



# Model Contracts

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## 1. Introduction

The **BAKE project** aims to empower entrepreneurs and offer them guidance on establishing successful, fair, and balanced investment relationships. This initiative is geared towards future entrepreneurs, students, and VET centres, equipping them with the knowledge, skills, competences, and language proficiency needed to effectively engage with angel investors.

To achieve this goal, aspiring entrepreneurs must acquire fundamental negotiation skills, learn the intricacies of fundraising, and understand how to secure investment. **By imparting the tools and language of investors, BAKE enables new entrepreneurs to engage in reliable and equitable negotiations.** Moreover, this empowers Business Angels (BAs) to collaborate with entrepreneurs who are adept at setting up efficient negotiations, facilitating a better understanding of projects and respective roles. Consequently, the foundation of BAs' relationships with entrepreneurs lies in well-structured contracts.

An **agreement or contract** plays a crucial role in regulating the relationships among shareholders in the context of a company's operations. Such an agreement serves to define each shareholder's role, ownership stake, business management, shareholding rights, responsibilities, and outlines the management mechanisms of the company. It is vital for a contract to be tailored to the specific needs of the parties involved, given its complexity and the necessity to address individual circumstances.

As a result, the project has developed the '**BAKE Toolkit on Balanced Funding Schemes with Business Angels**'. This toolkit includes the '**Codes of Conduct between Entrepreneurs and Business Angels Investors**', offering entrepreneurs invaluable guidance on managing equitable and fair investments. Additionally, it provides insights into management techniques, effective communication, and legal aspects.

## 2. Model contracts

As part of the '**Codes of Conduct between Entrepreneurs and Business Angels Investors**', a set of model contracts is provided to facilitate agreements between entrepreneurs and Business Angels.

BAKE operates within a multicultural environment, which introduces various considerations, especially in **legal aspects**. International law provides a foundation, but each nation has its distinct financial regulations and practices. Consequently, it is crucial for entrepreneurs to be aware of the legal factors when entering into a business angel investment agreement. This awareness ensures that entrepreneurs approach the agreement from an equitable standpoint.

The **Model Contracts** presented here are the collaborative efforts of Business Angel networks participating in the project's knowledge-sharing activities. However, it is important to note that a shareholder's agreement must be customised to suit the unique needs and circumstances of the parties involved. Shareholders' opinions on the provisions to include may differ based on factors such as whether they are founding shareholders or investors, minority or majority shareholders.

### 3. What does it mean?

You might have read a contract and found some terms confusing or out of context. So, what are the main terms of investment agreements? Let's break down some of the **key terms commonly found in model contracts**:

- **Party Identification:** The agreement begins by identifying who is involved. If multiple investors are part of the deal, it specifies their roles and responsibilities.
- **Tranche Payments:** A 'tranche' is a portion or segment of the funds being advanced. Thus, funds may be divided into tranches, each tied to specific conditions or milestones. The agreement outlines what happens if these conditions are not met (in general or within a certain deadline).
- **Warranties:** Investors often seek warranties about the company's performance and status. These are statements that certain facts are true at a given time. If a warranty turns out to be untrue, then the party relying on the warranty may be able to claim damages if it suffers a loss as a result. Sometimes investors negotiate fixed damages that are payable if there is a breach of the warranties and these are designed to be genuine pre-estimates of loss.
- **Board Representation:** An investor might gain a seat on the board or the right to observe meetings. These rights are typically detailed in the company's Articles and shareholders' agreement. Depending on what is set out, the investor may be able to appoint one or more directors to the board during or following the investment, and may be able to demand that board meetings must contain those investor directors in order to be considered validly held.
- **Restrictive Covenants:** To safeguard the investment and maintain management quality, the company may agree to specific promises or *restrictive covenants* in the agreement, which are designed to protect the investor's investment, as well as to ensure that there is not a deterioration in the quality of management or the trading and commercial position of the company, immediately after the investment is made.
- **Confidentiality:** To protect sensitive information, the agreement includes confidentiality provisions. It addresses who can disclose information about the investment.
- **Exit Strategy:** An exit plan is essential in case disputes arise, or if the investor wants to withdraw, transfer shares, or if the company faces insolvency.

## 4. Templates model of contracts

In this section, you will find a variety of contract templates designed for use between a Business Angel (BA) and an entrepreneur. These contracts can help you better understand key negotiation points.

**Note:** Please keep in mind that your country's specific legislation might include unique clauses. Therefore, it is essential to verify that the contract aligns with your local legal requirements in its entirety.

## 4.1. Model contract 1

### SHAREHOLDERS' AGREEMENT OF THE COMPANY

In [City/Country], at [date]

The undersigned:

[Legal company name] (hereinafter, "....."), a trading company of [Country] nationality and indefinite duration, domiciled in [company's address], the trade register number {xxxx}. Represented in this act by ]Mr./Ms] [name of director], with address at [director's address], with National Identity Card [xxxxxx], in his capacity as [position in the company], according to the resolution of the Board of Directors dated on [date].

[OTHER INVESTORS]

[ENTREPRENEUR]

[Mr./Ms.][Entrepreneur's name], of legal age, nationality [Country], domiciled in [entrepreneur's address], with National Identity Card [xxxxxx]. [She/He] acts in [her/his] own name and on [her/his] own behalf;

Hereinafter:

- a) To refer jointly to [Mr./Ms.][Entrepreneur's name], [he/she] shall be referred to as the "Current Member" although in describing [his/her] rights and duties as members it shall always be understood, unless expressly stated to the contrary, that each of [him/her] may exercise independently and individually.
- b) The "Relevant Partner" shall mean jointly [Mr./Ms.][Entrepreneur's name](ENTREPRENEUR), and [Mr./Ms.][Entrepreneur's name](ENTREPRENEUR)
- c) [Investor's name/company's name] shall hereinafter be referred to as "Investor" or "Investor Partner". Investor".
- d) The "Partners" shall mean jointly [Mr./ Ms./Messrs.] [Current and Reference Partners].

- e) The Partners may be referred to collectively as the "Parties" and individually each of them as a "Party".

Unless otherwise stated, decisions of any body of the Partners shall always be decided by a simple majority, in shall always be decided by a simple majority, according to the then current shareholding of each of the Shareholders. each of the partners at the time.

The Parties, acknowledging that they have sufficient capacity to enter into this Agreement,

**AGREED**

**FIRST.-** That the corporate purpose of the Company is:

- a) The object of the Company consists [xxxxxxx].

**SECOND.-** That, prior to the disbursement made by the Investors, the composition of the Company's share capital is divided between the following share capital of the Company is distributed as shown in the following table:

Current partners	Number of shares	% of total of total share capital
<b>Total</b>		

The Current Shareholders declare that there are no encumbrances, liens, claims, option rights or rights in rem on any of the said shares, and that they are in any case free from encumbrances.

The Current Shareholders declare that there is no agreement between them, and therefore, apart from the present document, there is no other document that regulates the relationship between them.



**THIRD.-** Investors, attracted by the Project and by the Reference Partners, have undertaken to make a total investment of [amount of money] [XXXXX.-€] broken down as follows:

- Detail if there are several investors, name and contribution.

That today, in a single act, simultaneously with the execution of this Agreement and in order to allow the Investor Shareholders to join the Company, an Extraordinary and Universal General Meeting of Shareholders of the Company was held, at which each and every one of the resolutions set forth in the minutes, the joint certification of which is attached to this Agreement as Annex 0, were adopted, including, among other matters, an increase in the Company's capital in the amount of [...] EUROS, i.e. up to [...] EUROS, through the creation of [...] shares, numbered sequentially from [...] to [...] EUROS, by means of the creation of [...] shares, numbered sequentially from [...] to [...] EUROS.] EUROS, i.e. up to the amount of [...] EUROS, through the creation of [...] shares, numbered sequentially from [...] to [...], both inclusive, of [...] EUROS par value and [...] EUROS share premium each, representing [...] % of the capital of the Company after the execution of such increase (hereinafter, the "Capital Increase"), the capital increase being subscribed as follows:

Partners	Number of shares	Contribution (money)	% on equity capital

Of the amount of the cash contribution, [...] EUROS (XXX.-€) shall correspond to the nominal value of the units, and the remainder to the total assumption premium.

[Investor's name/company's name] contribution will consist of:

- I. Amount: EUROS [amount of money] (XXXX.-€) corresponding to (XXXX.-€) to the nominal value of the units, and (XXXX.-€) to the total assumption premium.

- II. Units to be created: (XXXX) units with a nominal value of [amount of money] EUROS (.-€), numbered sequentially from [...] to [...] inclusive, with each unit corresponding to an assumption premium of [amount of money] EUROS (.-€).

**FOURTH.-** As a result of the capital increase described in the previous section, the sharecapital shall be distributed as follows:

Partners	Number of participations	Percentage
<b>Total</b>		

The Current Partners represent that no other person or entity has any right of any kind (whether by agreement, court order or otherwise) to acquire or to assume any kind of shareholding in the Company.

**FIFTH.-** That in order to establish the principles that will govern the participation in the share capital of the Company of the Investors, as well as to determine the criteria that will inspire their actions and the relationships and commitments that all the Partners will assume, the Parties wish to enter into this contract, which will be governed by the following:

## AGREEMENTS

### PART I - INTRODUCTION

#### 1. OBJECT

1.1. The purpose of this Shareholders' Agreement is to regulate the relations arising from the entry into the capital of the Company by the Investors, and in particular:

- a) Relations between the Partners in the Company.
- b) The functioning of the Company.

