



ACCELERATED DIGITAL VENTURES

DATED

201[X]

(1) THE INVESTOR

- and -

(2) THE FOUNDERS

- and -

(3) THE EXISTING SHAREHOLDERS

- and -

(4) THE COMPANY

**SUBSCRIPTION AND
SHAREHOLDERS' AGREEMENT**

relating to [Investee] Limited



ACCELERATED DIGITAL VENTURES

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THIS AGREEMENT is made on

201[X]

BETWEEN:

- (1) **[ACCELERATED DIGITAL VENTURES LIMITED** (company number 09693953) incorporated under the laws of England and Wales whose registered office is at Electric Works, Concourse Way, Sheffield, England, S1 2BJ (the "**Investor**";)
- (2) The persons whose names and addresses are set out in part 1 of schedule 1 (together the "**Founders**" and each a "**Founder**");
- (3) The persons whose names and addresses are set out in part 2 of schedule 1 (together the "**Existing Shareholders**"); and
- (4) **[INSERT NAME OF INVESTEE] LIMITED** (company number [X] incorporated under the laws of [England/Scotland]) whose registered office is at [X] (the "**Company**").

BACKGROUND:

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

IT IS AGREED:

1. DEFINITIONS

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

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

"Accounts Date" means [X];

"Act" means the Companies Act 2006;

"Acting in Concert" has the meaning given to it in The City Code on Takeovers and Mergers published by the Panel on Takeovers and Mergers (as amended from time to time);

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

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

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

"Budget" [the yearly budget of the Group [dated [X]], in the agreed form, and each subsequent budget approved in accordance with SCHEDULE 6: ;

"Business" means [X], as more fully described in the 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);

"Business Plan" the business plan of the Group [dated [X], in the agreed form, and each subsequent business plan approved in accordance with SCHEDULE 6: ;

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

"Connected Person" has the meaning given in section 1122 of the CTA 2010;

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

"Company's Solicitors" means [X] of [X];

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

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

"Completion Date" means the date upon which Completion occurs;

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



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

“Computer Software” means the computer programmes owned or used by the Company and all related manuals and documentation;

“Computer System” means the Computer Hardware, Computer Data and Computer Software;

“Controlling Interest” means an interest in shares giving to the holder or holders control of the Company within the meaning of section 1124 of the CTA 2010;

“CTA 2010” means the Corporation Tax Act 2010;

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

“Data Protection Principles” has the same meaning as the term **“Data Protection Principles”** under the Data Protection Legislation;

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

“Deep Dive Document” means the questionnaire in the agreed form completed by the Founders and/or the Company as part of the Investor’s application process;

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

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

“Due Diligence Questionnaire” means the questionnaire in the agreed form completed by the Founders and/or the Company as part of the Investor’s application process;

"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;

["Enterprise Capital Fund" means in particular but without limitation a fund created to identify, research, negotiate, make and monitor the progress of and sell, realise, exchange or distribute investments which shall include but shall not be limited to the purchase, subscription, acquisition, sale and disposal of shares, debentures, convertible loan stock and other securities in unquoted companies and the making of loans whether secured or unsecured to such companies in connection with equity or equity related investments, provided that all such Investments shall fall within a certain investment policy (as agreed between the general partner, manager and limited partner(s) of the Investor), with the principal objective of providing the partners of the Investor with a high overall rate of return;]

"External Challenge Report" means the report in the agreed form prepared by the Founders and/or the Company following review by the Investor's external challenge partners, as part of the Investor's application process;

"Exit" means a Sale or IPO;

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

["First Tranche Securities"] means the Ordinary Shares subscribed by the Investor pursuant to clause 3.1;

["Freedom of Information Legislation" the Freedom of Information Act 2000 (as amended), the Environmental Information Regulations 2004 (as amended) and the "Code of Practice on Access to Government Information".]

["Governmental Authority" means any supra-national, national or sub-national authority, commission, department, agency, regulator, regulatory body, court, tribunal or arbitrator to which the Investor reports or is responsible to;]

"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"** and **"Group"** shall be construed accordingly;

"HMRC" means HM Revenue & Customs;

"Individual Warranties" means the warranties to be given by each Founder in paragraph 13 of schedule 5;

"Initial Application Form" means the initial application form in the agreed form completed by the Founders and/or the Company as part of the Investor's application process and dated [X];

"Intellectual Property" means all forms of intellectual property including without limitation copyrights and related rights, moral rights, trade marks, service marks, trade names, rights in logos, business names, brand names, get-up and goodwill, inventions, confidential information, trade secrets, know-how, show-how, registered designs, design rights, patents, database rights, domain names, URLs, utility models, semi-conductor topographies, rights in unfair competition, rights to sue for passing-off, all rights of whatsoever nature in computer software and data, all rights of privacy and all intangible rights and privileges of a nature similar or allied to any of the foregoing, in every case in any jurisdiction or any part of the world and whether or not registered; and including all granted registrations and all applications for registration in respect of any of the same and all rights to sue for any past or present infringement of them;

"Intellectual Property Licences Out" means all subsisting licences, permissions or other contractual rights (whether in writing or otherwise) by which the Company or any Group Company grants third parties rights to use any Owned Intellectual Property or Licenced Intellectual Property;

"Internal Challenge Report" means the internal challenge report in the agreed form completed by the Founders and/or the Company as part of the Investor's application process;

["Investment(s)"] means an investment or investments acquired by the Investor (either directly or indirectly) including but not limited to shares, debentures, convertible loan stock, options, warrants or other securities and loans (whether secured or unsecured) made to any body corporate or other entity;]

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

"Investor Director" means the director appointed in accordance with clause 9.2;

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

"Investor" means the Investor and any other person to whom it transfers Shares or who subscribes for Shares and who becomes a party as an **"Investor"** by signing a Deed of Adherence in accordance with clause 13.2 and is named therein as an **"Investor"**;

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

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

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

"Licensed Intellectual Property" means any Intellectual Property licensed to the Company [or any Group Company] by a third party;

"Management Accounts" means the management accounts of [each Group] Company for the period starting on [insert date] and ending on [X] 201[X], in the agreed form;

["Milestone Date" means [X];]

["Milestone Determination" has the meaning given in clause 4.3;]

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

["Monitoring Bodies" the European Regional Development Fund, European Commission, European Investment Bank, European Investment Fund, Department for Business, Innovation and Skills, Department of Communities and Local Government, National Audit Office, European Commission Auditors, European Court of Auditors, any relevant body; and any of their respective representatives, any independent firm of auditors, agents or external expert support.]

["NASDAQ" means the NASDAQ Stock Market of the NASDAQ OMX Group Inc;]

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

"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 £[X] each in the capital of the Company from time to time having the rights set out in the New Articles;

"Pension Scheme" means the group personal pension scheme of the Company operated by [X];

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

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

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

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

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

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

["Second Completion" means completion by the parties of their respective obligations in accordance with clauses 4.3 to 4.6 (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 the Investor in writing;]

["Second Disclosure Letter" means the letter in the agreed form from the Warrantors to the Investor executed and delivered immediately before Second Completion;]

["Second Tranche Securities" means the Ordinary Shares subscribed by the Investor pursuant to clause 3.2;]

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

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

["Share Option Plan" means the share option plan to be established by the Company pursuant to clause 8;]

"Shares" means the Ordinary Shares and any other shares in the capital of the Company in issue from time to time;

["SME" as defined in Article 2.1 of Annex 1 of the GBER (provided that if the European Commission shall bring into force any other definition of small and medium-sized enterprise, such definition shall whilst it remains in force apply in substitution for the definition set out above);]

["State Aid" means any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the European Union;]

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

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

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

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

"Taxation Warranties" means the Warranties in respect of Taxation set out in paragraph 14 of Part 1 of schedule 5;

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

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

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

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

"VATA" means the Value Added Tax Act 1994;

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

"Warrantors" means the Company and each of the Founders [and the Existing Shareholders].

2. INTERPRETATION

- 2.1 The clause and paragraph headings and the table of contents used in this agreement are inserted for ease of reference only and shall not affect construction.
- 2.2 References to persons shall include bodies corporate, unincorporated associations and partnerships, in each case whether or not having a separate legal personality.
- 2.3 Reference to a party or parties is to a party or parties of this agreement.
- 2.4 References to documents **"in the agreed form"** are to documents in terms agreed on behalf of the Company and the Investor and initialled on behalf of each such party for the purposes of identification only.
- 2.5 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.
- 2.6 References to those of the parties that are individuals include their respective legal personal representatives.
- 2.7 References to **"writing"** or **"written"** includes any non-transitory form of visible reproduction of words.
- 2.8 References to the word **"include"** or **"including"** (or any similar term) are not to be construed as implying any limitation and general words introduced by the word **"other"** (or any similar term) shall not be given a restrictive meaning by

reason of the fact that they are preceded or followed by words indicating a particular class of acts, matters or things.

- 2.9 Reference to **"issued Shares"** of any class or Shares of any class **"in issue"** shall exclude any Shares of that class held as Treasury Shares from time to time, unless stated otherwise.
- 2.10 Reference to the **"holders"** of a class of Shares shall exclude the Company holding Shares of that class as Treasury Shares from time to time, unless stated otherwise.
- 2.11 Except where the context specifically requires otherwise, words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing corporations and vice versa, words importing the singular shall be treated as importing the plural and vice versa, and words importing the whole shall be treated as including a reference to any part thereof.
- 2.12 References to statutory provisions, enactments or EC Directives shall include references to any amendment, modification, extension, consolidation, replacement or re-enactment of any such provision, enactment or EC Directive (whether before or after the date of this agreement), to any previous enactment which has been replaced or amended and to any regulation, instrument or order or other subordinate legislation made under such provision, enactment or EC Directive unless any such change imposes upon any party any liabilities or obligations which are more onerous than as at the date of this agreement.
- 2.13 Section 1122 of the CTA 2010 shall apply to determine whether one person is connected with another for the purposes of this agreement.
- 2.14 References in clause 1 (in so far as they are used in the clauses and schedules referred to in this clause), clauses 5, clause 9, 10, 10.7, 12, 14, 15, schedule 5, schedule 6 and schedule 7 to the Company and the Board shall include, where appropriate in the context, each of the subsidiaries of the Company and any Successor Entity and the directors for the time being of those subsidiaries and any Successor Entity respectively.

