Company (as applicable) in relation to things like the use of ADV's investment and the provision of information to ADV. It also sets out important information about some of the features of an Enterprise Capital Fund.

5 **CLAUSE 8 – SHARE OPTION PLAN**

Clause 8 (where included) requires the Company to adopt a Share Option Plan on the terms agreed between the Company and ADV. Share Option Plans are a common way of ensuring the key employees of the Company are incentivised to contribute to the Company's success. It is usual to limit the number of shares that can be granted to employees by way of option to between 10% and 20% of the Company's issued share capital.

6 **CLAUSE 9 – THE BOARD OF DIRECTORS**

6.1 Clause 9 deals with the members of the Board immediately following Completion; the number of board meetings to be held in each calendar year; and the right of ADV to appoint an Investor Director and ADV representative to attend Board meetings as an observer.

6.2 Although the Company must pay the reasonable expenses of the Investor Director and observer, if an Investor Director is appointed ADV expect the Company to come to its own agreement with the Investor Director on the payment of any additional remuneration.

7 **CLAUSE 10 – INFORMATION RIGHTS**

The Company is required to provide certain information to ADV as set out in clause 10.1 (e.g. monthly management accounts), 10.2 (information tracking progress towards your agreed milestones and against monthly KPIs) and clause 10.3 (e.g. an operating and capital budget and cash flow forecast). This enables ADV to monitor its investment, and also promotes good governance. ADV requires copies of monthly management accounts and other reasonable information that it needs from time to time. The Company is also required to provide ADV with information on any offers the Company might receive to acquire the Company or its business. We also like to hold a monthly call with Founders to check on progress against KPI's and towards your agreed milestones.

8 **CLAUSE 11 – CONSENT MATTERS**

Clause 11 and Schedule 6 provide a list of matters which the Company can only do with ADV's consent. These provisions are designed to help ADV monitor its investment in the Company, and to involve ADV in key decisions that might affect the value of its Shares. The provisions aim to strike a fair balance between the ability of the Founder's to maintain operational freedom to drive the growth of the Company's business, whilst providing adequate protection for ADV's investment. In some cases, ADV's consent can be provided by its Investor Director, or will be deemed to have been given after a short period to allow the Company to proceed with important activities.

9 **CLAUSE 12 - UNDERTAKINGS**

Clause 12 and Schedule 7 contain a list of things that the Company must do whilst ADV is an investor. This includes things like maintaining key man insurance for its directors; protecting its intellectual property; and complying with laws. The provisions are again designed to aid good governance and are likely to be things that you'll be doing anyway.

10 **CLAUSE 14 – RESTRICTIVE COVENANTS**

Clause 14 sets out certain restrictive covenants (often referred to as "non-compete covenants") to be given by each Founder to confirm they won't, without Investor Consent, compete with the business of the Company whilst an employee of the Company or for a period of one year following leaving their employment with the Company. In addition, the provisions prevent the Founder poaching key employees, customers and suppliers.

11 **CLAUSES 15 AND 16 - CONFIDENTIALITY**

Clauses 15 and 16 include mutual obligations of confidentiality on the parties, which is subject to some exceptions, such as where disclosure of confidential information is required by law or to enable ADV to report to its investors and monitoring bodies. Any announcement or press release about ADV's investment must also comply with Clause 16, and where ADV has invested via its Enterprise Capital Fund, with the publicity guidelines in Annex 1 of the SSHA.

12 **CLAUSE 17 – COSTS AND EXPENSES**

The Company is required to pay the legal and due diligence costs incurred by ADV for the transaction. These will be agreed with you in advance and will usually be a fixed amount.

13 **CLAUSE 18 – 35 (INCLUSIVE) – VARIOUS**

Clauses 18 – 35 (inclusive) contain some general provisions (known as boilerplate) which set out important information about the SSHA, including how the parties give notice to each other of any matters relevant to the SSHA, how the SSHA may be terminated and varied and how the parties can exchange signed copies of the SSHA. The SSHA is also governed by English Law.