|  |  |
| --- | --- |
| DATED | 201● |
| **THE INVESTORS****and****THE FOUNDERS****and****THE COMPANY** |
| **SEED INVESTMENT AGREEMENT****RELATING TO • LIMITED** |
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**THIS AGREEMENT** is made on **•** 201●

BETWEEN

1. The persons whose names and addresses are set out in part 1 of schedule 1 [together with any new investor who executes a Deed of Adherence] (the "**Investors**" and each an "**Investor**");
2. The persons whose names and addresses are set out in part 2 of schedule 1 (together the "**Founders**" and each a "**Founder**"); and
3. **•** (company number ●) whose registered office is at **•** (the "**Company**").

INTRODUCTION

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

AGREED TERMS

# Definitions

1. In this agreement, unless the context otherwise requires, the words and expressions below shall have the following meanings:
2. "**Act**" means the Companies Act 2006;
3. "**Board**" means the board of directors of the Company as constituted from time to time;
4. "**Business**" means [ ], as more fully described in the Business Plan [*Note: insert relevant details*];
5. "**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);
6. "**Business Plan**" means the business plan for the Company in the agreed form;
7. "**Claim(s)**" means any claim(s) for breach of any Warranty;
8. "**Company Intellectual Property**" means all Intellectual Property which is owned, used or exploited by the Company;
9. "**Completion**" means completion by the parties of their respective obligations in accordance with clause 4;
10. "**Completion Date**" means the date upon which Completion occurs;
11. "**Deed of Adherence**" means the deed of adherence substantially in the form set out in schedule 8;
12. "**Disclosed**" means fairly disclosed to the Investors in the Disclosure Schedule with sufficient explanation and detail to enable the Investors to identify clearly the nature, scope and full implications of the matters disclosed;
13. "**Disclosure Schedule**" means the schedule of disclosures set out in schedule 7;
14. ["**EIS Provisions**" means the provisions of Part 5 of the Income Tax Act 2007 and Sections 150A-150C and Schedule 5B to the Taxation of Chargeable Gains Act 1992 relating to the Enterprise Investment Scheme;]
15. "**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);
16. "**Intellectual Property**" means copyrights, trade and service marks, including the trade marks, trade names, rights in logos and get-up, inventions, confidential information, trade secrets and know-how, registered designs, design rights, patents, utility models, semi-conductor topographies, all rights of whatsoever nature in computer software and data, all rights of privacy and all intangible rights and privileges of a nature similar or allied to any of the foregoing, in every case in any part of the world and whether or not registered; and including all granted registrations and all applications for registration in respect of any of the same;
17. "**Investor Director**" means the director appointed in accordance with clause 8.2;
18. "**Investor Majority**" means the consent of those Investors holding at least • per cent of the New Shares from time to time;
19. "**Key Employee**" means any employee who is or was during the Period employed by the Company:
	1. at management grade; or
	2. in a senior capacity;
20. "**Management Accounts**" means the management accounts of the Company for the period starting on [*insert date*] and ending on [ ], in the agreed form [*Note: insert relevant details*];
21. "**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;
22. "**New Shares**" means the shares subscribed by the Investors pursuant to clause 3.1 [and clause 3.8] at a price of £[ ] per share [*Note: insert relevant details*];
23. "**Ordinary Shares**" means ordinary shares of £[ ] [*Note: insert par value*] each in the capital of the Company from time to time having the rights set out in the New Articles;
24. "**Period**" means the period of two years immediately preceding the Termination Date;
25. "**PSC register**" has the meaning given in section 790C(10) of the Act;
26. ["**Registrable Person**" has the meaning given in section 790C(4) of the Act;]
27. ["**Registrable Relevant Legal Entity**" has the meaning given in section 790C(8) of the Act;]
28. "**Resolutions**" means the resolutions to (i) authorise and dis-apply pre-emption rights in the respect of the allotment of the New Shares and (ii) adopt the New Articles, in agreed form to be passed by the Company;
29. "**Second Completion**" means completion by the parties of their respective obligations in accordance with clauses 4.3 and 4.4;
30. "**Second Completion Date**" means the date on which Second Completion occurs;
31. "**Second Tranche Shares**" means the shares subscribed for by the Investors pursuant to clause 3.4;
32. ["**SEIS Provisions**" means the provisions of Part 5A of the Income Tax Act 2007 and Sections 150E-150G and Schedule 5BB to the Taxation of Chargeable Gains Act 1992 relating to the Seed Enterprise Investment Scheme;]
33. "**Service Agreements**" means the agreements in the agreed form to be entered into between the Company and each of the Founders;
34. "**Shareholders**" means each of the Founders and the Investors and the other members of the Company from time to time who are a party to this agreement;
35. "**Share Option Plan**" means the share option plan to be established by the Company pursuant to clause 7;
36. "**Share Option Pool**" has the meaning given in clause 7;
37. "**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;
38. "**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; and
39. "**Warranties**" means the warranties given pursuant to clause 5 (references to a particular representation or warranty being to a statement set out in schedule 5).