3. SUBSCRIPTIONS

- 3.1 Subject to the provisions of clauses 4.1 and 4.2, the Investor applies for the allotment and issue to it at Completion of the following shares as set out in the table below and the Company accepts such application:

Investor	No. of Ordinary Shares	Total subscription monies (£)
[Accelerated Digital Ventures Limited][ADV	[X]	[X]

ECF 1 LP]		
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3.2 [Subject to the provisions of clauses 4.3 to 4.6 (inclusive), the Investor applies for the allotment and issue to it at Second Completion of the following shares as set out in the table below and the Company accepts such application:]

Investor	No. of Ordinary Shares	Total subscription monies (£)
[Accelerated Digital Ventures Limited][ADV ECF 1 LP]	[X]	[X]

3.3 The Investor shall be entitled to direct that the [First Tranche] Securities [and the Second Tranche Securities] be issued and registered in the name of any nominee or custodian holding such shares on its behalf as bare nominee and the provisions of clauses 3.1, 3.2, 4 and 19 shall be interpreted accordingly.

3.4 Each of the Founders [and the Existing Shareholders] agrees to vote in favour of the Resolutions and hereby irrevocably waives (or confirms that it has procured the waiver of) all and any pre-emption rights they or their nominees may have pursuant to the Company's articles of association or otherwise so as to enable the issue of any shares in the capital of the Company contemplated by this agreement to proceed free of any such pre-emption rights.

4. COMPLETION

Completion

4.1 Subject to the Completion Conditions having been satisfied or waived by the Investor, Completion shall take place on the Completion Date once the events set out in clause 4.2 have occurred.

4.2 At Completion the following events shall occur:

4.2.1 the Investor shall pay the sum set out against its name in column 3 of the table in clause 3.1 (being the aggregate subscription price for the [First Tranche] Securities) by electronic funds transfer to the bank account of the Company's Solicitors as set out below and payment made in accordance with this clause 4.2 shall constitute a good discharge for the Investor of its obligations under this clause 4.2:

Account name : [X]
 Bank : [X]
 Account number : [X] [X]
 Sort code : [X]
 IBAN : [X]

Swift Code : **[X]**

4.2.2 a meeting of the Board shall be held at which the Company shall:

4.2.2.1 issue the [First Tranche] Securities credited as fully paid to the Investor and enter its name in the register of members in respect thereof;

4.2.2.2 execute and deliver to the Investor certificates for the [First Tranche] Securities;

4.2.2.3 [accept the resignations of each of **[X]** and **[X]** as directors of the Company;]

4.2.2.4 [appoint [name of director] as a director of the Board of the Company] [Investor Director]

4.2.2.5 [approve and authorise the execution by the Company of the Service Agreements]; [and]

4.2.2.6 pass any such other resolutions as may be required to carry out the obligations of the Company under this agreement.

4.2.3 the Business Plan in the agreed form shall be delivered to the Investor.

[Second Completion

4.3 Subject to (a) the Milestones having been satisfied or waived by the Investor by the Milestone Date (the "**Milestone Determination**") and (b) the remaining Second Completion Conditions having been satisfied or waived by the Investor, Second Completion shall take place on the Second Completion Date once the events set out in clause 4.6 have occurred.]

4.4 [Notwithstanding clause 4.3, the Investor may at its option (by written notice to the Company) require the Company at any time prior to the Milestone Date to accept its subscription for its allocation of the Second Tranche Securities irrespective of whether the Second Completion Conditions have been satisfied, in which event the Founders (in so far as they are legally able to do so) and the Company shall effect Second Completion for the Investor on the date so specified by the Investor, and the requirements of clause 4.6 shall apply in respect of such Second Completion.]

4.5 [Each of the Company and the Founders shall notify the Investor as soon as it or they become aware of any fact or circumstance which has caused or will or is likely to cause any of the Second Completion Conditions not to be satisfied.]

- 4.6 [At Second Completion the following events shall occur:
- 4.6.1 the 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 Securities subscribed by the Investor) by electronic funds transfer to the bank account of the Company's Solicitors and payment made in accordance with this clause 4.6 shall constitute a good discharge for the Investor of its obligations under clause 4.6;
 - 4.6.2 a meeting of the Board shall be held at which the Company shall:
 - 4.6.2.1 issue the Second Tranche Securities credited as fully paid to the Investor and enter its name in the register of members in respect thereof;
 - 4.6.2.2 execute and deliver to the Investor certificates for the Second Tranche Securities; and
 - 4.6.2.3 pass any such other resolutions as may be required to issue the Second Tranche Securities.]

5. WARRANTIES

- 5.1 The Warrantors jointly and severally warrant to the Investor that each and every Warranty set out in part 1 of schedule 5 (other than the Individual Warranties) is true, accurate and not misleading at the date of this agreement subject only to:
- 5.1.1 the matters Disclosed; and
 - 5.1.2 any exceptions expressly provided for under this agreement.
- 5.2 Each Founder severally and in respect of himself/herself only warrants to the Investor that the Individual Warranties are true and accurate in all respects and not misleading as at the date of this agreement.
- 5.3 Immediately before the Investor subscribes for the Second Tranche Securities, the Warrantors jointly and severally warrant to the Investor that each and every Warranty set out in part 1 of schedule 5 (other than the Individual Warranties) is true, accurate and not misleading as at the Second Completion Date subject only to:
- 5.3.1 the matters Disclosed; and
 - 5.3.2 any exceptions expressly provided for under this agreement.
- 5.4 Each Founder severally and in respect of himself/herself only warrants to the Investor that the Individual Warranties are true and accurate in all respects and not misleading as at the Second Completion Date.

- 5.5 Each Warranty is a separate and independent warranty, and, save as otherwise expressly provided, no Warranty shall be limited by reference to any other Warranty or by the other terms of this agreement, the Disclosure Letter [and the Second Disclosure Letter.]
- 5.6 The rights and remedies of the Investor in respect of any breach of any of the Warranties shall not be affected by Completion [or Second Completion], any investigation made by or on behalf of the Investor 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.
- 5.7 No information relating to the Company of which the Investor has actual knowledge other than by reason of it being Disclosed in accordance with clause 5.1.1 [or clause 5.3.1] (as appropriate) shall prejudice any Claim which the Investor shall be entitled to bring or shall operate to reduce any amount recoverable by the Investor under this agreement.
- 5.8 Without limitation to the rights of the Investor under this agreement, in the case of a Claim against the Company, no counterclaim or right of contribution or indemnity shall lie against the other Warrantors and, in the case of a Claim against any or all of the other Warrantors, no counterclaim or right of contribution or indemnity shall lie by any of them against the Company or any other Warrantor.
- 5.9 Where any Warranty is qualified by the expression "**so far as the Warrantors are aware**" or words having similar effect, such Warranty shall be deemed to include a statement that such awareness means both the actual knowledge of the Warrantors and also such knowledge which the Warrantors would have had if they had made reasonable enquiry of all relevant persons.
- 5.10 Any information supplied by the Company, its officers, employees or agents to the Founders or their agents, representatives or advisers in connection with, or which forms the basis of, any of the Warranties or any matter covered in the Disclosure Letter, [the Second Disclosure Letter] or otherwise in relation to the business and affairs of the Company (whether before or after the date hereof) shall be deemed not to include or have included a representation, warranty or guarantee of its accuracy by the Company to the Founders and shall not constitute a defence to any Claim by the Investor. The Founders hereby irrevocably waive any and all claims against the Company, its officers, employees or agents in respect of any information so supplied.

6. LIMITATIONS ON WARRANTY CLAIMS

- 6.1 The limitations set out in this clause 6 shall not apply to any Claim which is:
- 6.1.1 the consequence of fraud, dishonesty, wilful concealment or wilful misrepresentation by or on behalf of the Warrantors; or

- 6.1.2 (in the case of the Company only) which is a result of a breach of warranty statements 1, 3.1 and 5 of part 1 of schedule 5.
- 6.2 No Claim may be made against the Warrantors unless written notice of such Claim is served on the Warrantors giving reasonable details of the Claim as follows:
- 6.2.1 in respect of any of the Warranties other than the Taxation Warranties, by (i) no later than the date which is [[six] months after the date on which the Company delivers to the Investor the Board approved audited accounts of the Company for the [first][second] Financial Year of the Company following Completion; or (ii) [one][two] years after the Warranties were last given, whichever is the later]; and
- 6.2.2 in respect of the Taxation Warranties, by no later than the date which is four years and one month from the end of the accounting period of the Company during which Completion takes place.
- Failure to give reasonable details of any Claims shall not prevent the Investor from proceeding with any Claim otherwise made properly under this agreement.
- 6.3 The aggregate liability of the Warrantors in respect of all and any Claims shall be limited to:
- 6.3.1 in the case of the Company, an amount equal to the aggregate amount subscribed by the Investor 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 Investor; and
- 6.3.2 in the case of each of the Founders, £[X].
- 6.4 The Warrantors shall not be liable in respect of any Claim unless the aggregate liability for all Claims exceeds £[10,000], in which case the Warrantors shall be liable for the entire amount and not merely the excess.
- 6.5 In calculating liability for Claims for the purposes of clause 6.4, any Claim which is less than £[2,500] (excluding interest, costs and expenses) shall be disregarded. For these purposes, a number of Claims arising out of the same or similar subject matter, facts, events or circumstances shall be aggregated and form a single Claim.
- 6.6 No liability of the Warrantors in respect of any breach of any Warranty shall arise if such breach occurs by reason of any matter which would not have arisen but for the coming into force of any legislation not in force at the Completion Date or by reason of any change to HMRC's published practice occurring after the Completion Date.

- 6.7 The Investor shall be entitled to make a Claim in respect of liability which is contingent or unascertained provided that written notice of the Claim (giving as far as practical the amount and details of the Claim) is given to the Warrantors before the expiry of the relevant periods specified in clause 6.2.
- 6.8 The Warrantors shall not be liable for any Claim if the alleged breach which is the subject of the Claim is capable of remedy and is remedied to the reasonable satisfaction of the Investor by the Warrantors within 30 days of the date on which the notice in clause 6.2 is received by the Warrantors and the Investor suffers no loss in connection with the alleged breach.
- 6.9 Nothing in this agreement shall prejudice the Investor's duty under common law to mitigate any loss or liability which is the subject of a Claim.