- c) The mechanisms for the transfer of the Company's shares.
- d) Investor Investment Protection.

1.2. The Partners undertake to use their best efforts to maximise the investment made.

## **2. PRELIMINARY PROCEEDINGS AND ELEVATION TO THE PUBLIC**

2.1. On this day of today (hereinafter, the "Formalisation Date") the Shareholders, in unity of act to the formalisation of this Agreement, have held an Extraordinary and Universal General Meeting at which:

I. They have approved the Capital Increase;

II. Have approved the amendment of the Articles of Association (as defined below) of the Company, to be worded as set out in the consolidated text of the Articles of Association included in the certificate of corporate resolutions included in Annex 0 ("Articles of Association"); and

III. Have approved the modification of the structure of the Company's administrative body to that of a board of directors, appointing, accordingly, the new members of the Company's board of directors, on the terms set out in Clause 4.

2.2. The Parties undertake to take all necessary steps to complete the registration in the relevant Commercial Register of the agreements referred to in Clause 2.1 above, as soon as possible thereafter and in the event that registration is refused by the Commercial Registry, to take the necessary steps to amend the relevant resolutions (and in particular the article(s) of the Articles of Association whose registration has been refused) in order to ensure their proper registration, while respecting, however, to the maximum extent possible, the provisions of this Agreement and its spirit. In any event, the Parties expressly agree that in the event of any conflict between the Articles of Association of the Company and the terms of this Agreement, the provisions of this Agreement shall prevail as between the Parties. The Parties undertake to exercise their rights as necessary to ensure the prevalence set out in this clause in the shortest possible time.

## **PART II - GOVERNANCE AND OPERATION OF THE COMPANY**

### **3. THE BOARD OF PARTNERS**

3.1. The General Meeting of Shareholders of the Company shall meet at least once (1) a year, on an ordinary basis, within the legally required period, and at any other time, on an

extraordinary basis, as a universal meeting or upon prior notice to that effect by the Administrative Body, which shall notify each of the Company's Shareholders individually at least fifteen (15) days in advance, by means of the procedure established in the Company's Articles of Association. In addition, the notice of the meeting shall be sent by e-mail to each of the Shareholders.

- 3.2. The Members shall make their best efforts to hold meetings on a universal basis, if necessary and in order to expedite decision-making, avoiding the formalities involved in convening meetings in accordance with legal procedures.
- 3.3. Any Investor holding 5% of the share capital shall in any event be entitled to request the Administrative Body to convene the General Meeting of Shareholders, stating the items on the agenda to be discussed. If such a request is received, the Administrative Body shall proceed to convene it as soon as possible, and always within ten (10) calendar days following the date on which such request is received.
- 3.4. The General Meeting of the Company shall be chaired by the Chairman of the Board of Directors of the Company, who shall be assisted by the Secretary or, as the case may be, the Deputy Secretary thereof. Should the Chairman of the Board be unavailable due to extraordinary circumstances, the shareholders present, in accordance with the will of the majority of the shareholders present and the vote in favour of the Investors, may appoint a substitute.

#### **4. ADMINISTRATIVE BODY**

- 4.1. The management body of the Company shall be a Board of Directors. The Board of Directors shall be composed of five (5) Directors. The members of the Board of Directors shall be appointed by the Shareholders in accordance with the terms set forth in this Agreement, and the Shareholders undertake to vote for the election of the Directors appointed by each Party.
- 4.2. The General Partner shall appoint three (3) of the Directors and the Investors, who shall vote separately, shall be entitled to appoint two (2) Directors, one (1) of whom shall be a Director and one (1) of whom shall be a Director. (1) by [investor's name/company] and one (1) by [entrepreneur's company]. The aforementioned persons may make these appointments at any time, such that the non-appointment or waiver of the appointment at a given time of their corresponding director shall not mean the waiver of the right to the appointment, which may occur at a later date.
- 4.3. Directors shall be appointed for an indefinite term.

- 4.4. The Board of Directors shall meet at least four (4) times a year at the registered office at the initiative of the Chairman and, in any event, within a maximum period of three (3) months from the end of the financial year, in order to prepare the Annual Accounts, the Management Report and the Proposed Distribution of Profit. It shall also meet if any of the members of the Board appointed by the Investors request the holding of a Board meeting, in which case the Chairman shall convene it within a maximum period of three (3) calendar days from receipt of such request, so that it is held as soon as possible and always within ten (10) calendar days from the date on which he receives such request.
- 4.5. The agenda shall be that proposed by the Chairman, based on the proposals of the other Directors. Any of the Directors appointed by the Investors may demand the inclusion of certain items on the agenda, whether the Board is held at their request or at the request of the Chairman, and may do so by notifying the Chairman within three (3) days of receipt of the Notice of Meeting. The Chairman shall be obliged to communicate the additions to the rest of the Directors and, to the extent legally necessary, shall reissue the notice of call incorporating such items on the agenda.
- 4.6. Meetings held by videoconference, a method which the Company will always have as an available alternative, or by any other means which allows the identity of the members of the board or their representatives to be indisputably accredited, without requiring physical presence, shall be valid, provided that none of the Directors objects to this in a reasoned manner.
- 4.7. In the event that the Investors have not appointed any Directors, they shall also have the right to be called to meetings of the Board, at which they shall have the right to speak but not to vote.
- 4.8. The offices on the Board shall be those of Chairman and Secretary, the latter may be held by a non-director. The Chairman, and if applicable the Vice-Chairman, of the Board shall be appointed by the General Partner, while the Secretary, and if applicable the Vice-Secretary, of the Board shall be appointed by the Investors.
- 4.9. The directors nominated by the Investors, as well as the other directors, may be accompanied at board meetings by advisers or experts of their choice, although they may be required to sign a confidentiality agreement.
- 4.10. The office of director shall be free of charge.

4.11. Liability insurance. Within a maximum period of three months from the date of signature of this agreement, the Chief Executive Officer shall submit to the board a proposal for civil liability insurance for possible liabilities of the members of the Board of Directors. The directors undertake to approve the contracting of this insurance unless the contracting thereof is unanimously rejected by all the directors. This insurance shall be renewed in the same way. The cost of taking out and maintaining civil liability insurance shall be borne by the Company.

## **5. ADOPTION OF CERTAIN RESOLUTIONS BY THE GENERAL MEETING AND THE BOARD OF DIRECTORS.**

5.1. Any and all of the following matters (hereinafter the "Reserved Matters") shall constitute Reserved Matters of the general meeting of members for the purposes of this Agreement:

5.2. The General Meeting and the Board of Directors of the Company, as the case may be, may not pass any of the following resolutions without the affirmative vote of the majority of the Investors, according to their percentage shareholdings:

- a) To amend the Articles of Association in force; to adopt any corporate resolution by the management body or the General Meeting of Shareholders of the Company that, directly or indirectly, entails their modification, in particular and merely by way of example, that may entail any variation, increase or decrease of the share capital; to enter into para- corporate or extra-statutory agreements.
- b) Approve corporate operations considered structural, such as mergers, spin-offs, contributions of branches of activity, global assignment of assets and liabilities; as well as approve the dissolution or liquidation of the Company.
- c) The issue of bonds or of any securities, options or rights which, directly or indirectly, may give the right to subscribe for or acquire an interest in the share capital.
- d) The acquisition, disposal or redemption of own shares.
- e) Transferring, disposing of or encumbering assets or items comprising its fixed assets whose book value exceeds [amount of money] (xxxx.-€), including the Company's know-how and its industrial and intellectual property rights, unless they establish some kind of exclusivity, except for those legal transactions necessary and/or necessary for the Company's business. The Company's ordinary business activities are carried out in the normal course of business.

- f) Modify the composition, representation or remuneration of the Board of Directors, as well as establish permanent delegations to Managing Directors and/or Executive Committees, as the case may be. Appoint proxies empowered to take decisions on matters contemplated in this covenant 4.1.
- g) Entering into contracts or carrying out transactions outside the ordinary course of business or under unusual market conditions.
- h) Moving the registered office or the Company's premises and offices out of the province, opening or closing branches.
- i) Acquisition of companies and/or businesses and their sale.
- j) The use, by any means and in any medium, present or future, of the name, logo, image or any form of intellectual or industrial property of the Investors.
- k) The appointment, re-election and removal of the Company's auditors.
- l) To distribute dividends or reserves, as well as to set the dividend distribution policy.
- m) Approve or Modify the annual Business Plan and Budget, including procurement and logistics strategy and operations.
- n) To contract or approve indebtedness other than that foreseen in the Business Plan, in particular, to constitute additional participating loans, to grant shares, options thereon, or economic rights attached thereto, to employees of the Company.
- o) To provide real or personal guarantees in favour of third parties, whether to cover own or third-party obligations on assets, except for those imposed by law or those required by the regulatory bases for subsidies and public aid for which the Company is eligible.
- p) Create subsidiaries and grant strategic alliance agreements, partnership agreements that have a significant impact on the Company and are not approved in the Business Plan.

Exceptions to the above are those actions which, falling under powers e), g), o) and p), result directly from the implementation of the Business Plan or the duly approved Budget, or where the taking of such decisions is required by law.