# Interpretation

* + 1. Words and expressions which are defined in the Act shall have the meanings attributed to them therein when used in this agreement unless otherwise defined or the context otherwise requires.
		2. The clause and paragraph headings used in this agreement are inserted for ease of reference only and shall not affect construction.
		3. References to the Investor Director shall include any alternate appointed to act in his place from time to time.
		4. References to persons shall include unincorporated associations and partnerships, in each case whether or not having a separate legal personality.
		5. References to documents "**in the agreed form**" are to documents in terms agreed on behalf of the Company and the Investors and initialled on behalf of each such party for the purposes of identification only.
		6. References to a "**party**" or "**parties**" means a party or the parties to this agreement.
		7. References to those of the parties that are individuals include their respective legal personal representatives.
		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.
		9. Except where the context specifically requires otherwise, words importing individuals shall be treated as importing corporations and vice versa, and words importing the whole shall be treated as including a reference to any part thereof.
		10. References to statutory provisions or enactments shall include references to any amendment, modification, extension, consolidation, replacement or re-enactment of any such provision or enactment (whether before or after the date of this agreement) unless any such change imposes upon any party any liabilities or obligations which are more onerous than as at the date of this agreement.
		11. In this agreement, unless the context requires otherwise, where a matter is expressed to require the consent or approval of a Shareholder, that consent or approval may be given in writing (in accordance with clause 22) or by a director appointed by the relevant Shareholder at a meeting of the Board.

# Subscriptions

* + 1. Subject to the provisions of clause 4, the Investors apply for the allotment and issue to them at Completion of the following shares as set out in the table below and the Company accepts such applications:

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

* + 1. [Each Investor [and each Founder] confirms (in relation only to its or his own shares in the capital of the Company) to the Company that upon the allotment and issue of the shares referred to above at Completion, the persons set out in part 3 of schedule 3 will constitute a Registrable Relevant Legal Entity [or Registrable Person] (as the case may be) in relation to the Company and confirms their relevant particulars set out in part 3 of schedule 3.
		2. [[⦁name] confirms to the Company upon the allotment and issue of the shares referred to above at Completion [he/she] will cease to be a Registrable Person in relation to the Company.]
		3. Subject to the provisions of clause 5, the Investors apply for the allotment and issue to them at Second Completion of the following shares as set out in the table below and the Company accepts such applications:

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

* + 1. Each of the Founders agrees to vote in favour of the Resolutions and irrevocably waives or will procure the waiver of all or any pre-emption rights he or his nominees may have pursuant to the Company's articles of association or otherwise so as to enable the issue of any shares in the capital of the Company contemplated by this agreement to proceed free of any such pre-emption rights.
		2. Each party to this agreement warrants to each of the other parties that:

### it is entering into or adhering to the terms of this agreement (as the case may be) solely as principal and not on behalf of any other person);

### it has the power and authority to enter into and perform its obligations under this agreement without requiring the consent or approval of any other person;

### when executed, its obligations under this agreement will be binding on it; and

### execution and delivery of, and performance by it of its obligations under this agreement will not result in any breach or constitute any default of applicable law, agreement, instrument, judgment or other restriction.

* + 1. Each of the Investors warrants to the Company that it is entitled to receive financial promotions that may not have been approved by a person authorised by the Financial Conduct Authority for the purposes of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the "**FPO**") either as:
			1. a "certified high net worth individual" (within the meaning given in article 48 of the FPO);
			2. a "self-certified sophisticated investor" (within the meaning given in article 50A of the FPO);
			3. a high net worth company, unincorporated association, partnership or other person to whom article 49(2) of the FPO applies; or
			4. an "investor professional" (within the meaning given in article 19 of the FPO),

and (in the event of paragraph (a) or (b) above applying) has delivered a copy of such certification to the Company on or prior to the date of this agreement.

* + 1. [Each of the Investors acknowledges that the Company has [not applied for] [applied for but (at the date of this agreement) has not received] advance assurance from HM Revenue & Customs in relation to the [SEIS Provisions or the ]EIS Provisions.] [[1]](#footnote-1)
		2. [The parties agree that the Company may allot up to a further   **•** New Shares at a price per share of no less than £  **•**   (the "**Additional Shares**") to new or existing investors at any time and on more than one occasion on or before   **•**     **•**   20**•** (or at such later date as may be agreed otherwise with the prior written consent of the Investor Majority).]

## [On or prior to completion of each subscription for Additional Shares by an investor who is not already a party to this agreement, such investor shall execute a Deed of Adherence.]