7. [ENTERPRISE CAPITAL FUND REQUIREMENTS]

- 7.1 Each of the Warrantors hereby warrant jointly and severally to the Investor that each and every Warranty set out in part 1 of schedule 11 is true, accurate and not misleading at the date of this agreement.
- 7.2 The Founders hereby undertake to and covenant with the Investor that any and all subscription monies paid to the Company by or on behalf of the Investor as set out in this agreement:
- 7.2.1 will not be applied by the Company towards any of the matters or activities listed at part 2 of schedule 11; and
- 7.2.2 will be applied by the Company solely and exclusively on the development and expansion of the Business in accordance with the Business Plan (as amended from time to time, in accordance with the terms of this agreement).
- 7.3 As a separate obligation, severable from the obligations in clause 7.2, the Company undertakes to and covenants with the Investor that any and all subscription monies paid to the Company by or on behalf of the Investor as set out in this agreement:
- 7.3.1 will not be applied by the Company towards any of the matters or activities listed at part 2 of schedule 11; and
- 7.3.2 will be applied by the Company solely and exclusively on the development and expansion of the Business in accordance with the Business Plan (as amended from time to time, in accordance with the terms of this agreement).
- 7.4 The Company further undertakes to provide the Investor with the information at schedule 11 as soon as practicable, but no later than 15 Business Days' from the date of this agreement.

- 7.5 The Company understands and acknowledges that:
- 7.5.1 the Investor [ADV ECF 1 L.P.] is a limited partnership registered in, and governed by the laws of England and Wales;
 - 7.5.2 the Investor [ADV ECF 1 L.P.] is an Enterprise Capital Fund;
 - 7.5.3 there is a cumulative limit within any 12 month period of £5 million of investment in the Company by the Investor or any other Enterprise Capital Fund;
 - 7.5.4 an Investment from an Enterprise Capital Fund is State Aid and may impact the Company's eligibility for further support and investment from other state-supported investors;
 - 7.5.5 the Investor is subject to Freedom of Information Legislation and that the Investor may be required to disclose information regarding the Company pursuant to the obligations of such legislation and the Company consents to such onward transmission;
 - 7.5.6 pursuant to the Investor's status as an Enterprise Capital Fund, any of the Monitoring Bodies to which the Investor owes obligations to, may, from time to time and at their absolute discretion, request to inspect the books and records of the Company and the Company consents to such inspection with or without prior notice;
 - 7.5.7 the Investor may be required by its investors (and any related Governmental Authority) to disclose to them the information supplied by the Company pursuant to this clause 7 and the Company consents to such onward transmission.
- 7.6 The Company understands and agrees that the Investor is subject to market and public relations principles and guidelines in connection with its investors which restrict certain public announcements in relation to the Investors' portfolio of investee companies. The Investor has appended to this Agreement at Appendix 1 such principles and guidelines which the Company agrees to adhere to and comply with.
- 7.7 The Company acknowledges and agrees with the Investor that in the event that the Investor's subscription in the Company is found to constitute or contain any element of unlawful State Aid, the Investor shall be entitled to recover any sums which the Investor is required to repay pursuant to a decision of the Commission of European Communities, European Court of Justice or any other competent authority including for the avoidance of doubt any interest at the rate set by such authority.
- 7.8 Subject to clause 7.7, if the Investor's subscription in the Company under this Agreement is found to constitute or contain any element of unlawful State Aid which arises directly from the Investor's demonstrable and negligent

failure to identify that its subscription in the Company constitutes or contains any element of unlawful State Aid and which does not arise from information provided (or not provided) by, or actions or omissions of, the Company, the Investor shall indemnify the Company for any such direct loss, damage, cost or expense resulting from the operation of clause 7.7 up to an amount equal to the lower of: (i) the amount paid by the Company under clause 7.7; and (ii) the Investor's investment under this agreement.]

8. [SHARE OPTION PLAN

Within [X] Business Days of the Completion Date, the Company shall adopt a Share Option Plan in a form acceptable to the Investor whereby options over Ordinary Shares (subject to a maximum option pool [equal to [10-20%] per cent of the Shares (excluding Treasury Shares) in issue immediately following Completion) may be granted to directors, and employees of the Company pursuant to the Share Option Plan in such number as may be decided by the Board (in both cases with Investor Consent).]

9. THE BOARD AND THE INVESTOR DIRECTORS

- 9.1 The members of the Board immediately following Completion shall be [the Founders] and the Investor Director (if appointed). Board meetings will be held at intervals of not more than **[X]** weeks and at least **[X]** Board meetings will be held in each calendar year.
- 9.2 For so long as the Investor and its Permitted Transferees [holds not less than **[X]** per cent of the Shares (excluding Treasury Shares) in issue they shall have the right:
- 9.2.1 to appoint and maintain in office such natural person as the Investor may from time to time nominate as a director of the Company (and as a member of each and any committee of the Board) and to remove any director so appointed and, upon his/her removal whether by the Investor or otherwise, to appoint another director in his/her place; and
- 9.2.2 to appoint a representative to attend as an observer at each and any meeting of the Board and of each and any committee of the Board who will be entitled to speak at any such meetings but will not be entitled to vote.
- 9.3 Appointment and removal of an Investor Director or an observer in accordance with clause 9.2 shall be by written notice from the appointing Investor to the Company which shall take effect on delivery at the Company's registered office or at any meeting of the Board or committee thereof.
- 9.4 The Company shall send to the Investor, to any Investor Director and any observer appointed by the Investor (in electronic form if so required):

- 9.4.1 reasonable advance notice of each meeting of the Board (being not fewer than five Business Days) and each committee of the Board, such notice to be accompanied by a written agenda specifying the business to be discussed at such meeting together with all relevant papers; and
- 9.4.2 as soon as practicable after each meeting of the Board (or committee of the Board) a copy of the minutes.
- 9.5 The Company will reimburse the Investor Director and any observer appointed by the Investor with the reasonable costs and out of pocket expenses incurred by them in respect of attending meetings of the Company or carrying out authorised business on behalf of the Company.
- 9.6 If the Investor has appointed an Investor Director and/or an observer pursuant to clause 9.2 it shall procure that such Investor Director and/or observer shall comply with clause 15 save that such Investor Director and/or observer shall be at liberty from time to time to make full disclosure to the Investor of any information relating to the Company.
- 9.7 The parties agree that the Investor Director shall be under no obligation to disclose any information or opportunities to the Company except to the extent that the information or opportunity was passed to them expressly in their capacity as a director of the Company.
- 9.8 [For so long as the Founder[s] remain[s] [an] employee[s] of the Company they shall have the right to appoint and maintain in office as a director of the Company (and as a member of each and any committee of the Board) one of the Founders as a Founder director and to remove any director so appointed and, upon his/her removal whether by the Founders or otherwise, to appoint another Founder as a director in his/her place].

10. INFORMATION RIGHTS

- 10.1 [Each Group] Company shall for each month prepare management accounts which reasonably reflect the financial affairs of the Company for that period) with comparisons to budgets and containing trading and profit and loss accounts, balance sheets, cash flow statements and forecasts [and shall deliver them to the Investor within 14 days after the end of each month. The first management accounts shall be delivered to the Investor within 14 days after the end of the month in which Completion takes place.]
- 10.2 [Each Group] Company shall for each month prepare a milestones and KPI tracker in respect of the immediately preceding month in the format required by the Investor and shall deliver such update to the Investor within 15 days after the end of each month. The first milestones and KPI tracker shall be delivered to the Investor within 15 days after the end of the month in which Completion takes place.]

- 10.3 [Each Group] Company shall prepare a schedule of its issued share capital and any warrants and/or options to acquire shares and/or convertible securities, broken down by shareholder, optionholder, warrant holder and convertible securities holder (as appropriate) and including the percentage of the fully diluted issued share capital held by each holder and shall deliver such share capital schedule to the Investor within 21 days after the end of each quarter in the Group Company's Financial Year.
- 10.4 [Each Group] Company shall provide the Investor promptly with such other information concerning the [Group] Company and its business as the Investor may reasonably require from time to time.
- 10.5 [Each Group] Company and each of the Founders shall promptly provide the Investor with full details of any offer or proposed offer from any person wishing to enter into any Sale or purchase any of [Group Company's] assets or share capital or loan capital which may from time to time be brought to its or their attention.
- 10.6 If [any Group] Company does not comply with its obligations in clauses 10.1 to 10.5, the Investor and a firm of accountants nominated by the Investor at the [relevant Group] Company's expense will be entitled to attend the relevant [Group] Company's premises to examine the books and accounts of the [Group] Company and to discuss the Group Company's affairs, finances and accounts with its directors, officers and senior employees. Each Founder and [each Group] Company separately undertakes to the Investor to cooperate with any accountants appointed by the Investor pursuant to this clause 10.6.
- 10.7 The Founders will, unless otherwise agreed by the Investor, hold each month a conference call with the Investor on such date and time as agreed between the Founders and the Investor and by no later than the end of the third week in each month following delivery of the milestones and KPI tracker in accordance with clause 10.2.

11. MATTERS REQUIRING CONSENT OF THE INVESTOR

- 11.1 Each of the Shareholders shall exercise all voting rights and powers of control available to him/her in relation to the Company to procure that save with Investor Consent:
- 11.1.1 the Company shall not effect any of the matters referred to in part 1 of schedule 6;
- 11.1.2 the Company shall not effect any of the matters referred to in part 2 of schedule 6 without Investor Consent, provided that, the Investor shall have been deemed to have given Investor Consent on 10 Business Days' elapsing.

11.2 As a separate obligation, severable from the obligations in clause 11.1, the Company agrees that save with Investor Consent:

11.2.1 the Company shall not effect any of the matters referred to in part 1 of schedule 6; and

11.2.2 the Company shall not effect any of the matters referred to in part 2 of schedule 6 without Investor Consent, provided that, the Investor shall have been deemed to have given Investor Consent on 10 Business Days' elapsing.

12. BUSINESS UNDERTAKINGS

12.1 The Founders will promote the best interests of the Company and ensure that the Business is conducted in accordance with the Business Plan and with good business practice.

12.2 The Company shall apply the proceeds of the subscription by the Investor for the [First Tranche] Securities [and Second Tranche Securities] in the furtherance of the Business in accordance with the Business Plan and the Budget.

12.3 The Founders and the Company severally undertake to the Investor to procure, so far as it lies within their respective power to do so, that the Founders and the Company will comply with the requirements set out in schedule 7.