- 5.3. Likewise, and always without prejudice to the majority, qualified or otherwise, of votes in favour required in each case by the Capital Companies Act, the Company may not, in any of its governing bodies, adopt any of the following resolutions without the prior, express and written authorisation of the majority of the Investors in accordance with their percentages

of participation and additionally and in particular the prior, express and written authorisation of [investor's name/company] and [entrepreneur's company]:

- a) Limitation or exclusion of the pre-emptive subscription and acquisition rights of the Investor Shareholders or approval of capital increases in which this right is not recognised.
- b) The grant, transfer or sale to any of the shareholders, including the General Partners, of options, shares, rights or other instruments giving the right to acquire shares in the company unless such grant, transfer or sale is extended to all shareholders on the same terms and conditions and in an amount proportional to their respective shares in the company. This approval is not required for the transfers referred to in Annex 6, which all parties are aware of and accept.
- c) The creation of shares or partnership interests having, or the signing of shareholders' agreements providing for, voting rights, economic rights, preferential liquidation rights, or rights to the liquidation quota other than those corresponding to the interests held by the Investors and their rights under this agreement.
- d) The conclusion, modification and termination of contracts between the Company and one or more Shareholders of the Company (including, where applicable, the employment contract and remuneration) or with any of their relatives up to the second degree of consanguinity, or with companies in which any of them has a direct or indirect shareholding.  

In such cases of related-party transactions, the Shareholder to which the contract refers shall not participate in the voting on the agreement, and its prior approval shall not be required.
- e) The merger, takeover or spin-off of the Company and/or its subsidiaries, segregation of branches of activity, contribution of assets or liabilities, and any other consolidation or restructuring operations of the Company and/or its subsidiaries, when these are carried out with any other company in which any of the Shareholders has, directly or indirectly, an interest.
- f) The assignment of intellectual or industrial property rights or know-how, any licensing contract for the use, exploitation or any other concept of trademarks or any intellectual property right, provided that they imply any exclusivity.



- g) Approve or modify the compensation of the executive team other than that set forth in Annex I to this Agreement, of whatever nature, as well as their contracts of engagement with the Company.
  - h) The transfer of the Company's registered office outside Spain.
  - i) Any amendment to the Articles of Association that contradicts the provisions of this Agreement.
- 5.4. The approval of other resolutions to be adopted by the General Meeting and/or the Board of Directors of the Company shall be in accordance with the procedure established in the Capital Companies Act (Articles 198 et seq.).
- 5.5. At the time when the Investors come to hold a stake, jointly of 6% in the share capital of the Company, and such dilution occurs in whole or in part as a result of the transfer of their holdings having obtained an IRR for the same equal to or greater than 20% per annum of their investment in the Company, for the valid adoption by the General Meeting and/or the Board of Directors of the Company, whichever is competent, of the resolutions on the matters listed in the foregoing covenant. 5.2 the favourable vote of the Investors at the General Meeting and of the Director(s) appointed by the Investors on matters within the competence of the Board of Directors shall not necessarily be required.
- 5.6. The Shareholders shall assume the obligation to inform the Current Shareholders and the Investors, immediately and as soon as they become aware of them, of any fact or circumstance that may constitute a breach of this Agreement.

## **6. DEDICATION OF EXISTING PARTNERS, REFERENCE PARTNERS AND INVESTORS**

- 6.1. An essential cause for the Investors to take a stake in the capital of the Company was the commitment of the Reference Partners and the **XXXXXXXXXXXXXXXX** Partners to remain and dedicate themselves exclusively to their respective positions in the Company, in accordance with the provisions of the following covenants, as well as the Investors' willingness to follow the development of the Company and to be involved in the definition of the Company's strategy
- 6.2. Exempt from this exclusive dedication commitment are the activities carried out by the Reference Partners in favour of the Company's subsidiaries. Likewise, it is established that the **partner XXXXXXXX** is exempted from his exclusive dedication commitment.
- 6.3. Likewise, the Reference Shareholders and the **XXXXXXXXXX** Shareholders may, if so decided by the majority of the Investors on the basis of their shareholding in the Company and by

appropriate agreement with the Company, be subject to a post- contractual non-competition obligation of one year's duration. During this period, he/she shall not engage in any activities for his/her own account or for the account of others that may be in competition with the Company. In compensation for this commitment, the employee shall receive a contribution equal to his current gross annual salary payable in twelve (12) monthly payments. In the event of non-compliance by the Referral Partners or the XXXXXXXXXXXX Partners with this commitment, it shall be obliged to compensate the damages caused, as well as to return the financial compensation received.

- 6.4. The Reference Shareholders undertake to maintain their shareholding in the Company and not to transfer or encumber, inter vivos, their shares or any rights over them for a period of [amount of months] (in numbers) months from the date of signature of this agreement. This limitation shall not apply in the event of exercise of the drag- along clause (clause 10) or of the call option set out in Appendix 7

Furthermore, this limitation shall not apply in the case of (i) sale to a third party of more than XX% of the Company's shares by way of a sale and purchase or other transfer and (ii) a capital increase of the Company resulting in the entry of new shareholders into the Company's capital by subscribing to a package of shares giving them more than XX% of the Company's share capital.

- 6.5. The Parties expressly agree not to provide, transfer or sell any information regarding the Company's development and products to other entities or companies that compete, directly or otherwise, with the Company.
- 6.6. The Parties expressly assume the obligation not to compete with the Company and consequently undertake not to provide services, whether as employees, shareholders, directors, consultants or in any other way, for any person or entity that competes in the scope of the Business Project, whether through participation in the capital or equity or the granting of financing in companies that compete directly or indirectly with the Company, and not to hire or employ directly or indirectly, on its behalf or on behalf of third parties related or unrelated to it, persons who are employed by the Company.

Competition shall mean any activity which is directed to the same business which at the time constitutes the principal activity of the company. At the time of signing it is understood to be paragraph a) of the corporate purpose above.

The Parties are aware of the following activities carried out by the other Partners, and acknowledge that they do not violate this clause;

a) .....

In addition, XXXXXXXXX are current employees of Emotion Research Lab.

The Investors may, without being considered in breach of this agreement, invest in other e-commerce companies, including those providing certain services that may be in competition with the Company but within a broader distribution framework, not solely focused on servicing XXXXXXXX.

- 6.7. The Shareholders undertake vis-à-vis the Investors and the Company to remain in the service of the Company for a period of [AMOUNT OF MONTHS] (IN NUMBERS) months from the signing of the Shareholders' Agreement (hereinafter referred to as the "Permanence Period"), subject to the provisions of the Shareholders' Agreement 15. In any event, if during the Term a bankruptcy, pre-bankruptcy or dissolution process of the Company is commenced, the Referral Partners undertake to actively lead the related tasks, if requested to do so by the Investors.
- 6.8. The provisions of this Clause 6 shall be reflected in the relevant contract of employment or provision of professional services that the Referral Partners and the XXXXXX Partners are obliged to sign with the Company within sixty (60) days (60) from the signature of this contract at the latest.
- 6.9. For these purposes, the Reference Partners and the Partners [name of the partners] shall receive the gross annual salaries set out in Annex 1.
- 6.10. At all times while the Referral Shareholders and the XXXXXXXXXX Shareholders retain such status, they shall devote all their professional efforts exclusively to the Company (except as provided for in Covenant 6.2 above),
- 6.11. The Current Shareholders recognise the Company as the owner of all rights to exploit the Industrial and Intellectual Property developed by them to date within the framework of their employment and commercial relationship with the Company; and to the extent necessary, they declare that they have assigned to the Company all their possible rights to exploit such intellectual and industrial property. They also acknowledge that, in accordance with the

provisions of the Intellectual Property Law, the exclusive exploitation rights corresponding to the programmes and applications they develop within the framework of their employment relationship with the Company shall correspond to the Company, both in the source programmes and in the object programmes. This shall apply both to programs to be created and to improvements to programs already developed. The Company shall also have the exclusive rights to exploit the discoveries made by the Current Shareholders and the Company's staff in the research and development work they carry out within the framework of their employment or business relationship with the Company. To the extent possible, the Reference Partners shall endeavour to use all means available to them for the protection of those creations and inventions developed in the course of the Company's business and which are susceptible to protection by any intellectual and/or industrial property rights, provided that this does not conflict with applicable law or contractual obligations, for example, in the latter case of third party technology licensed to the Company.

- 6.12. In this regard, the Referential Partners undertake to sign or include, as well as to ensure that the employees and collaborators who provide their services to the Company, directly or indirectly, and through any contractual form, sign or include in their contracts with the Company, a specific confidentiality clause recognising the Company as the intellectual or industrial property of all creations or inventions, owned by the Company, whether or not they are subject to registration or registration, which derive from the contracting parties must in any case adjust their contractual relations to the obligations required under the applicable regulations in force. Consequently, all the aforementioned intellectual or industrial property rights (including patents, utility models, industrial designs and drawings, etc.) that derive or may derive from the activity of the Company shall be irrevocably and exclusively assigned to the Company for the maximum time established in the laws and/or international treaties and throughout the world, and the Company shall be exclusively responsible for their exploitation or commercialisation.
- 6.13. The Referral Partners undertake to exercise the duties of diligence and good faith provided for in art. 5 of the Workers' Statute, even if their relationship with the Company is not an employment relationship. These duties extend to keeping secret any information they obtain from the Company and/or its clients, in particular everything relating to computer applications and developments. The identity of the Company's customers and the databases relating thereto, strategic agreements and the findings of the Company's personnel in their research and development work shall also be deemed secret, unless the Reference Partners

or the Company are obliged to disclose such data by law or regulation, or by judicial or administrative decision. These duties of secrecy shall extend both while they are partners, employees or suppliers of the Company and indefinitely thereafter.