# Completion[*First Completion*]

* + 1. Subject to the conditions set out in schedule 4 being satisfied or waived by the Investors on or prior to Completion, Completion of the subscription by the Investors for the New Shares shall take place on the Completion Date when the events set out in clause 4.2 shall take place in such order as the Investors may require.
		2. The following events shall occur on the Completion Date:
			1. each Investor shall pay the sum set out against its name in column 3 of the table in clause 3.1 by electronic funds transfer to the designated bank account of the Company 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;
			2. a meeting of the Board shall be held at which the Company shall:
				1. issue the New Shares credited as fully paid to the Investors and enter their names in the register of members in respect thereof (and PSC register, to the extent required);
				2. execute and deliver to the Investors certificates for the New Shares;
				3. appoint • as the Investor Director;
				4. pass any such other resolutions as may be required to carry out the obligations of the Company under this agreement;
			3. the Company and each of the Founders shall enter into the Service Agreements;
			4. [the Company and [the Investors] shall enter into the management rights letter required for venture capital operating company requirements in the agreed form.]

[*Second Completion*

* + 1. The Second Completion shall take place   •   Business Days after Completion or on such later day as the parties shall agree, when the events set out in clause 4.4 shall take place in such order as the Investors may require.
		2. The following events shall occur on the Second Completion Date:
			1. each Investor shall pay the sum listed against its name in column 3 of the table set out in clause 3.4 by electronic funds transfer to the designated bank account of the Company and payment made in accordance with this clause 4.4 shall constitute a good discharge for the Investor of its obligations under this clause 4.4; and
			2. a meeting of the Board shall be held at which the Company shall:
				1. issue the Second Tranche Shares credited as fully paid to the Investors and enter their names in the register of members in respect thereof;
				2. [update the PSC register to the extent that any changes are needed as a result of the issue of the Second Tranche Shares and provided that the Company has been informed of the relevant changes;]
				3. execute and deliver to the Investors certificates for the Second Tranche Shares; and
				4. pass any such other resolutions as may be required to issue the Second Tranche Shares.]

# Warranties

* + 1. The Company acknowledges that the Investors have been induced to enter into this agreement and to subscribe for the New Shares in reliance upon the Warranties amongst other things.
		2. The Company warrants to the Investors that each and every Warranty set out in schedule 5 is accurate and not misleading at the date of this agreement.
		3. 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.
		4. The rights of the Investors in respect of any breach of any of the Warranties shall not be affected by Completion.
		5. Where any Warranty is qualified by the expression "**so far as the Company is aware**" or words having similar effect, such Warranty shall be deemed to include a statement that such awareness means both the actual knowledge of the Company and also such knowledge which the Company would have had if it had made reasonable enquiry of all relevant persons.

# Limitations on warranty claims

* + 1. The limitations set out in this clause 6 shall not apply to any Claim which is:
			1. the consequence of fraud, dishonesty, wilful concealment or wilful misrepresentation by or on behalf of the Company; or
			2. which is a result of a breach of warranty statement 1 (share capital) of schedule 5.
		2. The Company shall be under no liability under the Warranties to the extent that the matter or circumstance giving such rise to such liability is Disclosed.
		3. No Claim may be made against the Company unless written notice of such Claim is served on the Company by no later than the date which is [two years] after the date of this agreement.
		4. The aggregate liability of the Company in respect of all and any Claims shall be limited to an amount equal to the aggregate amount subscribed by the Investors pursuant to this agreement.
		5. The Company shall not be liable in respect of any Claim unless the aggregate liability for all Claims exceeds £• [*Note: insert amount*], in which case the Company shall be liable for the entire amount and not merely the excess.

# Employee Share Options

Within [ ] Business Days of the Completion Date, the Company shall adopt a Share Option Plan in a form acceptable to the Investor Majority (subject to a maximum option pool of [ ] Ordinary Shares (the "**Share Option Pool**")). [*Note insert relevant details*]

# The Board and the Investor Director

* + 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 [ ] weeks. [*Note: insert details*]
		2. For so long as the Investors and their Permitted Transferees hold not less than [ ]% of the issued equity shares in the Company from time to time they shall have the right to appoint and maintain in office such natural person as the Investor Majority may from time to time nominate as a director of the Company (and as a member of each and any committee of the Board) and to remove any director so appointed and, upon his removal whether by the Investors or otherwise, to appoint another director in his place.
		3. [For so long as the Investors and their Permitted Transferees hold not less than [ ]% of the issued equity shares in the Company from time to time they shall have the right to appoint one person as the Investor Majority may from time to time nominate to act as an observer to the Board. The observer shall be entitled to attend and speak at all meetings of the Board and receive copies of all board papers as if he were a Director but shall not be entitled to vote on any resolutions proposed at a board meeting.]
		4. For so long as the Founders together:
			1. hold more than [30%] of the Ordinary Shares in issue from time to time, such Founders shall together be entitled to nominate up to [two] persons to each act as a director of the Company by notice in writing addressed to the Company from time to time;
			2. hold more than [15%] but not more than [30%] of the Ordinary Shares in issue from time to time, such Founders shall together be entitled to nominate one person to act as a director of the Company by notice in writing addressed to the Company from time to time.