13. FURTHER ISSUE AND TRANSFER OF SHARES

13.1 Each of the Founders [and the Existing Shareholders] undertakes to the Investor that they shall not, and shall not agree to, transfer, mortgage, charge or otherwise dispose of the whole or any part of their interest in, or grant any option or other rights over, any shares in the capital of the Company to any person except:

13.1.1 with Investor Consent; or

13.1.2 where required so to do pursuant to the New Articles or this agreement.

13.2 Without prejudice to clause 13.1, none of the Founders and the Existing Shareholders shall effect any transfer, mortgage, charge or other disposal of any interest in Shares described in clause 13.1 nor shall the Company issue any shares or equity securities (as defined in section 560 of the Act) or sell or transfer any Shares held as Treasury Shares, to any person who is not a party to this agreement without first obtaining from the transferee or subscriber a Deed of Adherence [save in respect of the grant or exercise of an option pursuant to the Share Option Plan].

- 13.3 The Deed of Adherence shall be in favour of the Company, the Investor and any other parties to this agreement and shall be delivered to the Company at its registered office and to the Investor. Subject to clause 13.2, no share transfer or issue of shares shall be registered unless such Deed of Adherence has been delivered.

14. FOUNDER COVENANTS

Restrictive covenants

- 14.1 For the purpose of assuring to the Investor the value of the Business and the full benefit of the goodwill of the business of the Company, each of the Founders hereby undertakes and covenants with the Investor and the Company that (save for any interest in the shares or other securities of a company traded on a securities market so long as such interest does not extend to more than 3 per cent of the issued share capital of the company or the class of securities concerned or save with Investor Consent) he/she shall not:
- 14.1.1 while he/she is a director or employee of, or a consultant to the Company, carry on or be concerned, engaged or interested directly or indirectly (in any capacity whatsoever) in any trade or business competing with the trade or business of the Company as carried on at the time or, in relation to any trade or business of the Company that he/she has been engaged or involved in, at any time during a period of two years immediately preceding that time; or
 - 14.1.2 during the period of 12 months commencing on the Termination Date:
 - 14.1.2.1 within the [European Economic Area] carry on or be concerned, engaged or interested directly or indirectly in any capacity whatsoever in any trade or business competing with the business carried on by the Company in which he/she shall have been engaged or involved at any time during the Period;
 - 14.1.2.2 either on his/her own behalf or in any other capacity whatsoever directly or indirectly do or say anything which may lead to any person ceasing to do business with the Company on substantially the same terms as previously (or at all);
 - 14.1.2.3 either on his/her own behalf or in any other capacity whatsoever directly or indirectly endeavour to entice away from the Company or solicit any person, firm or company who was a client, customer, supplier, agent or

distributor of the Company during the Period with whom he/she shall have been engaged or involved by virtue of his/her duties during the Period in competition with or to the detriment of the Company;

14.1.2.4 either on his/her own behalf or in any other capacity whatsoever directly or indirectly have any dealings with any person, firm or company who was a client, customer, supplier, agent or distributor of the Company during the Period with whom he/she shall have been engaged or involved by virtue of his/her duties during the Period in competition with or to the detriment of the Company; or

14.1.2.5 either on his/her own behalf or in any other capacity whatsoever directly or indirectly employ, engage or induce, or seek to induce, to leave the service of the Company any person who is or was a Key Employee with whom he/she shall have had dealings during the Period whether or not such person would commit any breach of their contract of employment by reason of so leaving the service of the Company or otherwise; or

14.1.3 at any time after the Termination Date represent themselves as being in any way currently connected with or interested in the business of the Company (other than as a shareholder if that be the case).

14.2 Each of the restrictions contained in each paragraph of clause 14.1 is separate and distinct and is to be construed separately from the other such restrictions. Each of the Founders hereby acknowledges that they consider such restrictions to be reasonable both individually and in the aggregate and that the duration extent and application of each of such restrictions are no greater than is necessary for the protection of the goodwill of the businesses of the Company and that the consideration paid by the Investor for the [First Tranche] Securities [and Second Tranche Securities] applied for in this agreement takes into account and adequately compensates him/her for any restriction or restraint imposed thereby. However, if any such restriction shall be found to be void or unenforceable but would be valid or enforceable if some part or parts thereof were deleted or the period or area of application reduced, each of the Founders hereby agrees that such restriction shall apply with such modification as may be necessary to make it valid.

Intellectual property

14.3 Any discovery, invention, secret process or improvement in procedure made or discovered by any Founder while in the service of any Group Company or while a Shareholder in the Company in connection with or in any way affecting or relating to the Company's business or capable of being used or

adapted for use in or in connection with the Company's business shall as soon as reasonably practicable be disclosed to the Company and shall belong to and be the absolute property of the Group Company which the Company nominates for the purpose. For the avoidance of doubt, this agreement shall not operate as a transfer instrument and any transfer of Intellectual Property rights shall be effected under a separate agreement.

- 14.4 Each of the Founders (whether before or after his/her ceasing to be a Shareholder in the Company or his/her ceasing to be an employee or engaged as a consultant of any Group Company) shall at the expense of the Company or its nominee apply or join in applying for letters patent or other similar protection in the United Kingdom or any other part of the world for any such discovery, invention, process or improvement as referred to in clause 14.3 and shall execute all instruments and do all things necessary for vesting those letters patent or other similar protection when obtained and all right and title to and interest in them in the Company (or its nominee) absolutely and as sole beneficial owner.

15. CONFIDENTIALITY

- 15.1 Subject to clause 15.2, each of the parties agrees to keep secret and confidential and not to use disclose or divulge to any third party or to enable or cause any person to become aware of (except for the purposes of the Company's business) any Confidential Information.
- 15.2 The Investor shall be at liberty from time to time to make such disclosure:
- 15.2.1 to its partners, trustees, shareholders, unitholders and other participants or potential participants for the purposes of, but not limited to, reviewing existing investments and investment proposals;
 - 15.2.2 to any lender to the Company and/or to any shareholder of the Company;
 - 15.2.3 as shall be required by law or by any regulatory authority to which the Investor is subject or by the rules of any stock exchange upon which an Investor's securities are listed or traded;
 - 15.2.4 to the Company's auditors and/or any other professional advisers of the Company;
 - 15.2.5 to the Investor's professional advisers and to the professional advisers of any person to whom the Investor is entitled to disclose information pursuant to this clause 15.2;
 - 15.2.6 to any person who is considering making an investment in the Company or purchasing Shares for the purposes of evaluating any such investment or purchase,



- 15.2.7 in relation to the business affairs and financial position of the Company as it may in its reasonable discretion think fit, provided that the recipient is subject to an obligation to keep the disclosure confidential on the same basis as is required by the Investor.
- 15.3 For the purposes of this clause, "**Confidential Information**" means any information or know-how of a secret or confidential nature relating to the Company or of the Investor, including (without limitation):
- 15.3.1 any information regarding this agreement and the investment by the Investor in the Company pursuant to this agreement;
 - 15.3.2 any financial information or trading information relating to the Company or of the Investor which a party may receive or obtain as a result of entering into this agreement;
 - 15.3.3 in the case of the Company, information concerning:
 - 15.3.3.1 its finances and financial data, business transactions, dealings and affairs and prospective business transactions;
 - 15.3.3.2 any operational model, its business plans and sales and marketing information, plans and strategies;
 - 15.3.3.3 its customers, including, without limitation, customer lists, customer identities and contact details and customer requirements;
 - 15.3.3.4 any existing and planned product lines, services, price lists and pricing structures (including, without limitation, discounts, special prices or special contract terms offered to or agreed with customers);
 - 15.3.3.5 its technology or methodology associated with concepts, products and services including research activities and the techniques and processes used for development of concepts, products and services;
 - 15.3.3.6 its computer systems, source codes and software, including, without limitation, software and technical information necessary for the development, maintenance or operation of websites;
 - 15.3.3.7 its current and prospective Intellectual Property;
 - 15.3.3.8 its directors, officers, employees and shareholders (including, without limitation, salaries, bonuses, commissions and the terms on which such individuals are

employed or engaged and decisions or contents of board meetings);

- 15.3.3.9 its suppliers, licensors, licensees, agents, distributors or contractors including the identity of such parties and the terms on which they do business, or participate in any form of commercial co-operation with the Company;
- 15.3.3.10 information concerning or provided to third parties, in respect of which the Company owes a duty of confidence (in particular but without limitation, the content of discussions or communications with any prospective customers or prospective business partner); and
- 15.3.3.11 any other information which it may reasonably be expected would be regarded by a company as confidential or commercially sensitive,

but shall not include any information which:

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

16. ANNOUNCEMENTS

- 16.1 Except in accordance with clauses 15.2 or 16.2, the parties shall not make any public announcement or issue a press release or respond to any enquiry from the press or other media concerning or relating to this agreement or its subject matter (including but not limited to the Investor's investment in the Company) or any ancillary matter.
- 16.2 Notwithstanding clause 16.1, any party may:
- 16.2.1 only 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;
 - 16.2.2 make or permit to be made an announcement or any press release concerning or relating to this agreement or its subject matter or any ancillary matter with the prior written approval of the Investor and the Board or if and to the extent required by:
 - 16.2.2.1 law;
 - 16.2.2.2 any securities exchange on which such party's securities are listed or traded;
 - 16.2.2.3 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
 - 16.2.2.4 any court order.

17. COSTS AND EXPENSES

- 17.1 No later than 5 Business Days' after Completion, the Company shall pay for the legal and due diligence costs borne by the Investor for the transaction set out in this agreement, up to a maximum aggregate amount of £[X] plus VAT and disbursements.
- 17.2 Subject to clause 17.1 above, the Company the Founders and the Existing Shareholders shall bear their own costs and disbursements incurred in the negotiations leading up to and in the preparation of this agreement and of matters incidental to this agreement.
- 17.3 If the Investor or any of its Permitted Transferees successfully brings a Claim against the Company, the Investor or such Permitted Transferee(s) shall be able to recover in full any costs and disbursements associated with such Claim from the Company.

18. SURVIVAL AND CESSATION OF OBLIGATIONS OF THE FOUNDERS

The obligations on a Founder under clauses 5, 14, 15 16 and schedule 5 shall survive any transfer by them of all or any Shares and shall survive them ceasing to be a director or employee of or consultant to the Company but otherwise upon a Founder ceasing to hold Shares and ceasing to be a director or employee of or consultant to the Company the relevant Founder shall have no further obligation or liability hereunder but without prejudice to the due performance by them of all obligations up to the date of such cessation.