## **7. INVESTOR INFORMATION RIGHTS**

7.1. For the proper monitoring by the Company's Investors, the Company undertakes to provide them monthly or annually, through its representative on the Management Committee or Board, with the following documentation and information:

- On a monthly basis, within twenty (20) calendar days after the close of the month:
  - a) Monthly financial statements, including balance sheet, income statement and cash flow, as well as an updated cash forecast for the following 12 months and other operational information (commercial, management, KPIs, technological advances, etc.), corresponding to the previous month and accumulated annually, all compared to: (i) the same period of the previous year, and (ii) the Business Plan approved by the board of directors;
  - b) Actual month-end closing compared to the Business Plan, and identical period of the previous year. Including an analysis of the main deviations.
  - c) Breakdown of current debt and debt conditions.
  - d) A brief report on business developments and key aspects of the business.

The following are significant deviations from the Business Plan: future investment plans or developments, as well as any forecast deviations from the Business Plan. During the first year of the Partners' Pact, this information shall be provided in a flexible manner, so that the deadlines for the delivery of this documentation shall in no case prejudice the delivery deadlines for the Company's own business projects, and the Referential Partners undertake to use their best efforts to comply with the provisions of this Pact.

On an annual basis:

- a) In the last quarter of each financial year, the Company must prepare an annual budget for the following financial year, which must be expressly approved by the Investors.
- b) The Company shall also prepare its annual accounts, consisting of annual report, balance sheet and profit and loss account as at the closing date of the Company's

- financial year and prepared in accordance with generally accepted accounting principles, which shall be provided to the Investor within two (2) months of the said date, even if provisional, and within three (3) months of the said date, even if final.
- c) In any event, the Company shall have its accounts audited by an auditor of recognised standing, appointed by the Investors and approved by the Company. In the event that the Company and the Auditor do not reach a satisfactory agreement as to fees or method of work, the Company may appoint a second Auditor from among the four large international firms with a presence in Spain or two Spanish firms with the highest turnover, which must be approved by the Investors. The Report will be provided to the Investors together with the Annual Accounts. The expenses will be borne by the Company.
  - d) In addition, the Company shall attach to the annual accounts a brief report commenting on the evolution of the business and the most significant aspects arising, investment plans or future developments, as well as deviations from the annual budget.

Reference Partners also commit themselves to:

- To make available to the Investors as soon as it is available, in real time if applicable, all the information relating to the audience and revenues contracted by each and every website managed, in whole or in part, by the Company, Google Analytics, Nielsen, OJD, Comscore, or similar, in the event that the Company has contracted them or has access to them.
- To inform the Investors as soon as possible and through their representative on the administrative bodies, of any failure to pay tax, labour or Social Security obligations.
- Immediately notify the Investor Shareholders of any fact or circumstance that may constitute a breach of this Agreement or that could have a significant effect on the development of the business and activities or otherwise on the Company's assets, economic, accounting or financial situation.

The Investors may request the sending of information in other formats, content or frequency, depending on their monitoring needs, requesting any change with two months' notice.

## **PART III - TRANSFER OF SHARES**

### **8. ESSENTIAL PRINCIPLES IN THE TRANSFER OF COMPANY SHARES**

8.1. Transfers in which the Company acquires all or part of the shares of a Shareholder following a termination of the Shareholder as provided for in this Agreement or other call option contracts in favour of the Company entered into with individual Shareholders are excluded from the restrictions on transferability provided for in this Agreement.

In order to give effect to the provisions of this clause 8.1, the Shareholders undertake to carry out such acts as may be necessary or appropriate, including without limitation the waiver in the necessary form of their pre-emptive acquisition rights, so that the transfers referred to in this section are carried out in the terms provided for in the relevant contracts as soon as possible.

8.2. Any "inter vivos" transfer of shares, directly or indirectly, from any Shareholder to third parties shall be subject to a pre-emptive acquisition right in favour of the other Shareholders and, in the absence thereof, of the Company itself, on the terms described in Pact 11.

8.3. As an exception to the foregoing, and unless the potential acquirer is a competing company, the Investors may freely transfer their shares in favour of:

- their natural person partners and these in favour of companies controlled by these partners (where "Control" is understood to mean owning more than fifty-one percent (51%) of their share capital and holding the representation and administration of the company, by forming part of the company's administrative body),
- their partners who are legal persons, as well as those resulting from company dissolution or asset restructuring processes, between companies belonging to the same group as that of the legal entity partners of the Investors, and in transfers "mortis causa" the acquisition of shares by inheritance confers on the acquiring heir or legatee the status of Shareholder and shall not be subject to further limitations in the event that the acquirer is a lineal ascendant or descendant of the deceased.

In any other case, the remaining Shareholders and, failing that, the Company, shall have the right to acquire the shares of the deceased Shareholder, for which purpose, once the relevant notification has been made regarding the inheritance acquisition, the company's administrative body shall in turn notify in writing, within fifteen (15) calendar days, all the other Shareholders, any of whom may opt for the preferential acquisition of the shares,

notifying the administrative body in writing within fifteen (15) calendar days of the previous notification. In the event of concurrence between several Shareholders, the shares to be transferred shall be distributed among them in proportion to the shares they hold and, if fractions are indivisible, they shall be drawn by lot. Such shares shall be acquired at their fair value determined in accordance with the provisions of Articles 353 et seq. of the current Capital Companies Act and their price shall be paid in cash.

- 8.4. For the valid transfer, in any form, of the shares of the Company, it shall be an essential requirement that the acquirer binds himself to the contents of this Shareholders' Agreement by signing a document to that effect.

The Parties shall keep the Company's shares free of liens, encumbrances, claims, option rights, rights in rem and shall use their best efforts to keep them free of attachments. Notwithstanding the foregoing, the following procedure shall be followed in the event of a lien:

The Company shall be immediately notified of the seizure of shares, in any seizure procedure, by the Judge or Administrative Authority that has decreed it, stating the identity of the seizer as well as the shares seized. The Company shall proceed to record the seizure in the Register of Shareholders, immediately sending a copy of the notification received to all the Shareholders.

Once the auction has been held or, in the case of any other form of compulsory disposal provided for by law, at the time prior to the allotment, the approval of the auction and the allotment of the seized shares shall be suspended. The judge or the administrative authority shall send to the company a verbatim record of the minutes of the auction or of the award agreement and, where appropriate, of the award requested by the creditor. The Company shall send a copy of this statement to all shareholders within a maximum of five calendar days of receipt thereof.

The auction or the allotment to the creditor shall become final one (1) month after the receipt by the Company of the testimony referred to in paragraph (1) above. Until such time as they become final, the shareholders and, failing that, the Company may be subrogated in place of the auctioneer or, if applicable, the creditor, by expressly accepting all the conditions of the auction and by depositing in full the amount of the auction or, if applicable, of the award to the creditor and all the expenses incurred. If the subrogation is exercised by several



shareholders, the shares shall be distributed among all of them pro rata to their respective shares.

- 8.5. Pre-emptive rights of pre-emptive acquisition of shares, if any, shall be transferable under the same conditions as the shares from which they derive and therefore the same procedure shall be followed as for the transfer of shares except that the right of pre-emptive acquisition shall not be vested in the Company but only in the Shareholders.

## **9. RIGHT OF FIRST OR JOINT SALE ("TAG-ALONG")**

- 9.1. Without prejudice to the obligation of permanence set out in Pact 6 above, in the event that any third party should be interested in acquiring any share in the capital of the Company from any of the Current Shareholders, the Investors shall have the right to sell to the third party on a preferential basis, all or part of the shares, at the same price and on the same conditions as those offered to the latter.
- 9.2. In the event that any third party acquires more than 50% of the Company's shares, the other Shareholders shall be entitled to sell all of their shares to the third party.

## **10. DRAG-ALONG RIGHT ("DRAG-ALONG")**

- 10.1. If, five (5) years after the signing of this Shareholders' Agreement, any of the Investors receives an offer to purchase shares in the share capital of the Company in exchange for cash or listed shares, and this offer is expressly approved in writing by the Investors, the Investors shall have a drag-along right vis-à-vis the other shareholders (hereinafter the "Drag-alongs").
- 10.2. In this case, the remaining Shareholders shall have a period of sixty (60) days from the date of notification of the offer to make a preferential acquisition of the shares being sold, for the same amount as the offer received.
- 10.3. In the event that the pre-emptive acquisition right is not exercised, the remaining Shareholders would be obliged to sell the corresponding proportional part of their shareholding for the same price and on the same terms as those offered.
- 10.4. In order to give effect to this Drag-Along Right, and without prejudice to the contractual liability of the Parties and the right of the Drag-Along Right's assignees to enforce this clause in any event, each of the Owners, other than the Investors, hereby grants an irrevocable power of attorney to **[Ms./Ms.] XXXXXXXXXXXX [CEO]** and the Investors, to act as follows the

Shareholder and [Ms./Ms.] XXXXXXXXXXXX [CEO] jointly and severally with any one of the Investor Shareholders, including by way of self-contracting, and subject to the limits and conditions contained in this Agreement, may sell, deliver and transfer all the shares of the Company held by such appointing Shareholder, and may carry out all actions and acts necessary on its behalf for such purpose (including, without limitation, obtaining certified copies of the deeds evidencing title to the shares). Each of the Shareholders hereby acknowledges that the power of attorney conferred has the nature of a mandate in rem propiam and therefore any revocation made without the prior written consent of [Ms./Ms.] XXXXXXXXXXXX [CEO] and the Investors shall be null and void. The Draggable Parties undertake to submit to [Ms./Ms.] XXXXXXXXXXXX [CEO], if required, the title deeds to their respective shareholdings in the Company in order to facilitate the exercise of this power of attorney. This power of attorney shall be automatically revoked when [Ms./Ms.] XXXXXXXXXXXX [CEO] or all the Investors lose their shareholding in the Company (notwithstanding that it may be used when the proxy's loss of shareholding is simultaneous with the exercise of the power of attorney granted).