The Founders shall be entitled to exercise their rights under this clause 8.4 by majority decision, with such majority to be determined by reference to shareholdings. If a person nominated to act as a director of the Company pursuant to this clause 8.4 is an employee of the Company at the time of such appointment and at any time thereafter ceases to be so employed on a full-time basis for any reason, the appointment of such person shall automatically and immediately terminate and such person may not be reappointed as a director pursuant to this clause 8.4 without the consent of the Investor Majority.

* + 1. Appointment and removal of a director of the Company under clause 8.2 or 8.4 [and any observer appointed by the Investors] shall be by written notice to the Company which shall take effect on delivery at its registered office or at any meeting of the Board or committee thereof.
		2. The Company shall send to the Investors, the Investor Director [and any observer appointed by the Investors]:
			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
			2. as soon as practicable after each meeting of the Board (or committee of the Board) a copy of the minutes.
		3. Save with the prior written consent of the Investor Director (if appointed), no business shall be transacted at any meeting of the Board (or committee of the Board) save for that specified in the agenda referred to in clause 8.6.
		4. The Company will reimburse the Investor Director with the reasonable costs and out of pocket expenses incurred by him in respect of attending meetings of the Company or carrying out authorised business on behalf of the Company.

# Information rights

* + 1. The Company shall for each [month] prepare management accounts (in a form approved by the Investor Majority) and shall deliver them to the Investors within [21] days after the end of each [month].
		2. The Company shall at least [30] days prior to the end of each financial year prepare and deliver to each Investor a detailed operating and capital budget and cash flow forecast in respect of the next financial year in such form as the Investor Majority shall reasonably require from time to time.
		3. The unaudited accounts of the Company in respect of each accounting period shall be completed and approved by the Board and delivered to the Investors within [four] months after the end of the accounting period to which such unaudited accounts relate, provided that such accounts shall be audited if requested by the Investor Majority.
		4. The Company shall provide the Investors promptly with such other information concerning the Company and its business as the Investors may reasonably require from time to time.
		5. The Investor Director [and any observer] appointed by the Investors shall be at liberty from time to time to make full disclosure to the Investors of any information relating to the Company.
		6. Each Investor shall be at liberty from time to time to make such disclosure to its partners, trustees, shareholders, members, unitholders and other participants and/or to any Member of the same Fund Group (as defined in the New Articles) as an Investor in relation to the business, affairs and financial position of the Company as it may in its reasonable discretion think fit.

# Matters requiring consent of the Investors or the Investor Director

* + 1. Each of the Shareholders (who are a party to this agreement) shall exercise all voting rights and powers of control available to him in relation to the Company to procure that:
			1. save with the prior written consent of the Investor Majority, the Company shall not effect any of the matters referred to in part 1 of schedule 6; and
			2. save with the prior written consent of the Investor Director (or the Investor Majority if no Investor Director is appointed), the Company shall not effect any of the matters referred to in part 2 of schedule 6.
		2. As a separate obligation, severable from the obligations in clause 10.1, the Company agrees that:
			1. save with the prior written consent of the Investor Majority, it shall not effect any of the matters referred to in part 1 of schedule 6; and
			2. save with the prior written consent of the Investor Director (or the Investor Majority if no Investor Director is appointed), the Company shall not effect any of the matters referred to in part 2 of schedule 6.

# Business undertakings

* + 1. The Founders will promote the best interests of the Company and ensure that the Business is conducted in accordance with the Business Plan.
		2. The Company shall apply the proceeds of the subscription by the Investors for the New Shares in the furtherance of the Business in accordance with the Business Plan and the budgets and forecasts adopted in accordance with the terms of this agreement.