19. NO WARRANTIES PROVIDED BY AN INVESTOR ON AN EXIT

Each party acknowledges and agrees that, upon an Exit, the Investor shall not be obliged to give warranties or indemnities (except a warranty as to title to the shares held by the Investor (or its nominees)).

20. EFFECT OF CEASING TO HOLD SHARES

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

21. CUMULATIVE REMEDIES

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

22. 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.

23. ENTIRE AGREEMENT

23.1 This agreement and the documents referred to or incorporated in it constitute the entire agreement between the parties relating to the subject matter of this agreement and supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, between the parties in relation to the subject matter of this agreement.

23.2 With effect from Completion and in consideration of the obligations of the parties to each other under this agreement, the [Prior Agreement] shall terminate and cease to have effect. Each of the parties to the Prior

Agreement shall stand released and discharged from all obligations arising under or resulting from the Prior Agreement. None of the parties to the Prior Agreement shall be entitled to exercise (and each such party waives) any rights to make any claim against any of the others under or in relation to the Prior Agreement or its termination.

- 23.3 Each of the parties acknowledges and agrees that it has not entered into this agreement in reliance on any statement or representation of any person (whether a party to this agreement or not) other than as expressly incorporated in this agreement and the documents referred to or incorporated in this agreement.
- 23.4 Without limiting the generality of the foregoing, each of the parties irrevocably and unconditionally waives any right or remedy it may have to claim damages and/or to rescind this agreement by reason of any misrepresentation (other than a fraudulent misrepresentation) having been made to it by any person (whether party to this agreement or not) and upon which it has relied in entering into this agreement.
- 23.5 Each of the parties acknowledges and agrees that the only cause of action available to it under the terms of this agreement and the documents referred to or incorporated in this agreement in respect of a Claim shall be for breach of contract.
- 23.6 Other than in respect of a Claim, each of the parties acknowledges and agrees that damages alone may not be an adequate remedy for the breach of any of the undertakings or obligations as set out in this agreement. Accordingly, without prejudice to any other rights and remedies the parties may have, the parties shall be entitled to seek the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement.
- 23.7 Nothing contained in this agreement or in any other document referred to or incorporated in it shall be read or construed as excluding any liability or remedy as a result of fraud.

24. VARIATION AND TERMINATION

- 24.1 All and any of the provisions of this agreement may be deleted, varied, supplemented, restated or otherwise changed in any way at any time with the prior written consent of the Company, the Investor and by the Shareholders holding at least [90] per cent of the Shares (excluding Treasury Shares) held by the Shareholders, in which event such change shall be binding against all of the parties hereto provided that if such change would impose any new obligations on a party, or increase any existing obligation, the consent of the affected party to such change shall be specifically required.

24.2 This agreement may be terminated with the prior written consent of the Company, the Investor and by Shareholders holding at least [90] per cent of the Shares (excluding Treasury Shares) held by the Shareholders, in which event such termination shall be binding against all of the parties hereto save that nothing in this clause shall release any party from liability for breaches of this agreement which occurred prior to its termination.

25. 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.

26. ASSIGNMENT AND TRANSFER

26.1 Subject to clause 26.3, this agreement is personal to the parties and no party shall:

26.1.1 assign any of its rights under this agreement;

26.1.2 transfer any of its obligations under this agreement;

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

26.1.4 charge or deal in any other manner with this agreement or any of its rights or obligations.

26.2 Any purported assignment, transfer, sub-contracting, delegation, charging or dealing in contravention of clause 26.1 shall be ineffective.

26.3 The Investor may assign the whole or part of any of its rights in this agreement to any person who has received a transfer of shares in the capital of the Company from the Investor in accordance with the New Articles and has executed a Deed of Adherence.

27. RIGHTS OF THIRD PARTIES

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.

28. CONFLICT BETWEEN AGREEMENTS

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

29. COUNTERPARTS; NO ORIGINALS

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

30. NOTICES

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

30.1.1 to any company which is a party at its registered office (or such other address as it may notify to the other parties to this agreement for such purpose);

30.1.2 to any individual who is a party at the address of that individual shown in schedule 1; or

30.1.3 to the Investor at the principal place of business of the Investor,

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

30.2 A communication sent according to clause 30.1 shall be deemed to have been received:

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

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

30.2.3 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.

31. SEVERANCE

31.1 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.

- 31.2 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.

32. GOVERNING LAW

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

33. JURISDICTION

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

34. CONFIRMATION BY FOUNDERS AND INVESTOR

- 34.1 Each of the Founders confirms to the Investor that, for the purposes of entering into the transactions contemplated by this agreement:

34.1.1 they have entered into such transactions entirely on the basis of their own assessment of the risks and effect thereof;

34.1.2 they are owed no duty of care or other obligation by the Investor; and

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

- 34.2 The Investor acknowledges that it is not relying upon any person, firm, or corporation, other than the Company and its officers and directors, in making its investment or decision to invest in the Company.

35. [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.]



SCHEDULE 1: FOUNDERS AND SHAREHOLDERS

Part 1: The Founders

Name	Address

Part 2: The Existing Shareholders

Name	Address

SCHEDULE 2: THE COMPANY

Part 1: Particulars of the Company

Registered number:	
Registered office:	
Directors:	
Secretary:	
Accounting reference date:	
Charges:	
Auditors:	
Issued share capital (including treasury shares):	

Part 2: Particulars of the subsidiaries

Registered number:	
Registered office:	
Directors:	
Secretary:	
Accounting reference date:	
Charges:	
Auditors:	
Issued share capital (including treasury shares):	



SCHEDULE 3: MEMBERS OF THE COMPANY

Part 1: Members of the Company - pre-Completion

Member	Number of [INSERT CLASS OF SHARE] Shares held

Part 2: Members of the Company - post-Completion

Member	Number of [INSERT CLASS OF SHARE] Shares held	Number of [Note: insert details of other class of shares, options, warrants and/or convertible securities (as appropriate)] held

Part 3: [Members of the Company - post-Second Completion]

Member	Number of [INSERT CLASS OF SHARE] Shares held	Number of [Note: insert details of other class of shares, options, warrants and/or convertible securities (as appropriate)] held

SCHEDULE 4: CONDITIONS TO COMPLETION

Part 1: Conditions to Completion

1. The passing of directors' and shareholders' resolutions in the agreed form at a duly convened Board meeting and a general meeting or by shareholders' written resolution to:
 - 1.1 authorise the allotment of the [First Tranche] Securities [and Second Tranche] Securities;
 - 1.2 waive pre-emption rights in respect of the allotment and issue of the [First Tranche] Securities [and Second Tranche Securities]; and
 - 1.3 adopt the New Articles.
2. The delivery to the Investor of: [the Business Plan], [the Accounts], [the Management Accounts]
3. [The assignment to a Group Company of all Intellectual Property made or discovered by any Existing Shareholder while in the service of any Group Company or while a shareholder in the Company in connection with or in any way affecting or relating to the Business or capable of being used or adapted for use in or in connection with the Business.]
4. [The delivery of a letter from the Company's Solicitors addressed to the Investor confirming that all necessary checks have been completed for the purposes of anti-money laundering regulations.]
5. [Keyman and critical illness insurance having been effected in the sum of £[X] for the benefit of the Company on the life and health of [X] on such terms as shall be approved by the Investors.]
6. [Directors' and officers' liability insurance having been effected in the sum of £[X] on such terms as shall be approved by the Investors.]
7. Delivery to the Investor of the Disclosure Letter.
8. The Investor being satisfied that its investment for the [First Tranche] Securities satisfies the eligibility conditions for an investment by an Enterprise Capital Fund.
9. The Investor and the Company agreeing the monthly key performance indicators and milestones to be monitored following Completion.

Part 2: Conditions to Second Completion

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

2. [Each of the Milestones having been achieved by the Company to the reasonable satisfaction of the Investor (or waived in whole or in part by the Investor) by the Second Completion Date.]
3. [In the reasonable opinion of the Investor, there having been no material adverse change in the financial position or prospects of the Company or its Business since Completion.]
4. In the reasonable opinion of the Investor, there having been no material breach of this agreement, the New Articles or any document referred to herein as being in the agreed form, which if capable of remedy, has not been remedied within seven Business Days of notification of such breach.
5. [The delivery to the Investor of the Accounts, the Management Accounts and the Business Plan.]
6. [Delivery to the Investor of the Second Disclosure Letter.]
7. Each of the Founders continuing to be employed or engaged by the Company.
8. The Company:
 - 8.1 not having entered into any composition or arrangement with its creditors generally;
 - 8.2 not being placed in voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) nor having any order made for its compulsory liquidation;
 - 8.3 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
 - 8.4 ceasing to carry on business or being deemed unable to pay its debts for the purposes of section 123 of the Insolvency Act 1986.
9. The Investor being satisfied that its investment for Second Tranche Securities satisfies the eligibility conditions for an investment by an Enterprise Capital Fund.



SCHEDULE 5: WARRANTIES

Part 1: Completion Warranties

1. Corporate information and share capital

- 1.1 The Company is a private limited company, duly incorporated and validly existing under the laws of England and Wales. The Company has full power and authority to enter into and perform this Agreement and this Agreement constitutes binding obligations on it in accordance with its terms.
- 1.2 Each Founder is the sole legal and beneficial owners of the number of Shares set opposite his/her respective name in column 2 of part 1 of schedule 3 [and column 2 of part 2 of schedule 3 respectively]. The Shares set opposite his/her respective name in column 1 of part 1 of schedule 3 [and column 2 of part 2 of schedule 3 respectively] post-completion will have been properly allotted and fully paid up and there is no Encumbrance affecting such Shares, nor any agreement to create any.
- 1.3 Immediately following Completion, the Shareholders will be the legal and beneficial owners of the number of the Shares set opposite their respective names in column 2 of part 2 of schedule 3.
- 1.4 The Shares set out in part 1 of schedule 3 constitute the entire issued share capital of the Company immediately prior to Completion. No dividend or other distribution of profits or assets (including any distribution within the meaning of Corporation Tax Act 2010) has been, or has been agreed to be, declared, paid or made by the Company. No person has any right (whether contingent or otherwise) to require the Company to allot or grant rights to subscribe for any shares or to convert any existing securities into shares or issue securities that have rights to convert into shares. No person has claimed to be entitled to any of such things.
- 1.5 No liquidator, provisional liquidator, administrator, receiver, administrative receiver or similar officer has been appointed in relation to the Company or the whole or any part of its assets or undertaking. So far as the Warrantors are aware, there are no circumstances which are likely to result in such an event.