- 10.5. All Shareholders undertake to cooperate with the Shareholders requesting the Right to Drag and with any potential investor identified by them as a possible acquirer giving rise to the exercise of the Right to Drag and in particular to provide any documentation or information that may be necessary in the context of the sale of all or part of the shares (in particular, in the context of the legal, tax, financial and business reviews that are customary in this type of transaction), provided that the due confidentiality of the information and documentation provided is respected, and to provide their full cooperation in this process, not hindering or delaying without just cause the delivery of the documentation or information required from time to time.
- 10.6. The obligations provided for in this Clause are set out in the Articles of Association as an ancillary obligation of all Shareholders.
- 10.7. Failure by any of the Shareholders to comply with the ancillary performance referred to in the preceding paragraph, regardless of the cause, whether voluntary or not, shall entail for the defaulting Shareholder:
  - I. His exclusion as a Shareholder of the Company, in accordance with the terms set forth in the Consolidated Text of the Capital Companies Act; and
  - II. The obligation to pay a penalty in favour of the Company equal to fifty percent (50%) of the fair value of the units.

The Company shall be entitled to offset this penalty against the amount of the fair value of the shares of the defaulting Shareholder, determined in accordance with the provisions of article 353.1 and related provisions of the Consolidated Text of the Capital Companies Act, and the Company shall be entitled to offset this penalty against the fair value of the shares of the defaulting Shareholder.

## **11. PROCEDURE FOR THE TRANSFER OF SHARES**

- 11.1. Subject to the provisions of this Articles of Association, the transfer of shares in the Company shall be subject to the rules contained in this Articles of Association 11.
- 11.2. A Shareholder - including the Investors - wishing to transfer part or all of its units shall notify the Investors and the management body of the Company in a reliable manner, stating the number of units it intends to sell, the name and personal circumstances of the purchaser, the price and payment terms set for the sale and, if other than the Investors, that the Investors have waived their pre-emptive sale right. Where applicable, the notice shall expressly state whether the sale is to include units of the other Shareholders as a result of the exercise of the Investor's right of pre-emption.
- 11.3. The Management Body shall reliably convey the offer of sale to the remaining Shareholders within five (5) calendar days of receipt of the letter.
- 11.4. Shareholders, including Investors, wishing to purchase the units offered for sale (including, where applicable, those of the Investor) must notify the management body by letter delivered in a reliable manner within ten (10) days of receipt of the notice sent by the management body. All the purchase offers made by the Shareholders must include all the units offered for sale (including, where applicable, those of the Investors).
- 11.5. In the event that several Shareholders are interested in acquiring the shares offered for sale, unless otherwise agreed between them, the shares shall be distributed proportionally among the Shareholders interested according to the number of shares held by each of them.
- 11.6. If there are no shareholders wishing to acquire the shares or if the offers received do not cover all the shares to be sold, the Company may acquire them, in compliance with the legal formalities, within fifteen (15) days from the last day of the period during which the shareholders may express their wish to acquire the shares. To this end, the Shareholders undertake to hold a General Meeting of Shareholders to decide on the acquisition of the shares.

11.7. In the event that neither the Company nor the Shareholders wish to acquire the units offered for sale, the selling Shareholder must proceed to the announced sale of shares under the conditions also agreed and within a maximum period of ninety (90) calendar days following the date on which the management body informs him of the negative response of the other Shareholders and of the Company itself. Otherwise, it shall again initiate the procedures provided for in this Agreement.

In general, if the proposed transfer is by way of sale, the price, form of payment and other terms and conditions of the transaction shall be those communicated to the Company by the Shareholder intending to sell; in the case of a transaction other than for consideration, or a transfer free of charge, the price or acquisition value shall be fixed by mutual agreement between the parties, in accordance with the fair value of the shares, and in the event of discrepancy, shall be that fixed by an auditor other than the Company's auditor, appointed by the Registrar of Companies of the registered office of the Company at the request of the Company or any of the shareholders owning the shares to be valued.

11.8. The formalities provided for in this Pact shall also apply in the event of the transfer of any rights to acquire or subscribe for units and to any securities convertible into units.

11.9. Exceptions to the provisions of this paragraph are the transfers referred to in Pact 8.1.

## **PART IV - LIABILITIES AND NON-COMPLIANCE**

### **12. COMPLIANCE WITH THE SHAREHOLDERS' AGREEMENT.**

12.1. The Parties agree to submit at all times to and comply with each of the laws and regulations applicable to them in connection with the transactions contemplated by this Partnership Pact.

12.2. The Parties shall personally do, or cause others to do, all acts necessary or desirable for the performance of the agreements between the Parties set out in this Shareholders' Agreement, including, but not limited to, the casting of their votes as Shareholders of the Company and their representatives on the Board of Directors of the Company and the signing of such minutes or other documents as may be necessary for the performance of such agreements.

### **13. REPRESENTATIONS AND WARRANTIES.**

- 13.1. The Investors expressly declare, and the Company, the Current Shareholders and the Directors expressly acknowledge, that the consideration of the Project and the Business Plan, the Company, the General Partners and the Directors have been essential elements in the formation of the Investors' will and, consequently, of their decision to participate in the capital of the Company and to be bound by this Shareholders' Agreement.
- 13.2. The Reference Partners represent and warrant to the Investors that the following representations and warranties are, to the best of their knowledge and belief, accurate, complete and not misleading:
- a) All information provided to the Investor in Annex I to this Agreement (including information of a financial nature) is correct and fairly reflects the Investor's position and the Investor is not aware of, and should not reasonably be aware of, any facts or omissions which would detract from such information.
  - b) The Company is in compliance with all legal, fiscal and contractual obligations, including intellectual property and data protection regulations.
  - c) The ownership of the share capital is exactly as specified in the background to this Pact, and is duly reflected in the Register of Members.
  - d) The financial statements of the Company, which are attached as Appendix 3, have been prepared in accordance with accounting principles and practices generally accepted in Spain and faithfully reflect its financial position and the results of its operations as at that date, and the Reference Shareholders are not aware of any material adverse change since that date. The Reference Partners are not aware of any material liabilities (contingent or otherwise) at the date the financial statements were authorised for issue that the Company did not disclose or for which an appropriate provision had not been made in the financial statements. There are no liabilities to partners or other third parties, other than those of a current nature reflected in the financial statements.
  - e) The net financial position (sum of current assets accounts referring to cash, banks, cash and cash equivalents and short-term financial investments less debts at cost and total current liabilities) of the financial statements of the Company as at the date of signature of this Shareholders' Agreement shall not vary by more than [amount of money] Euros (€.-) with respect to the financial position presented in the financial statements of the Company attached hereto.

- f) The Company has full ownership of the trademarks and internet domains listed in Annex 5, on the designs and software developments incorporated since their creation, and no third party may claim any amount or compensation from the Company in relation thereto. The domains or brands that, being the property of the members, directly affect the activity of the Company, shall be understood to be automatically and freely assigned to the Company.
- g) The Company has not assigned, on a permanent or temporary basis, in favour of third parties, the use of intellectual property and know-how or non- registrable knowledge necessary for the development of the Project. All industrial and intellectual property rights used by the Company are owned by the Company, or it enjoys sufficient rights of use to carry out its activity, without the Processing Partners being aware of any infringement of the rights of third parties or any legal or contractual provisions regulating such rights. In particular, the Current Shareholders have waived any intellectual or industrial property claims against the Company, in exchange for which declare that they have received sufficient consideration, and undertake to regularise this situation if required to do so by the Company or the Investors.
- h) The [company] Partners are not aware of any current events that would constitute a breach of any contract or legal obligation to which the Company is a party. In particular, the Company complies with its environmental, labour, social security, health and safety and data protection obligations.
- i) There are no management contracts granting the total or partial management of the Company's business to third parties.
- j) The Company is not, nor has it been in the past, the owner of any shareholding in companies or businesses whose legal regime is that of unlimited and/or indefinite liability of their participants or from which any type of liability may arise for the Company in the future.
- k) The Company has never been a director of any civil or commercial company.
- l) There is currently no litigation, arbitration or proceeding of any kind instituted or known to have been instituted which, if resolved adversely to the Company, would have a material effect on its business, assets, property or financial condition or its ability to perform its obligations hereunder or which would call into question the validity or enforceability of this agreement.

- m) There are currently no pledges, charges or encumbrances on its assets (including intellectual and industrial property) or rights, including its shares or participations, nor has the Company granted any guarantee in favour of third parties.
- n) There are no contractual or commercial relationships of the Company or the Shareholders or the Directors with each other or with third parties affecting the Company other than those reflected in this Agreement; in particular, but not limited to, extra-statutory shareholders' agreements, warranties, options, pre-emptive rights or other rights of any kind in respect of any of the Company's shares. No person or entity has any right of any kind (whether by virtue of agreement, court order or otherwise) to acquire or subscribe for any interest of any kind in the Company.
- o) Likewise, the Referral Partners commit to remedy the contingencies detected and to implement the recommendations listed in Annex 8 within three months from the signature of the present document.