# Restrictive covenants

* + 1. For the purpose of assuring to the Investors the value of the Business and the full benefit of the goodwill of the business of the Company, each of the Founders hereby undertakes and covenants with the Investors and the Company that (save with the written consent of the Investor Majority) he shall not:
			1. while he is a director or employee of, or a consultant to, the Company carry on or be concerned, engaged or interested directly or indirectly (in any capacity whatsoever) in any trade or business competing with the trade or business of the Company as carried on at the time or, in relation to any trade or business of the Company that he has been engaged or involved in, at any time during the period of two years immediately preceding that time; or
			2. during the period of [●] commencing on the Termination Date:
				1. within [*Note: insert geographic area/region to which the restriction is to apply*] carry on or be concerned, engaged or interested directly or indirectly in any capacity whatsoever in any trade or business competing with the business carried on by the Company in which he shall have been engaged or involved at any time during the Period; or
				2. either on his own behalf or in any other capacity whatsoever directly or indirectly do or say anything which may lead to any person ceasing to do business with the Company on substantially the same terms as previously (or at all); or
				3. either on his own behalf or in any other capacity whatsoever directly or indirectly endeavour to entice away from the Company or solicit any person, firm or company who was a client, customer, supplier, agent or distributor of the Company during the Period with whom he shall have been engaged or involved by virtue of his duties during the Period in competition with or to the detriment of the Company; or
				4. either on his own behalf or in any other capacity whatsoever directly or indirectly have any dealings with any person, firm or company who was a client, customer, supplier, agent or distributor of the Company during the Period with whom he shall have been engaged or involved by virtue of his duties during the Period in competition with or to the detriment of the Company; or
				5. either on his own behalf or in any other capacity whatsoever directly or indirectly employ, engage or induce, or seek to induce, to leave the service of the Company any person who is or was a Key Employee with whom he shall have had dealings during the Period whether or not such person would commit any breach of his contract of employment by reason of so leaving the service of the Company or otherwise; or
			3. at any time after the Termination Date represent himself as being in any way currently connected with or interested in the business of the Company (other than as a shareholder if that be the case).
		2. Each of the restrictions contained in each paragraph of clause 12.1 is separate and distinct and is to be construed separately from the other such restrictions. Each of the Founders hereby acknowledges that he considers such restrictions to be reasonable both individually and in the aggregate and that the duration extent and application of each of such restrictions are no greater than is necessary for the protection of the goodwill of the businesses of the Company. However, if any such restriction shall be found to be unenforceable but would be 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 enforceable.

# Confidentiality and announcements

* + 1. Subject to clauses 9.5 and 9.6, 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 relating to the Company but excluding any information which is in the public domain (otherwise than through the wrongful disclosure of any party) or which they are required to disclose by law or by the rules of any regulatory body to which such party is subject.
		2. Except in accordance with clauses 9.5 or 9.6, the parties shall not make any public announcement or issue a press release relating to this agreement without the prior written approval of the Investor Majority and the Board except to the extent they are required to make such disclosure by law or by the rules of any regulatory body to which such party is subject.

# [Fees

The Company shall pay at Completion all fees and disbursements of the Investors in relation to the negotiation and execution of this agreement up to £ ● .]

# Effect of ceasing to hold shares

* + 1. Subject to clause 15.2, a party shall cease to be a party to this agreement for the purpose of receiving benefits and enforcing his rights with effect from the date he ceases to hold or beneficially own any shares in the capital of the Company (but without prejudice to any benefits and rights enjoyed prior to and to the due performance by that party of all obligations up to such cessation).
		2. The obligations on a Founder under clauses 12 (restrictive covenants) and 13 (confidentiality and announcements) shall survive any transfer by him of all or any shares in the Company.

# Entire agreement

* + 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 supersedes and extinguishes 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.
		2. 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.
		3. 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 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.
		4. 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 shall be for breach of contract.
		5. Nothing contained in this agreement or in any other document referred to or incorporated in it shall be read or construed as excluding any liability or remedy as a result of fraud.

# Variation

* + 1. Any variation of this agreement is valid only if it is in writing and signed by the Company and by the Shareholders holding between them at least 90% of the issued share capital of the Company, in which event such change shall be binding against all of the parties, provided that if such change would impose any new obligations on a party, vary an express contractual right of that party under this agreement or increase any existing obligation, the consent of the affected party to such change shall be specifically required.
		2. This agreement may be terminated with the prior written consent of the Company and by Shareholders holding at least 90% of the issued share capital of the Company, in which event such termination shall be binding against all of the parties save that nothing in this clause shall release any party from liability for breaches of this agreement which occurred prior to its termination.

# Assignment and transfer

* + 1. Subject to clause 18.2, this agreement is personal to the parties and no party shall assign or transfer any of its rights or obligations under this agreement without the prior written consent of the other parties.
		2. An Investor may assign the whole or part of any of its rights in this agreement to any person who has received a transfer of shares in the Company from such Investor in accordance with the New Articles.

# Rights of third parties

* + 1. Subject to clause 19.2, this agreement does not confer any rights on any person or party (other than the parties to this agreement) pursuant to the Contracts (Rights of Third Parties) Act 1999.
		2. The general partner of an Investor or the management company authorised from time to time to act on behalf of an Investor or another person or persons nominated by an Investor, shall be entitled to enforce all of the rights and benefits under this agreement at all times as if party to this agreement.