2. Records and registers

- 2.1 The records (including computer records), statutory books, registers, minute books and books of account of the Company are duly written up and maintained in accordance with all legal requirements applicable thereto and contain true, full and accurate records of all matters required to be dealt with therein and all such books and all records and documents (including documents of title) which are its property are in its possession or under its control.

2.2 All accounts, documents and returns required to be delivered or made to the Registrar of Companies have been duly and correctly delivered or made. There has been no notice of any proceedings to rectify the register of members of the Company or the Company's PSC register and there are no circumstances which might lead to any application for rectification of the register of members or the PSC register.

2.3 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.

3. **Intellectual Property, Confidential Information and Data Protection**

3.1 The Company is the sole unencumbered legal and beneficial owner and, where registered, the sole registered proprietor of all its Intellectual Property.

3.2 The Company has taken all steps necessary or desirable for the fullest protection of all Intellectual Property and know-how used by it and the Company has not itself granted any rights to third parties in relation to any of its Intellectual Property.

3.3 The Company is (or in the case of applications will be) the sole legal and beneficial owner of (and where registered, the sole registered owner of) each item of its Intellectual Property and all such Intellectual Property is not subject to any claims of opposition from any third party and is valid, subsisting and enforceable.

3.4 The operations of the Company and any products or services supplied by them do not use or infringe the rights of any person or infringe any right of privacy and the Warrantors are not aware of any claims or applications for registration which might be material for disclosure to the Investor as an applicant for shares in the Company.

3.5 No Intellectual Property in which the Company has any interest and which is, or is likely to be, material to the business of the Company is:

3.5.1 being (or has been) infringed, misappropriated or used without permission by any other person; or

3.5.2 subject to any licence, estoppel or authority or similar right in favour of any other person.

3.6 All Intellectual Property which is registered in the name of the Company, or in respect of which the Company has made application for registration, is:

3.6.1 listed and briefly described in the Disclosure Letter;



- 3.6.2 legally and beneficially vested in the Company; and
- 3.6.3 valid and enforceable and not subject to any claims of opposition from any third party.
- 3.7 All renewal fees in respect of the Intellectual Property registered by the Company have been duly paid, and all other steps required for the maintenance and protection of such registered Intellectual Property have been taken, in any jurisdiction in which they are registered.
- 3.8 Save as Disclosed in the Disclosure Letter, there are no Intellectual Property Licences Out and save as Disclosed in the Disclosure Letter, the Company is not under any obligation (whether contingent or otherwise) to grant any.
- 3.9 The Company uses Licensed Intellectual Property in accordance with the terms of the applicable licence(s) and has not been notified of any breach of such licence(s) and there are no facts or circumstances which might give rise to such a claim.
- 3.10 The Company, the Founders and all other employees of the Company have not disclosed or permitted to be disclosed to any person (other than to the Investors and to their agents, employees or professional advisers) any of its know-how, trade secrets, confidential information or lists of customers or suppliers.
- 3.11 The Disclosure Letter describes:
 - 3.11.1 each item of Open Source Code that is contained in, distributed with, or used in the development of the Company Products or from which any part of any Company Product is derived; and
 - 3.11.2 the Company Product(s) to which each such item of Open Source Code relates.
- 3.12 To the extent that the Company uses any "open source" or "copyleft" software or is party to "open" or "public source" or similar licenses, the Company is in compliance with the terms of any such licenses, and the Company is not required (and, even if it distributed its software, would not be required) under any such license to (a) make or permit any disclosure or to make available any source code for its (or any of its licensors') proprietary software; or (b) distribute or make available any of the Company's proprietary software or intellectual property (or to permit any such distribution of availability).
- 3.13 The Company is the legal and beneficial owner free from Encumbrances of the Computer System and no other person has any claims or rights in respect of any element of the Computer System; and
- 3.14 The Computer System:

- 3.14.1 is not wholly or partly dependent on any facilities which are not under the exclusive ownership or control of the Company;
 - 3.14.2 has been and is being properly and regularly maintained and replaced and has the benefit of appropriate maintenance and support agreements;
 - 3.14.3 has the capacity and is of a suitable technical specification necessary to fulfil the present and foreseeable requirements of the business of the Company; and
 - 3.14.4 comprises all computer hardware, firmware, software (including source code and object code) manuals, supporting materials and accessories which are necessary to enable the Company to carry on business.
- 3.15 The Company has in place adequate back-up, disaster recovery and other systems and procedures (details of which have been provided to the Investor) to enable its business to continue without material adverse change in the event of a failure of the Computer System.
- 3.16 In respect of any Personal Data processed by the Company, the Company:
- 3.16.1 has complied with the Data Protection Legislation (including but not limited to the Data Protection Principles) and any guidance notes or guidelines issued from time to time by the Information Commissioner (and any successor) and all other relevant authorities;
 - 3.16.2 has not received any enforcement notice, information notice, special information notice, monetary penalty notice or other notice, letter or complaint alleging a breach by it of any of the provisions of the Data Protection Legislation or requesting information as to its data protection policies or practices and no circumstances exist which may give rise to any of the above; and
 - 3.16.3 has not awarded compensation to an individual under the Data Protection Legislation, no claim for such compensation is outstanding and so far as the Warrantors are aware there is no reason to believe that any circumstances exist which might lead to any claim for compensation being made.

4. **Litigation**

- 4.1 Otherwise than as claimant in the collection of debts arising in the ordinary course of business (none of which exceed £[X]) neither the Company nor any person for whose acts or defaults the Company may be vicariously liable is involved in any disputes or claims (whether threatened, pending or actual) and there is not and has not been any governmental, regulatory or other

investigation, inquiry or proceedings concerning the Company, its business or any of its assets and none is pending or threatened.

- 4.2 There are no circumstances likely to give rise to any of the matters in paragraph 4.1.
- 4.3 Neither the Company nor any of its officers, agents or employees (during the course of their duties in relation to the business of the Company) has committed or omitted to do any act or thing the commission or omission of which is or could be in contravention of any statutory obligation or any other law of England or any other country giving rise to any fine, penalty, default proceedings or other liability in relation to the business or officers of the Company or any of its assets or any judgment or decision which would materially affect the financial or trading position of the Company.

5. **Statutory and legal requirements**

- 5.1 The Company has conducted its business and dealt with its assets in all material respects in accordance with all laws. Neither the Company nor any person for whose acts or defaults the Company may be vicariously liable has done or omitted to do anything which is or is likely to be in material contravention of any law.
- 5.2 The Company has all permits, authorities, licences and consents required to own and use its assets and to carry on its business as currently carried on and all conditions applicable thereto have been complied with and 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.
- 5.3 In respect of all insurance policies held by the Company (and which the Warrantors confirm are appropriate for the Business and comply with the recommendations of the Company's insurance broker):
- 5.3.1 all premiums have been duly paid to date;
 - 5.3.2 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
 - 5.3.3 there are no circumstances which would or might give rise to any claim and no insurance claim is outstanding.
- 5.4 In respect of any Grant Funding provided to the Company:

- 5.4.1 the Company has complied in all respects with the terms and conditions on which any Grant Funding has been provided to the Company;
- 5.4.2 the entry into this agreement and the fulfilment of the Business Plan will not:
 - 5.4.2.1 breach any terms or conditions of any Grant Funding; and
 - 5.4.2.2 alter or abrogate any rights of the Company under any Grant Funding.
- 5.4.3 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 Business Plan.

6. **Material Obligations**

- 6.1 The Company has not assumed or incurred any material liability, obligation or expense (whether actual or contingent) other than as a result of trading activities in the ordinary and usual course of its business, nor has it agreed to do so.
- 6.2 The current liabilities of the Company do not exceed £75,000, other than as Disclosed.
- 6.3 The Company has not incurred any indebtedness or other liability in the nature of indebtedness (other than trade credit extended in the ordinary course of business), and does not have any off-balance sheet liabilities.
- 6.4 All agreements between any of the Founders and Existing Shareholders or between any of the Founders and Existing Shareholders and the Company (other than this agreement) are Disclosed in the Disclosure Letter.
- 6.5 No Founder nor any person connected with a Founder owns any property used by the Company.
- 6.6 The Company is not in arrears in respect of any payments due from the Company to HM Revenue and Customs or any other public body.

7. **Accounts**

- 7.1 The Accounts have been prepared in accordance with accounting principles, standards and practices which are generally accepted in the United Kingdom and on the same basis and in accordance with the same accounting policies as the corresponding accounts for the preceding [three] financial years, comply with the requirements of the Act and give a true and

fair view of the state of affairs of the Company at the Accounts Date and of the profits and losses for the period concerned.

7.2 The Accounts make proper provision or reserve for or, in the case of actual liabilities, properly disclose, note or take into account as at the Accounts Date:

7.2.1 all liabilities whether actual contingent or disputed;

7.2.2 all capital commitments whether actual or contingent;

7.2.3 all bad and doubtful debts; and

7.2.4 all Taxation.

7.3 The profits (or losses) shown in the Accounts have not to a material extent been affected (except as disclosed therein) by any extraordinary or exceptional event or circumstance or by any other factor rendering such profits unusually high or low.

7.4 The Management Accounts:

7.4.1 have been prepared in accordance with good accounting practice;

7.4.2 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

7.4.3 are not inaccurate or misleading in any material respect.

7.5 Since the Accounts Date as regards the Company:

7.5.1 the Business has been carried on in the ordinary course and as to maintain the same as a going concern;

7.5.2 there has not been any material deterioration in the financial position of the Business of the Company; and

7.5.3 no part of the Business has been affected to a material extent by the loss of any important customer, or of any source of supply or by the cancellation or loss of any order or contract or by any other abnormal factor or event nor so far as the Warrantors are aware are there any circumstances like to lead thereto.

8. **Borrowings and facilities**

The Company is not in breach of any of the terms of its bank overdraft facilities and other borrowings and none of such facilities or terms of borrowing will be terminated as a result of the entry into of this agreement.