#### **14. NON-COMPLIANCE AND ITS EFFECTS.**

- 14.1. The Shareholders shall be liable for breaches of this Partnership Agreement provided that there has been intent, fault or negligence.
- 14.2. The cause of any non-performance shall be notified to the non-performing Party by the Party that considers itself aggrieved by the non-performance, granting a period of one (1) month to remedy the non-performance, if the non-performance can be remedied. Once this period has elapsed without the non-performance being remedied, the notifying Party may demand performance, without prejudice to claiming damages that may arise from the eventual non-performance, which shall include all taxes and expenses, whatever their nature, cause or origin, including the fees of the notary public, solicitors and experts and legal advisors arising from the eventual non-performance of the Contract.
- 14.3. The Referral Partners shall be liable for any damages or costs incurred by the Company as a result of any breach of the representations and warranties set out in covenant 13 above.
- 14.4. The representations and warranties made by the Reference Partners in this agreement have been decisive in securing the Investors' contribution. The regime applicable in the event of breach of these representations and warranties shall be as follows:
  - a) The Reference Shareholders shall be personally and jointly and severally liable in proportion to their shareholdings, and undertake to indemnify both the Company and the Investors in respect of all and any tax, labour and Social Security liabilities or

contingencies, as well as against any other damages, liabilities and claims, of a civil, commercial or administrative nature or of any other kind whose cause is prior to the date of this agreement, as well as for any infidelity, inaccuracy or breach of the declarations and commitments expressed in Pact 13. The liability of the Referral Shareholders towards the Company and the Investors shall in any event be limited to the sum of [amount of money] (-€).

- b) The Referral Partners shall not be liable for damages for contingencies that together do not exceed [amount of money] (-€).
- c) The compensation for the damage in question must be paid by the Reference Shareholders within a maximum period of thirty (30) calendar days from the date on which the administrative or judicial decision declaring the existence of the contingency becomes final, without further possible appeal, by means of monetary compensation or, in the event that the amount of the damage exceeds [amount of money] (-€), and at the choice of the Reference Partners, by the delivery of shares representing the capital of the Company, valued at the market price thereof on the date on which the damage becomes apparent, as established by a third party agreed by mutual agreement between the Parties or, in the absence of an agreement, by an Auditor among the four large international firms with a presence in Spain or two Spanish firms with the highest turnover.
- d) In the event that the Investors claim damages from the Reference Shareholders, the compensation for damages shall be that which is derived from applying to the total damage caused to the Company the percentage corresponding to their shareholding, subject to the maximum limit provided for in Agreement 14.3.a. In such case, the Reference Shareholders shall be exempted from compensating the Company for the same damages. The maximum amount for which the Reference Shareholders may be liable to the Company and the Investors may never exceed €.

14.5. Serious breaches, as defined below, both of the obligations under this Membership Agreement and of the representations and warranties contained herein, shall be dealt with in accordance with the provisions of this section.

- a) It shall be considered a serious breach:
  - I. repeated actions aimed at preventing or impeding the Investors from exercising their voting rights as members or as directors,
  - II. violation of the regime for the transfer of company shares,



- III. making decisions or commitments for the Company in contravention of the system provided for in the Pact 5,
- IV. the denial of investors' right to information under Pact 7,
- V. breach of the duties of exclusivity, non-competition and remuneration provided for in this Partnership Agreement.
  - b) In the event of serious non-compliance:
    - I. The liability of the Reference Partner for such a serious breach shall be attributable to the Partner causing the breach. In the event that two or more Reference Partners are at fault, the liability shall be jointly and severally attributable to them.
    - II. The Investors, in addition to the right to compensation for any damages that may have been caused, shall have a right of sale whereby they may require the Defaulting Reference Shareholders to purchase the units held by them at the time of the default under the following conditions:
      - i. The option must be exercised on all of the transferor's shares within three (3) months of becoming aware of the breach and its seriousness.
      - ii. The persons obliged to acquire the shares shall be firstly the Company (without prejudice to any right of redemption) and if the Company does not have sufficient funds, the Current Shareholder liable, and if there is more than one, among the Current Shareholders liable pro rata to their shareholding, jointly and severally.
      - iii. The selling price of the units shall be the higher of (i) the market price determined by the average value of the latest acquisitions or capital assumptions made in the last six months (6) months prior to the exercise of this right and (ii) the acquisition price plus an annual compounded daily increase of EURIBOR plus twenty percent (20%).
      - iv. Unless otherwise expressly agreed by the parties involved, the formalisation of the transfer of the units and the payment of the price shall take place on the date indicated by the Investors.
      - v. With regard to the form of notification of the exercise of the option, the Investors shall notify the Shareholders, the Chairman and the Secretary of the Board of Directors of the exercise of the aforementioned right in a reliable manner. In the event that the above notification cannot be given in a reliable manner for any reason, the Secretary of the Board shall

immediately order its publication in two of the newspapers with the largest circulation in the locality in which the registered office is located. In the latter case, the notice shall be deemed to have been served ten (10) days after the last publication.

- vi. The notice must state: i) the intention to exercise the put option; ii) that the option is exercised in respect of all the investors' units; iii) the price of the units after valuation in accordance with the criteria set out in point c) above; iv) the date and place at which the sale and purchase and payment of the price must be formalised; and v) the Notary before whom the transfer must be formalised.
- vii. The expenses derived from the exercise of the option and any other expenses derived from the provisions of this Pact shall correspond to the acquirers in the same proportion in which they acquire.

## **15. BUYBACK FROM SHARES FROM PARTNERS FROM REFERENCE BY DIVESTITURE**

15.1. Each of the Reference Shareholders, as well as the **XXXXXXXXXX** Shareholders and any new shareholder who joins this Agreement by signing the membership document in Annex 4 where the same refers to the shares being subject to the sale obligations set out in this clause (hereinafter "Vesting Shareholders") undertake, as a commercial obligation attached to their status as a Shareholder, to continue to provide their services to the Company on the same terms as those agreed in the employment or commercial service contracts binding them to the Company for a period of four (4) years (the "Vesting Period"). In the case of the Referral Partners, the four (4) year period shall be deemed to commence on the Date of Formalisation of this Agreement, and for those who join this Agreement with the date of accession shall be deemed to be the relevant date of accession (hereinafter the "Reference Date"). In the event that any Vesting Member voluntarily terminates its employment or business relationship with the Company, is dismissed by a judicially declared disciplinary dismissal or is in repeated breach of the obligations contained in its respective service contract and such repeated breach is established by a court decision (hereinafter the "Voluntary Termination") during a period of four (4) years from the Reference Date, it shall offer for sale either to the Company or to a third party (hereinafter the "Vesting Member"), or to a third party (hereinafter the "Vesting Member"), Voluntary Dismissal") during the period of four (4) years from the Reference Date, shall offer for sale

either to the Company or to the Shareholders in proportion to his shareholding, if so decided by the General Meeting, any shares held by him at the time of Voluntary Dismissal (hereinafter, the "Unconsolidated Units due to Voluntary Dismissal"). In the case of the XXXXXXXX Shareholders, they shall offer the sale of all of their shares to the [ceo] Shareholder in priority to the other Shareholders of the Company. The purchase price to be paid if they exercise the option to purchase the Non-Vesting Units shall be their acquisition cost paid by the relevant Vesting Shareholder at the time of the takeover or, if lower, their net book value.

All other events not specified in this resolution shall not oblige the Vesting Shareholder to offer to repurchase its shares in the Company.

In any case, if the Referral Partner ceases to provide its services due to Voluntary Withdrawal, it shall lose its right to be a member of the Board of Directors and shall be disassociated for all purposes from this Shareholders' Agreement.

15.2. In order to give effect to the call option and the put obligation set out in this clause 15, and in particular the obligation of the Vesting Shareholders to sell their Units as set out in this clause and to adopt the corporate resolutions necessary to implement the transactions referred to in paragraph 15.3, and without prejudice to the contractual liability of the Parties and the right of the Company and the other Shareholders to enforce compliance with this clause in any event, each of the Vesting Shareholders hereby grants to the Company and in the case of the XXXXXXXX Shareholders to the [ceo] Shareholder an irrevocable call option to repurchase the Shares of the Company held by such Shareholder which are affected by the put obligation as set out in paragraph 15.1, on the terms and conditions set out in the document attached hereto as Appendix 7 (hereinafter referred to as the "Call Option"). The Call Option shall automatically lapse once all of the holdings of the Vesting Shareholders are deemed to be Consolidated Holdings.

15.3. Once the Company exercises its rights to acquire the Unconsolidated Units upon the Voluntary Withdrawal of a Vesting Shareholder as provided for in the following paragraphs in this section, the Shareholders undertake to adopt the necessary resolutions and to make such waivers and take such actions as may be appropriate to enable the acquisition by the Company and subsequent redemption by means of a consequent capital reduction of the shares acquired.

- 15.4. The sale and purchase of Unconsolidated Units upon the Voluntary Withdrawal of a Vesting Shareholder must be effected on such date and at such notary as may be notified by the Company to the relevant Vesting Shareholder.
- 15.5. The Vesting Shareholder or its legal representative undertakes to appear and take the necessary steps to perfect the transfer of ownership of the relevant shares, including the execution of the relevant deeds of sale and purchase and to vote in the manner necessary to adopt any corporate resolutions that may be necessary.
- 15.6. For clarification purposes, it is expressly stated that the Call Option on the shares of the Vesting Shareholders set out in this Clause 15 shall lapse following a transfer of the shares which are the subject of the Call Option in the context of a sale in which the Right to Carry Forward is exercised or following a sale of the relevant shares which is authorised by the Meeting of the Shareholders with the majority required for Reserved Matters.