# 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.

# Counterparts

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

# Notices

* + 1. Any communication and/or information to be given in connection with this agreement shall be in writing in English and shall either be delivered by hand or sent by first class post or fax or email or in electronic form:
			1. to any company which is a party at its registered office; or
			2. to any individual who is a party or an Investor at the address of that individual or Investor shown in schedule 1,

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

* + 1. A communication sent according to clause 22.1 shall be deemed to have been received:
			1. if delivered by hand, at the time of delivery; or
			2. if sent by pre-paid first class post, on the second day after posting; or
			3. if sent by fax, email or other electronic communication, at the time of completion of transmission by the sender,

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

# [[Seed] Enterprise Investment Scheme relief

The Company and the Founders undertake that, so far as is reasonably practicable in all the circumstances and subject always to the provisions of this agreement and the duty of directors of the Company to promote the success of the Company for the benefit of the shareholders of the Company as a whole, they shall not, unless agreed by the Investor Director (acting reasonably), contravene any of the [SEIS][EIS] Provisions and thereby prevent or prejudice the availability to the Investors of [Seed] Enterprise Investment Scheme relief or the continued availability to them of the [Seed] Enterprise Investment Scheme relief after it has been obtained.][[2]](#footnote-2)

# Governing law

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

# Jurisdiction

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

Part 1: The Investors

|  |  |
| --- | --- |
| **Name** | **Address** |
|  |  |

**Part 2: The Founders**

|  |  |
| --- | --- |
| **Name** | **Address** |
|  |  |

Particulars of the Company

Registered number:

Registered office:

Directors:

Secretary:

Accounting reference date:

Charges:

Auditors:

Issued share capital:

Persons with significant control

and relevant legal entities (and

their interests) as required

on PSC register:

Part 1: Members of the Company - pre-Completion

|  |  |
| --- | --- |
| **Member** | **Number of Ordinary Shares held** |
|  |  |
|  |  |
|  |  |

**Part 2: Members of the Company - post-Completion**

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

**Part 3: Registrable Persons and Registrable Relevant Legal Entities in relation to the Company - post-Completion**

|  |  |  |
| --- | --- | --- |
| **Name:** | [ ] | [ ] |
| **Registrable Person or Registrable Relevant Legal Entity?** |  |  |
| **The nature of control over the Company:**  |  |  |
| **Date on which they became a Registrable Person or Registrable Relevant Legal Entity in relation to the Company:** |  |  |
| **Particulars (*if Registrable Person*):** |
| **Service address:** |  |  |
| **Country or state (or part of UK) in which he or she is usually resident:**  |  |  |
| **Nationality:**  |  |  |
| **Date of birth:** |  |  |
| **Usual residential address:** |  |  |
| **Restrictions in force on using or disclosing any of the individual's PSC particulars (Yes / No):**  |  |  |
| **Particulars (*if Registrable Relevant Legal Entity*):** |
| **Registered office:** |  |  |
| **Legal form of the entity and the law by which it is governed:** |  |  |
| **The register of companies in which it is registered and registration number:** |  |  |

Conditions to Completion

Completion of the subscription by the Investors for the New Shares is conditional upon:

* + - * 1. the completion of due diligence and anti-money laundering checks of the Investors;
				2. the passing of the Resolutions;
				3. the delivery to the Investors of the Management Accounts and the Business Plan;
				4. the delivery by the Founders of their respective personal questionnaires to the Investors; and
				5. [the receipt of an [SEIS][EIS] advance assurance from HM Revenue & Customs confirming that the issue of New Shares should qualify for relief.][[3]](#footnote-3)

*[Note: Warranties will need to be tailored for each transaction]*

**Warranties**

* + 1. Share capital

All of the shares set out in part 1 of schedule 3 are fully paid and comprise the entire issued share capital of the Company. None of the share capital of the Company is under option or subject to any Encumbrance or subject to any restriction notice under Schedule 1B to the Act, no options, warrants or other rights to subscribe for new shares in the Company have been granted or agreed to and no dividends or other rights or benefits have been declared, made or paid or agreed to be declared, made or paid thereon.

* + 1. Group structure

The Company does not have any subsidiary companies nor has it at any time been the holding company of any company or a member of or the beneficial owner of any shares, securities or other interest in, or otherwise required to be registered in the PSC register (or equivalent register) of, any company or other person.

* + 1. Information

The information contained or referred to in the schedules 2 and 3 is true, complete and accurate and not misleading.

* + 1. Business Plan

The Business Plan has been diligently prepared and the Company believes that it represents a realistic plan in relation to the future progress, expansion and development of the Business.

* + 1. Management Accounts

The Management Accounts:

* + - * 1. 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
				2. are not inaccurate or misleading in any material respect.
		1. Agreements, commitments and liabilities

The Company:

* + - * 1. has no material capital commitments, liabilities, loans or borrowings;
				2. is not a party to any contract, arrangement or commitment (whether in respect of capital expenditure or otherwise) which is of an unusual, onerous or long-term nature or which involves or could involve a material obligation or liability;
				3. is not a party to any agreement which is or may become terminable as a result of the entry into or completion of this agreement;
				4. is not a party to any agreement in respect of any real property; or
				5. is not in default of any agreement or arrangement to which it is a party.
		1. Intellectual Property
			1. In respect of all Company Intellectual Property other than standard, off-the-shelf, packaged office software:
				1. the Company is the sole legal and beneficial owner, free of licence, royalty, restriction or other adverse interests; or
				2. the Company has licences from third parties which are fully adequate to enable it to execute the development plans set out in the Business Plan; or
				3. (in respect of any Company Intellectual Property not within (a) or (b) above) third party licences are freely available on the open market on usual commercial terms.
			2. So far as the Company is aware, the Company has taken all steps necessary or desirable for the fullest protection of all Intellectual Property used by it and the Company has not itself granted any rights to third parties in relation to any of the Company Intellectual Property.
			3. No actions, claims or allegations with respect to any Company Intellectual Property have been made, or, so far as the Company is aware, are pending or threatened, by any third party:
				1. alleging breach, infringement, misuse or misappropriation by the Company or on the Company's behalf of any Intellectual Property;
				2. otherwise challenging the use by the Company or any third party of any technology, know-how or computer software;
				3. challenging the ownership by the Company, validity or effectiveness of any Company Intellectual Property; or
				4. alleging that the activities or proposed activities of any employee of the Company in relation to the Company's business is in breach of any contract or covenant with a third party,

and, so far as the Company is aware, there are not any facts, matters or circumstances which could give rise to any such action, claim or allegation, including in respect of the work the Company plans to do with the Company Intellectual Property as evidenced in the Business Plan.

* + - 1. The licences, agreements and arrangements entered into by the Company in relation to the Company Intellectual Property in respect of which the Company is a licensor, a licensee or otherwise a party, have been entered into in the ordinary course of business, are in full force and effect and no notice has been given on either side to terminate any of them and no amendment has been made or accepted to their terms since they were first entered into; and the obligations of all parties under each of the same have been fully complied with and no disputes exist or are anticipated in respect of any of them.
		1. Employment and consultancy arrangements
			1. The Company has entered into contracts of service or for services for all directors, employees and consultants of the Company and such contracts and arrangements have been entered into in the ordinary course of business, are in full force and effect and no notice has been given on either side to terminate any of them, the obligations of all parties under each of the same and under statute, regulation, common law and all codes of practice, have been fully complied with and no disputes exist or are anticipated in respect of any of them.
			2. There are no agreements or arrangements (whether legally enforceable or not) for the payment of any pensions, allowances, lump sums or other like benefits on redundancy, retirement or on death or during periods of sickness or disablement for the benefit of any director or former director or employee or former employee of the Company or for the benefit of the dependants of any such person.
			3. There are no outstanding claims or, so far as the Company is aware, anticipated claims from any employee, consultant, ex-employee or ex-consultant and no grievances have been made or, so far as the Company is aware, are anticipated, whether formal or informal nor are there any employees with any disciplinary or anticipated disciplinary warnings. No employees are on any leave except in relation to their holiday entitlement.
		2. Contracts with connected persons
			1. There are no loans made by the Company to any of its directors or shareholders and/or any person connected with any of them and no debts or liabilities owing by the Company to any of its directors or shareholders and/or any person connected with them as aforesaid.
			2. There are no existing contracts or arrangements to which the Company is a party and in which any of its directors or shareholders and/or any person connected with any of them is interested.

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

* + 1. Assets and debts

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

* + 1. Litigation

Neither the Company nor, so far as the Company is aware, any person for whose acts and defaults it may be vicariously liable, is engaged whether as claimant, defendant or otherwise in any legal action, proceeding or arbitration which is either in progress or is threatened or so far as the Company is aware is pending or is being prosecuted for any criminal offence and no governmental or official investigation or inquiry concerning the Company is in progress or so far as the Company is aware pending.

* + 1. Taxation
			1. The Company has duly paid or fully provided for all Taxation for which it is liable and there are no circumstances in which interest or penalties in respect of Taxation not duly paid could be charged against it in respect of any period prior to Completion.
			2. All directors or employees of the Company who have received any securities or interests in securities falling with Chapter 2 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 have entered into elections jointly with the Company under Section 431(1) of the Income Tax (Earnings and Pensions) Act 2003.
		2. Statutory and legal requirements

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

* + 1. Insurance
			1. The Company maintains appropriate and suitable insurance policies of a company for its size and type of business. In respect of such insurances:
				1. all premiums have been duly paid to date;
				2. all the policies are in full force and effect and are not voidable on account of any act, omission or non-disclosure on the part of the insured party nor could they be declared null and void or as a consequence of which any claim might be rejected; and
				3. there are no circumstances which would or might give rise to any claim and no insurance claim is outstanding.