9. Properties

- 9.1 The Properties (and the interest held by the Company) are identified in schedule SCHEDULE 8: and they are the only properties in which the Company has an interest or occupies.
- 9.2 The Company is the sole owner of and has a good and marketable title to the Properties. The title documents for the Properties are held by the Company and are in good order.
- 9.3 There are no outstanding liabilities (actual, anticipated or contingent) in relation to any of the Properties (including, without limitation, outstanding rent reviews and future obligation to reinstate alterations) or in relation to any property formerly owned or occupied by the Company.

10. Assets, debts and stock

All assets used by and all debts due to the Company or which have been otherwise been represented as being its property or due to it or used or held for the purposes of its business are at the date of Completion its absolute property and none is the subject of any Encumbrance (save in respect of liens arising in the normal course of trading) or the subject of any factoring arrangement, hire purchase, retention of title, conditional sale or credit sale agreement.

11. Employees

- 11.1 None of the officers or employees of the Company has given or received notice terminating his/her employment or will be entitled to give notice as a result of the provisions of this agreement.
- 11.2 The Company does not owe any amount to, nor does it have any outstanding obligations in respect of, any of its present or former directors, employees or shareholders other than remuneration accrued during the month in which this agreement has been entered into.
- 11.3 [The Company has at all times complied with its obligations to, under and in respect of the Pension Scheme, and the Pension Scheme has been operated and administered in accordance with the terms of its governing documentation, all legal obligations, and the requirements of all regulatory bodies, including, without limitation, the Pensions Regulator and HMRC.]
- 11.4 The Company is not involved in any disputes and there are no circumstances which may result in any dispute involving any of the officers or employees or former employees of the Company (including any claim against the

Company arising out of the employment or termination of employment of any employee or former employee for compensation for loss of office or employment or otherwise) and none of the provisions of this agreement including the identity of the Investors is likely to lead to any such dispute.

12. **General**

- 12.1 Each of the Warrantors has supplied to the Investor all information in their reasonable opinion which they believe would be relevant to the Investor entering into this agreement and no Warrantor is aware of any factor or matter not Disclosed which may directly affect the Company of the financial or trading prospects of the Company, the disclosure of which might reasonably affect the willingness of a reasonable investor to subscribe for Shares in the capital of the Company, or the price at or terms on which an investor would be willing to subscribe for them.
- 12.2 The information provided to the Investor by the Company in the Company's response to the Investor's Initial Application Form, Deep Dive Document, Internal Challenge Questionnaire, Due Diligence Questionnaire, External Challenge Reports and in any pitches provided to the Investor as part of the approval process for its investment pursuant to this agreement was when given and, save to the extent subsequently updated, is now materially accurate.
- 12.3 All expressions of opinion, intention and expectation contained in the Business Plan are reasonable and are fairly and honestly held and have been made after due and careful enquiry as to the facts on which they are based and after due and careful consideration.
- 12.4 The financial forecasts, projections or estimates contained in the Business Plan ("**Projections**") have been prepared with all reasonable care and on reasonable assumptions (material details of which are set out in the Business Plan). The Projections have been carefully considered by the Warrantors and are honestly believed by them to be reasonable having regard to all information presently known to them after having made such enquiries as they could reasonably be expected to make and relying on such information as it is reasonable for them to rely on.
- 12.5 The Company has not paid, nor is it liable for, any finder's fee, brokerage or other commission or advisers' fees, costs or expenses in connection with the Investor's subscription in the Company, this Agreement or any matters which would be ancillary to the Investor's subscription.

13. **Individual Warranties**

- 13.1 Each Founder has never been charged with or convicted of a criminal offence (other than a road traffic offence for which no custodial sentence was imposed), nor have any bankruptcy or equivalent proceedings or

proceedings for disqualification as a director been threatened or brought against him/her, nor is he/she aware of any circumstances which he/she believes may give rise to any such proceedings.

13.2 Each Founder is not engaged or has pending, or so far as each Founder is aware, threatened against him/her any litigation, claim or proceedings and, so far as each Founder is aware, there are no circumstances likely to give rise to any such litigation, claim or proceedings and each Founder is of good standing.

14. **Taxation**

14.1 [Each Group][The] Company has duly and punctually made all returns and given or delivered all notices, accounts and information which ought to have been made to and is not and has not been involved in any dispute with any Taxing Authority concerning any matter likely to affect in any way the liability (whether accrued, contingent or future) of it to Taxation and [no Group][the] Company is [not] aware of any matter which may lead to such dispute.

14.2 All Taxation due in respect of payments made by [each Group][the] Company to any person, which ought to have been made under deduction or withholding of or in respect of Taxation, has been properly deducted and duly accounted for to the appropriate Taxing Authority from all such payments made.

14.3 No directors, officers or employees of [any Group][the] Company have received any securities, interests in securities or securities options (each as defined in Part 7 of ITEPA).

14.4 No directors, employees or officers of [any Group][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.

14.5 [All directors, officers or employees of [each Group][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 [each Group][the] Company under section 431(1) of ITEPA within the statutory time limit and a schedule of any such directors, officers or employees and the elections entered into is attached to the Disclosure Letter.]

14.6 [Each Group][The] Company is a close company as defined in section 439 of the CTA 2010, but is not and has never been a close investment-holding company as defined in section 34 of the CTA 2010.

14.7 No distribution within section 1064 of the CTA 2010 has been made by [any Group][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 [any Group][the] Company, and [each Group][the] Company has not,



since [the Accounts Date] [incorporation], released or written off the whole or part of the debt in respect of any such loan or advance.

- 14.8 All acquisitions or disposals of assets by [each Group][the] Company and all supplies of services by and to [each Group][the] Company have occurred at arm's length between unconnected persons and for a consideration in cash at market value.
- 14.9 [Each Group][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). [Each Group] Company has complied with all statutory provisions, regulations and notices relating to VAT and has duly and punctually accounted for and/or paid HMRC all amounts of VAT which it ought to have so accounted for and/or paid.
- 14.10 [The Company has not][No Group Company has] been party to or concerned with any scheme or arrangement of which the main purpose or one of the main purposes was the avoidance of or a reduction in a liability to Taxation.

Part 2: Second Completion Warranties

1. General

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

2. Financial

- 2.1 The Investor has 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.
- 2.2 Since the date to which the aforesaid accounts were drawn, there has been no material adverse change in the financial or trading position of [any Group] Company.
- 2.3 [Each Group] Company has disclosed to the Investor in writing all:
- 2.3.1 commitments of an unduly onerous nature;
 - 2.3.2 litigation (including litigation known to be threatened);
 - 2.3.3 unusual or non-recurring items significantly affecting its financial position;
 - 2.3.4 debts known to be bad or doubtful;



- 2.3.5 dividends paid or proposed; and
- 2.3.6 any actual or potential Intellectual Property infringements by [each Group] Company of which the Founders are aware.

SCHEDULE 6: MATTERS REQUIRING INVESTOR CONSENT OR NOTIFICATION

Part 1:

[Consider in the context of the investment]

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

a receiver or administrative receiver over all or any part of the Company's assets or undertaking.

11. Enter into or give or permit or suffer to subsist any guarantee of or indemnity or contract of suretyship for or otherwise commit itself in respect of the due payment of money or the performance of any contract, engagement or obligation of any other person or body [other than a wholly owned subsidiary of the Company].
12. Offer or grant any superior registration rights to any future shareholder in the Company without offering substantially similar rights to the Investor.
13. Make any material change to the nature of the Business or the jurisdiction where it is managed and controlled.
14. Deal in any way (including the acquisition or disposal, whether outright or by way of licence or otherwise howsoever) with Intellectual Property other than by sub-licencing such Intellectual Property on arm's length terms and in the ordinary course of business

Part 2: Matters subject to prior notification on 10 Business Days with deemed Investor Consent

1. Engage any broker, advisor (including, without limitation, financial, accounting, auditing or legal), investment bank or similar party to provide any services for a Sale or IPO.
2. Enter into any right of first refusal, negotiation or notification that applies in relation to a Sale or IPO which gives a third party a preferential right to negotiate, make an offer or receive information in relation to such Sale or IPO.
3. Incur any capital expenditure outside the scope of the [Business Plan/Budget] (including obligations under hire-purchase and leasing arrangements) which exceeds the amount of [£X].
4. Expanding, developing or evolving the business of the Company otherwise than through the Company or a wholly owned subsidiary of the Company.
5. Factor any of its debts, borrow monies (other than by way of its facilities in place at the date of this agreement), incur any indebtedness or accept credit (other than normal trade credit).
6. Except as provided for in the Business Plan or the Budget (as approved in accordance with this Agreement), engage any employee or consultant on terms that either his/her contract cannot be terminated by three months' notice or less or his/her emoluments and/or commissions or bonuses are or are likely to be at the rate of [£X] per annum or more or increase the emoluments and/or commissions or bonuses of any employee or consultant to more than £25,000 per annum or vary the terms of employment of any employee

earning (or so that after such variation they will, or are likely to earn) more than [£X] per annum.

7. Vary or make any binding decisions on the terms of employment and service of any director or company secretary of the Company, increase or vary the salary or other benefits of any such officer, or appoint or dismiss any such officer.
8. Mortgage or charge or permit the creation of or suffer to subsist any mortgage or fixed or floating charge, lien (other than a lien arising by operation of law) or other Encumbrance over the whole or any part of its undertaking, property or assets.
9. Make any loan or advance or give any credit (other than in the ordinary course of business) to any person or acquire any loan capital of any corporate body (wherever incorporated).
10. Permit the appointment or removal of any person as a director of it.
11. Conduct any litigation material to the Company, save for the collection of debts arising in the ordinary course of the business carried on by the Company or any application for an interim injunction or other application or action (including interim defence) which is urgently required in the best interests of the Company in circumstances in which it is not reasonably practicable to obtain prior consent as aforesaid.
12. Except as provided for in the Business Plan or the Budget (as approved in accordance with this Agreement) take or agree to take any leasehold interest in or licence over any real property.
13. Other than where expressly contemplated by this agreement or the Service Agreements, enter into or vary any transaction or arrangement with, or for the benefit of any of its Directors or Shareholders or any other person who is a Connected Person with any of its Directors or Shareholders.
14. Enter into any transaction or make any payment other than on an arm's length basis for the benefit of the Company.
15. Enter into or vary either any unusual or onerous contract or any other material or major or long term contract.
16. Approve a new Business Plan or Budget, or any amendments or updates thereto.
17. Do or agree to do any of the above with respect to a Group Company.