## 16. ANTI-DILUTION CLAUSE

- 16.1. In the event that the Shareholders resolve to issue additional units of the Company in which the total amount to be paid up for each new share unit (nominal and premium) is less than the average amount paid up per unit (nominal and premium) at the time immediately preceding the new issue of units, the Investors holding units at that time shall be entitled to subscribe at nominal value for an additional number of units of the Company equal to N, calculated according to the following formula:

$N = S * Op / Wp - S$ , where

$Wp = (Op * Stot + Np * Snew) / (Stot + Snew)$ , and where

N = Number of shares available for purchase at par value

Op = Average amount paid up per unit (nominal and premium) at the time immediately prior to the issue of the new shares.

Np = New amount of the participation (nominal and premium) in the new issue.

S = Number of shares of the Investor immediately prior to the issue of the new shares (excluding options if any)

Wp = Weighted average amount paid up per unit (nominal and premium) immediately prior to the issue of the new shares.

Stot = Total number of shares immediately prior to the issue of the new shares (excluding options, if any).

Snew = Number of shares to be issued by the Company in the planned issue.

## **17. PREFERENTIAL SETTLEMENT QUOTA**

- 17.1. Unit Investors shall have a pre-emptive right in the event of (i) any voluntary or involuntary liquidation or dissolution of the Company, (ii) as well as in the event of the transfer by any title or transaction of more than 50% of the voting rights attaching to the Company's units, (iii) merger by absorption of the Company, (iv) transfer of all or substantially all of the Company's assets (including by virtue of the grant of exclusive rights of use over its technology); all of which are hereinafter referred to as "Liquidation Events".
- 17.2. Such preferential right shall consist of the right of the Investors holding units participating in the Settlement Event to elect to receive a preferential settlement fee (hereinafter the "Preferential Settlement Fee") as an alternative to the settlement fee or other economic rights to which, as members of the Company, they may be entitled in the Settlement Event and prior to the receipt of any consideration by the other holders.
- 17.3. The Preferred Settlement Charge shall amount to the amount(s) paid to the Company for the relevant units prior to the Settlement Event by way of capital, share premium or any other contribution to shareholders' equity (e.g. loss relief contributions). In the case of in the event that the consideration derived from the Liquidity Event is insufficient to cover the Pre-emptive Settlement Shares of which they have elected to exercise their entitlement the available consideration shall be distributed pro rata among such Shareholders in proportion to the amounts of each such Shareholder's Pre-emptive Settlement Share.
- 17.4. Once the relevant Preferred Settlement Shares have been paid, the remainder will be distributed among the other Investors and those Investors who have not opted to receive the Preferred Settlement Share, in proportion to their shareholding in the share capital of the Company. Shareholders holding Class B units who have elected to receive the Pre-emptive Settlement Share shall not be entitled to any additional distribution.

## **PART V - GENERAL PROVISIONS**

### **18. AMENDMENTS TO THE SHAREHOLDERS' AGREEMENT.**

This Partnership Pact may not be modified, amended or waived in any of its provisions, unless such modification, amendment or waiver is in writing and is consented to and signed by all of the Parties, or is covered by a provision contained in the Partnership Pact itself.

## 19. HEADINGS AND TITLES

The headings and titles of the covenants in this Shareholders' Agreement are provided for convenience only and are not intended to describe the content of the respective clauses and do not constitute covenants, terms or conditions of this Shareholders' Agreement.

## 20. PRESERVATION OF RIGHTS

The waiver at any time by either Party to require performance by the other Party of an obligation under this Partnership Pact shall in no way affect its right to require such performance at any time thereafter. The waiver by either Party of any breach of any provision of this Partnership Pact shall not constitute a waiver of any subsequent breach of the same or any other provision or of the obligation itself.

## 21. SURVIVAL OF OBLIGATIONS

The termination or expiration for any reason of this Partnership Pact shall not relieve either Party of any liability it had to any other Party at the time of termination or expiration, or of any liability it may have in respect of any act or omission prior to such termination or expiration. Nor shall the termination or expiration of this Partnership Pact in any way affect the survival of any right, duty, or obligation expressly agreed to survive termination or expiration.

## 22. NOTIFICATIONS

22.1. All written communications, sent in execution of this Membership Agreement, shall be sent either to the addresses set out in the heading or to the e-mail addresses set out below, provided that the content and delivery of the communication can be proven.

Any change in the addresses for notification shall be communicated to the other Parties in good time by means of a reliable notification.

The e-mail addresses are as follows:

I. The Investors:

- 

II. Current Members:

-

## 23. CALCULATION OF DEADLINES

For the purposes of calculating the various time periods provided for in this Pact, the following definitions shall apply:

- a) "Business Day" means any day of the week on which business may be transacted at Banks and Savings Banks, excluding Saturdays, which for the purposes of this agreement shall not be considered Business Days.
- b) "quarter" means the period of time between a given day and the day before the day of the same number of the third consecutive month in the calendar, inclusive, unless in the latter month there is no day equivalent to that of the first month, in which case it shall be deemed to end on the last day of the month.

23.1. If the date on which any of the obligations are to be performed is not a business day, the due date shall be deemed to be the immediately following business day (unless otherwise expressly provided for in this agreement).

## 24. ASSIGNMENT

24.1. The Investors may freely assign and transfer, in whole or in part, their contractual positions in such a way that the rights and obligations of the Investors arising therefrom are fully vested in the assignee, provided that the assignee is a natural person partner of the Investors and/or companies controlled by such partners of the Investors (where "Control" is understood as holding more than fifty-one percent (51%) of their share capital and holding the representation and administration of the company, by being part of the management body thereof), and/or any legal entity partner of the Investors or companies belonging to the same group as that of the legal entity partner of the Investors, by virtue of company dissolution or asset restructuring processes of such legal entity partners of the Investors.

For this purpose, the Investors shall give the Company at least ten (10) business days' written notice prior to the date on which the assignment is to take effect. As from this date, the Parties shall be contractually bound to the transferee, who shall be fully subrogated, in the appropriate proportion, to the rights and obligations of all kinds corresponding to the transferor.

24.2. The Parties heretofore and hereafter give their full consent, to the extent necessary, to any assignment made pursuant to this Compact. With the exception of the Investors, the Current

Shareholders may not assign their contractual position, except with the prior express written consent of the Investors.

## **25. VALIDITY**

This Shareholders' Agreement shall remain in force for as long as the Shareholders of the Company retain such status. It, its annexes and the agreements specifically referred to in it constitute all agreements heretofore concluded between the parties hereto and expressly supersede and repeal all agreements and undertakings between the parties heretofore concluded with respect to the subject matter of this Agreement.

## **26. CONFIDENTIALITY**

- 26.1. The Parties agree to treat the contents of this Partnership Pact as strictly confidential and therefore to keep it strictly confidential and to maintain the utmost secrecy.
- 26.2. Likewise, any data to which the Parties have access by virtue of this contractual relationship, in particular the Parties' own information and data or data relating to the Company and its activity, including know-how, strategies, etc., shall be considered confidential.
- 26.3. The Parties undertake not to disclose information considered confidential and not to publish it or otherwise make it available to third parties, either directly or through third parties or companies, without the prior written consent of the other Parties.
- 26.4. Furthermore, the Parties may not make use of the exploitation rights outside the scope of the Company, nor disclose, publish or make known by any means to third parties any data related to the intellectual property rights of the Company, nor may they disclose, publish or make known by any means to third parties any data related to the intellectual and industrial property rights of the Company.

## **27. DATA PROTECTION**

The Parties acknowledge that the legislation on personal data protection establishes a series of obligations in the processing of personal data which they declare and undertake to comply with. The



confidentiality and data protection obligations set out in this agreement shall be of indefinite duration and shall remain in force after the termination, for any reason, of the relationship between the Parties.

## **28. NULLITY AND INEFFECTIVENESS OF CLAUSES**

- 28.1. If any provision of this Shareholders' Agreement is declared, in whole or in part, null and void or ineffective, such nullity or ineffectiveness shall affect only that provision or part thereof which is null and void or ineffective, and the provision or part thereof which is affected shall be deemed not to have been included in the agreement in all other respects.
- 28.2. The Parties undertake to negotiate in good faith the replacement of the clause declared, in whole or in part, null and void or ineffective, with a clause that is faithful to the spirit of the clause declared, in whole or in part, null and void or ineffective.
- 28.3. This shall not apply in respect of provisions the deletion of which would significantly impair the balance of the reciprocal obligations of the parties.

## **29. GOOD FAITH**

The Parties undertake to comply with this Partnership Pact and to exercise the rights and fulfil the obligations arising therefrom at all times in accordance with the requirements of good faith.

## **30. FORCE OF LAW. DISCREPANCY WITH THE ARTICLES OF ASSOCIATION AND SHAREHOLDERS' AGREEMENTS PRIOR TO THE ENTRY OF THE INVESTORS.**

- 30.1. The Parties declare that the covenants and agreements contained herein have the force of law for the Parties and undertake to faithfully perform them. In particular, the Parties undertake to exercise all the voting rights they hold in order to give full effect to the terms and conditions of this Shareholders' Agreement and, in particular, to reflect them as far as legally possible in the Articles of Association of the Company. The Parties shall adopt such amendments as are strictly necessary to facilitate its registration, so that the new wording retains as much of the content of the clause in question as possible.
- 30.2. In the event of a discrepancy between any of the provisions of this Shareholders' Agreement and the Articles of Association of the Company, this Shareholders' Agreement shall prevail over the provisions of the Articles of Association between the Parties.