Part 1: Matters requiring Investor Majority consent

* + - * 1. Permit or cause to be proposed any alteration to the rights attaching to its shares.
				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 provided the aggregate number of options granted does not exceed the Share Option Pool, 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. Propose or pay any dividend or propose or make any other distribution (as defined under the Corporation Tax Act 2010).
				5. Subscribe for or otherwise acquire, or dispose of any shares in the capital of any other company.
				6. Acquire 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.
				7. Permit the Company to cease, or propose to cease, to carry on its business or permit the Company or any of its directors 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).
				8. Permit the Company or any of its directors (i) to take any step to place the Company into administration; (ii) to propose or enter into any arrangement, scheme, moratorium, compromise or composition with its creditors or to apply for an interim order under Part 1 of the Insolvency Act 1986; or (iii) to invite the appointment of a receiver or administrative receiver over all or any part of the Company's assets or undertaking.
				9. Adopt a detailed operating and capital budget and cash flow forecast in respect of each financial year of the Company.

**Part 2: Matters requiring Investor Director consent**

* + - * 1. Incur any capital expenditure in relation to any item exceeding £[            ].
				2. Dispose of any asset of a capital nature having a book or market value greater than £[            ].
				3. Make any material change to the nature of the Business or the jurisdiction where it is managed and controlled.
				4. Establish any new branch, agency, trading establishment or business or close any such branch, agency, trading establishment or business.
				5. Engage any employee or consultant on terms that either his contract cannot be terminated by three months' notice or less or his emoluments and/or commissions or bonuses are or are likely to be at the rate of £[] per annum or more.
				6. Enter into any loan, borrowings or advance of any nature 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).
				7. Create or permit the creation of or suffer to subsist any Encumbrance (other than a lien arising by operation of law) over the whole or any part of its undertaking, property or assets.
				8. Enter into or vary either any unusual or onerous contract or any other material or major or long term contract.

Disclosure Schedule

Deed of Adherence

**THIS DEED** is made on 201 **•**

**BY** [ ]

**INTRODUCTION**

(A) By a subscription for shares of even date herewith [ ] (the "**Subscriber**") subscribed for    **•**        **•**    Shares of £  **•**   each in the capital of     **•**      (the "**Company**") (the "**Subscribed Shares**").

(B) This deed is entered into in compliance with the terms of clause 3 of an agreement dated [ ] made between (1) the Investors, (2) the Founders and (3) the Company (all such terms as are therein defined) (which agreement is herein referred to as the "**Investment Agreement**").

**AGREED TERMS**

1. Words and expressions used in this deed shall have the same meaning as is given to them in the Investment Agreement unless the context otherwise expressly requires.

2. The Subscriber hereby agrees to assume the benefit of the rights under the Investment Agreement in respect of the Subscribed Shares.

3. The Subscriber hereby agrees to be bound by the Investment Agreement in all respects as if the Subscriber were a party to the Investment Agreement as one of the Investors and to perform all the obligations expressed to be imposed on such a party to the Investment Agreement, to be performed on or after the date hereof.

4. This deed is made for the benefit of:

(a) the parties to the Investment Agreement; and

(b) any other person or persons who may after the date of the Investment Agreement (and whether or not prior to or after the date hereof) assume any rights or obligations under the Investment 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 shares in the capital of the Company.

5. Neither the Company nor any of the Founders:

(a) makes any representation or warranty or assumes any responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of any of the Investment Agreement (or any agreement entered into pursuant thereto);

(b) makes any representation or warranty or assumes any responsibility with respect to the content of any information regarding the Company or any member of the group or otherwise relating to the subscription of shares in the Company; or

(c) assumes any responsibility for the financial condition of the Company or any other party to the Investment Agreement or any other document or for the performance and observance by the Company or any other party to the Investment 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.

6. 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 )

[Subscriber] )

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

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

**EXECUTED AS A DEED** by )

[                    ] **LIMITED** acting by a director )

acting as [general partner/manager] )

of [THE INVESTOR] )

in the presence of: )

……………………………….. Director

Signature of witness:

Name of witness:

Address of witness:

**EXECUTED AS A DEED** by )

[THE COMPANY] )

acting by a director )

in the presence of: )

……………………………….. Director

Signature of witness:

Name of witness:

Address of witness:

**EXECUTED AS A DEED** by [FOUNDER] )

in the presence of: )

Signature of witness:

Name of witness:

Address of witness:

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

**EXECUTED** by )

[                      ] LIMITED acting by a director )

acting as [general partner/manager] )

of [THE INVESTOR] )

 …………………………………… Director

**EXECUTED** by )

[THE COMPANY] )

acting by a director )

 …………………………………… Director

**EXECUTED** by [FOUNDER] )

**EXECUTED** by [FOUNDER] )

1. Where a version of this clause is included, consideration should be given to whether it is appropriate to include paragraph 1(e) of schedule 4 and/or clause 23. [↑](#footnote-ref-1)
2. If a version of clause 3.8 is included, consideration should be given to whether it is appropriate to include this clause. [↑](#footnote-ref-2)
3. If a version of clause 3.8 is included, consider whether this wording should be deleted. [↑](#footnote-ref-3)