SCHEDULE 7: UNDERTAKINGS

[To be considered in the context of investment - delete as appropriate]

In this schedule, references to the Company shall where the context requires be construed as references to any Group Company.

1. The Company shall maintain in full force and effect the keyman insurance (for the exclusive benefit of the Company) and the directors' and officers' liability insurance both referred to in schedule 4 and shall not take or effect any steps so as to render such policies void or voidable or otherwise unenforceable.
2. The Company shall take out and maintain insurances satisfactory to the Investor and shall on request supply any Investor with a schedule of such insurances.
3. The Company shall take all such reasonable action as may be required, including any action reasonably required of it by the Investor, to protect its Intellectual Property rights and/or other property and assets.
4. All new business opportunities relevant to the Company shall only be taken up through the Company or a wholly-owned subsidiary.
5. New employees engaged by [any Group] Company shall not bring with them and employ Intellectual Property belonging to their ex-employers and other third parties.
6. The Company, each of the Founders shall comply with the terms of this agreement, the New Articles and the Service Agreements.
7. The Company shall comply with all applicable laws and regulations and maintain all required licences and consents and shall immediately notify the Investor if the Company loses any such licence or consent.
8. Neither the Company, nor the Founders shall engage in any activity, practice or conduct which would constitute an offence under section 1, 2 or 6 of the Bribery Act 2010 or any other applicable anti-corruption laws or regulations of any other jurisdiction.
9. The Company has and shall maintain in place Adequate Procedures designed to prevent any Associated Person of the Company from undertaking any conduct that would give rise to an offence under section 7 of the Bribery Act 2010 or any other applicable anti-corruption laws or regulations of any other jurisdiction.
10. The Founders shall procure that forthwith upon receiving notice so to do from the Investor, the Company convenes and holds at short notice a general meeting of the Company at such place and time as the Investors shall



reasonably determine at which any resolution required by the Investor shall be proposed.

11. The Company shall prepare and submit to the Investor for approval for each Financial Year an updated Business Plan and Budget, no less than 2 months prior to the commencement of the relevant Financial Year.

SCHEDULE 8: PROPERTIES



SCHEDULE 9: DEED OF ADHERENCE

THIS DEED is made on 201[X]

BY [X]

INTRODUCTION

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

AGREED TERMS

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

4. This deed is made for the benefit of:
 - 4.1 the parties to the Subscription and Shareholders' Agreement; and
 - 4.2 any other person or persons who may after the date of the Subscription and Shareholders' Agreement (and whether or not prior to or after the date hereof) assume any rights or obligations under the Subscription and Shareholders' Agreement and be permitted to do so by the terms thereof,

and this deed shall be irrevocable without the consent of the Company acting on their behalf in each case only for so long as they hold any Preference/Ordinary Shares in the capital of the Company.
5. For the avoidance of doubt:
 - 5.1 no transferee who acquires shares from an Founder shall be liable under any of the Warranties liability for which shall remain with the Founder; and
 - 5.2 nothing in this deed shall release the Transferor from any liability in respect of any obligations under the Subscription and Shareholders' Agreement due to be performed prior to [the date of this deed].
6. Neither the Investor nor any of the Founders:
 - 6.1 makes any representation or warranty or assumes any responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of any of the Subscription and Shareholders' Agreement (or any agreement entered into pursuant thereto);
 - 6.2 makes any representation or warranty or assumes any responsibility with respect to the content of any information regarding the Company or any member of the group or otherwise relates to the [acquisition]/[subscription] of shares in the Company; or
 - 6.3 assumes any responsibility for the financial condition of the Company [or any Subsidiary] or any other party to the Subscription and Shareholders' Agreement or any other document or for the performance and observance by the Company or any other party to the Subscription and Shareholders' Agreement or any other document (save as expressly provided therein),

and any and all conditions and warranties, whether express or implied by law or otherwise, are excluded save for the representations, warranties and undertakings contained in the Warranties.
7. This deed shall be governed by and construed in accordance with the laws of England and Wales.

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



EXECUTED as **DEED** by)

[Transferee/Subscriber])



SCHEDULE 10: MILESTONES

[Only relevant for staged investments - examples of milestones below. ADV to consider what is relevant/necessary to them and in context of the business]

1. [Organizational excellence:
 - 1.1 Completion of key deliverables
 - 1.1.1 3 years Business Plan
 - 1.1.2 1 year Budget
 - 1.1.3 Definition of company control mechanisms, including cash management
 - 1.1.4 Marketing and Sales plan
 - 1.1.5 Hiring Plan]
2. [Key operational milestones
 - 2.1 working [alpha/beta] version of product
 - 2.2 final development plan to reach commercial release
 - 2.3 Plan for possible kick-starter campaign or for alternative similar crowd-funding / marketing platform
 - 2.4 signed either MOU, LOI or contracts with three companies - either equipment, production or marketing companies]
3. **[INSERT METRICS FOR MILESTONES OR CONSIDER INSERTION OF SCHEDULE SPECIFIC TO TRANSACTION]**

SCHEDULE 11: ENTERPRISE CAPITAL FUND REQUIREMENTS

Part 1:

1. The Company does not operate in any of the sectors referred to below and is not expected to operate in any of such restricted sectors in the future:
 - 1.1 synthetic fibres and yarns;
 - 1.2 motor vehicles;
 - 1.3 ship building;
 - 1.4 steel (European Community) products;
 - 1.5 steel (non-European Community) products;
 - 1.6 coal;
 - 1.7 transport; and
 - 1.8 the production (including the relevant means of productions in fisheries and aquaculture sectors), processing or marketing of products listed in Annex I referred to in Article 32 of the EC Treaty.
2. The Company's principal place of business is in the United Kingdom, or is predominantly related to, or demonstrably for the benefit of, the economy of the United Kingdom at the date of this agreement.
3. The Company is an SME within the meaning of the EU Commission Recommendation 2003/361 concerning the definition of micro, small and medium-sized enterprises and is not listed on any public market or stock exchange;
4. The Company has not been operating or trading in any market prior to the date of this Agreement or has not been operating or trading in a market for more than seven (7) years since their first commercial sale in that market.
5. The Company carries on a qualifying trade within the meaning of section 300 of the Income Taxes Act 2007.

Part 2:

1. The Company does not and will not operate in any of the restricted sectors referred to below:
 - 1.1 synthetic fibres and yarns;
 - 1.2 motor vehicles;

- 1.3 ship building;
 - 1.4 steel (European Community) products;
 - 1.5 steel (non-European Community) products;
 - 1.6 coal;
 - 1.7 transport; and
 - 1.8 the production (including the relevant means of productions in fisheries and aquaculture sectors), processing or marketing of products listed in Annex I referred to in Article 32 of the EC Treaty.
2. The Company's principal place of business will remain in the United Kingdom, or the Company will predominantly be related to, or demonstrably for the benefit of, the economy of the United Kingdom.

Part 3:

1. The Company shall provide to the Investor (insofar as it has not already provided such information) the following information upon request:
 - 1.1 [the name, registered address, company registration number, VAT registration number and postcode and other relevant particulars of the Company];
 - 1.2 the names of all the management team, listing name, years in sector and previous business ownership;
 - 1.3 Product/service description and four digit Standard Industrial Classification (SIC) codes(s);
 - 1.4 date of inception/start-up;
 - 1.5 current revenues (dated);
 - 1.6 number of full time staff at time of application;
 - 1.7 brief company plans for the new capital;
 - 1.8 The Company confirms that British Business Finance Ltd, the Government or its agent may contact the Company as required for any future evaluation of the Enterprise Capital Fund programme;
 - 1.9 The Company confirms that a non-confidential Business Plan may be used for any future British Business Finance Ltd or Government evaluation of the Enterprise Capital Fund programme.
2. On request from the Investor the Company shall provide details of:



- 2.1 the number of directors of the Company who are from an ethnic minority;
and
- 2.2 the number of directors of the Company who are female.



APPENDIX 1: [PUBLICITY PRINCIPLES AND GUIDELINES]

The following guidelines apply to any marketing and public relations activities by the Company which refer to the investment by ADV ECF 1 L.P. in the Company and the participation in British Business Bank plc's "Enterprise Capital Fund Programme":

Any references to the relationship between ADV ECF 1 L.P. and British Business Bank plc must refer to the "Enterprise Capital Fund Programme" and must also include with reasonable prominence the following wording (or such other simplified version that may be communicated to the Company in advance as an alternative, including hypertext links to a website of the British Business Bank group):

"Supported by British Business Finance Ltd, a wholly owned subsidiary of British Business Bank plc, British Business Bank plc is a development bank wholly owned by HM Government. Neither British Business Finance Ltd nor British Business Bank plc are authorised or regulated by the Prudential Regulation Authority (PRA) or the Financial Conduct Authority (FCA)."

There should be no sense, either directly or implied, that the investment by ADV ECF 1 L.P. in the Company reflects any endorsement, guarantee or warranty from British Business Finance Ltd or British Business Bank plc.

Marketing and public relations activity should not lead with or be built on the foundation of British Business Bank plc investment or participation.



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

Executed as a deed by [**ACCELERATED**)
DIGITAL VENTURES LIMITED] by a)
director in the presence of a witness:)

Signature

Name (block capitals)

Director

Witness signature

Witness name (block capitals)

Witness address

.....

.....

*[Executed as a deed by **ADV ECF 1 L.P.** acting by its general partner, ADV (GP) LLP, acting by its duly authorised attorney]*



)
)
)

Signature

Name (block capitals)

Duly authorised attorney

Witness signature

Witness name (block capitals)

Witness address

.....

.....

Accelerated Digital Ventures Limited)
acting by its duly authorised attorney)
in the presence of a witness:)

Signature

Name (block capitals)

Duly authorised attorney

Witness signature

Witness name (block capitals)

Witness address

.....

.....

]



Executed as a deed by [**NAME OF**)
COMPANY] by a director in the)
presence of a witness:)

Signature

Name (block
capitals)
Director

Witness
signature

Witness name
(block capitals)

Witness address
.....
.....



Signed as a deed by [**FOUNDER**] in the)
presence of:)
)
) Signature

Witness
signature

Witness name
(block capitals)

Witness address
.....
.....

Signed as a deed by [**EXISTING**
SHAREHOLDER] in the presence of:)
)
)
) Signature

Witness
signature

Witness name
(block capitals)

Witness address
.....
.....