30.3. The relationship between the Shareholders as members of the Company shall henceforth be governed exclusively by the terms and conditions of this Agreement and the provisions of the Articles of Association, and all other agreements and undertakings between the Parties except those set out in Appendix 6 shall be expressly superseded and repealed. The Parties further undertake not to enter into any other agreement in this regard unless such agreement is entered into by all Parties or with the express consent of those Parties who do not enter into such agreement

### **31. APPLICABLE LAW AND JURISDICTION**

31.1. This Pact is of a commercial nature and shall be interpreted and complied with on its own terms and, where not provided for, shall be governed by [Country] law.

31.2. For the resolution of any disagreements arising from the validity, interpretation, fulfilment or execution of this document, the Parties, waiving any other jurisdiction that may correspond to them, expressly submit to the jurisdiction and competence of the Courts and Tribunals of the city of [company's city].

### **32. TAXES AND CHARGES**

The Company shall be responsible for the taxes and expenses for the notarisation of this agreement, amendment of the Articles of Association and registration in the Commercial Register, as well as other expenses for the formalisation of the capital increase.

The following expenses shall also be borne by the Company:

- Accounting, legal, labour and tax due diligence fees.
- The costs of structuring the transaction carried out by [assessors]: shareholders' agreement, business due diligence, coordination of the transaction, etc. for which it will charge the Company XXXXX

## 4.2. Model contract 2

### Termsheet

[COMPANY] LIMITED

#### ISSUE OF ORDINARY SHARES

Company	[Company] Limited (the "Company").
Founders	[Founder 1], [Founder 2], & [Founder 3] (the "Founder[s]").
Investors	[[Lead Investor]] (the "[Lead] Investor") [in conjunction with other investors] (the "Investors") [mutually agreeable to the Lead Investor and the Company].
Structure of Financing	<p>The financing will comprise an aggregate of €[ ] at a fully diluted pre-money valuation of €[ ] assuming an unallocated employee share option plan ("ESOP") comprising [ ]% on a fully diluted basis after completion of the transaction.</p> <p>The Lead Investor will invest €[ ] and will hold [ ]% of the Company on a fully diluted basis, as set out in the capitalisation table in Appendix A.</p>
Conditions to Close	[(i) satisfactory completion of financial and legal due diligence and anti-money laundering checks; (ii) all employees having entered into service agreements containing IP assignment provisions; (iii) receipt of all necessary consents; and [(iv) the adoption by the Company] of the new Articles of Association, establishing any additional rights of the Ordinary Shares.
Closing Date	[Closing Date].
Type of Security	[ ] newly issued ordinary shares in the capital of the Company (the "Ordinary Shares"), which shall rank pari passu to all other ordinary shares of the Company in all respects.



[Priority Payment on Exit]

[This provision will only apply to **the Lead Investor**. In the event of a (i) liquidation (ii) sale or (iii) exclusive license or other sale of substantially all of the assets of the Company, The Lead Investor shall be entitled to receive the higher of:

(i) The financing of € (being the original purchase price paid by the Lead Investor) plus any declared but unpaid dividends; or

(ii) **The Lead Investor's** pro rata share (based on its ownership of the shares) of such assets or proceeds.]

Important Decisions

[Option 1: Certain important actions of the Company shall require the consent of the holders of a majority of the Ordinary Shares (a "Majority") to include amongst others, actions to: (i) alter the rights of the Ordinary Shares; (ii) allot any new shares beyond those anticipated by this investment; (iii) create any new class senior to the Ordinary Shares; (iv) increase the number of shares reserved for issuance to employees and consultants, whether under the ESOP or otherwise; (v) redeem or acquire any shares (vi) pay or declare dividends or distributions to shareholders; (vii) change the number of board members; (viii) amend the memorandum or articles of association; (ix) effect any material change to the nature of the business plan; (x) subscribe or otherwise acquire, or dispose of any shares in the capital of any other company.]

[Option 2: The consent of the Majority shall be required for the important decisions, substantially in the form listed in Appendix B.]

Pre-emption on issue

All shareholders will have a pro rata right, but not an obligation, based on their ownership of issued capital, to participate in subsequent financings of the Company (subject to customary exceptions). Any shares not subscribed for may be reallocated among the other shareholders **[or any third party]**. [The Investors] may assign any such pre-emption right to another member of their fund group].

Right of First Refusal and Co-Sale

The Investors] shall have a pro rata right, but not an obligation, based on their ownership of Ordinary



Shares, to participate on identical terms in transfers of any shares of the Company, and a right of first refusal on such transfers (subject to customary permitted transfers, including transfers by Investors to affiliates or pursuant to a portfolio sale). Any shares not subscribed for by the Investors would then be offered to the other holders of Ordinary Shares.

#### Drag Along

In the event that the Majority wish to accept an offer to sell all of their shares to a third party, then subject to the approval of the Board, all other shareholders shall be required to sell their shares or to consent to the transaction on the same terms and conditions.

#### Restrictive Covenants and Founders Undertakings

Each Founder will enter into a non-competition and non-solicitation covenant and an employment agreement in a form reasonably acceptable to the Investors, and shall agree to devote their entire business time and attention to the Company and to not undertake additional activities without the consent of the Investors. Subject to applicable law, [a breach of any of the foregoing restrictive covenants or undertakings by a Founder shall result in immediate dismissal for cause of such Founder.] The period of the restrictive covenants will be for the duration of each Founder's [employment with] [or shareholding in] the Company and 12 months following the expiry of same.

#### Founder Shares

Shares held by the Founders will be subject to reverse vesting provisions over three years as follows: [25% to vest one year after Closing and the remaining 75% to vest in equal monthly instalments over the next following two years]. If a Founder leaves the Company voluntarily or is dismissed for cause, they shall offer for sale to the Company (with a secondary subscription option for the holders of [preference shares]) any unvested shares at the lower of nominal value or subscription price.

#### Board of Directors

The Board shall consist of a maximum of three members of which the holders of Ordinary Shares other than the Lead Investor may appoint [ ]



director[s] and the Lead Investor may appoint [ ] director[s].

The [Lead Investor] may appoint a [non-voting] observer to attend meetings of the Board.

#### Information and Management Rights

The Lead Investor or [Investor[s]] shall receive: [(i) weekly reports (to include [ ]) no later than [enter day] following the end of each week; (ii) management accounts of the Company no later than [ ] days following the end of each calendar month, (iii) the quarterly unaudited financial reports of the Company no later than [ ] days following the end of the first three quarters; and (iv) the audited financial report of the Company no later than [ ] days following the end of the financial year to which it relates.

#### Documentation and Warranties

Definitive agreements shall be drafted by counsel to the Lead Investor or [Investor[s]], which shall include customary covenants, representations and warranties of the Company [and Founder[s]] (which shall be liable up to a maximum of the investment amount [or, in the case of each Founder €[ ]]) reflecting the provisions set forth herein and other provisions typical to venture capital transactions.

#### Expenses

Option 1: [The Company shall pay the Lead Investor's fees and expenses in the transaction at Closing, anticipated not to exceed €[ ] (exclusive of VAT)]

OR

Option 2: [Each party shall pay their own legal and other fees and expenses in relation to the transaction contemplated by this summary of terms. If the financing does not complete within 60 days from the date of this summary of terms or because the Company withdraws from negotiations (except as a result of the [Lead Investor] or [Investors[s]] making a material change in the terms hereof), the Company shall bear [all] or [an amount up to €[ ] (exclusive of VAT)] of the [Lead Investor's] and/or [investors'] legal costs incurred to that date.]

#### Exclusivity

In consideration of the [Lead Investor] or [Investor[s]] committing time and expense to put in

place this financing, the Company and Founders agree not to discuss, negotiate or accept any proposals regarding the sale or other disposition of debt or equity securities, or a sale of material assets of the Company for [x] days from the date of the parties' signature below.

#### Confidentiality

The Company and Founders agree to treat this term sheet confidentially and will not distribute or disclose its existence or contents outside the Company without the consent of the [Lead Investor] or [Investor[s]], except as required to its shareholders and professional advisors.

#### Non-binding Effect and Governing Law

This Summary of Terms is not intended to be legally binding, with the exception of this paragraph and the paragraphs entitled Expenses, Exclusivity and Confidentiality, which are binding upon the parties hereto. This Summary of Terms and all obligations arising from or connected with it shall be governed and construed in accordance with the laws of Ireland.

**APPENDIX A**

**CAPITALISATION TABLE**

Shareholder	Class of Shares	No. of Shares.	Ownership (%)
[FOUNDER 1]	[Ordinary Shares]	•	•%
[FOUNDER 2]	[Ordinary Shares]	•	•%
[FOUNDER 3]	[Ordinary Shares]	•	•%
Lead Investor	[Ordinary Shares]	•	•%
Additional Investor	[Ordinary Shares]	•	•%
Option Pool	[Ordinary Shares]	•	•%
<b>Total</b>		•	<b>100%</b>



**APPENDIX B**

[List of Important Decisions to be inserted]

Acknowledged and agreed by:

<hr/> <p>For and on behalf of [Company]</p> <p>Date: (x)</p>
<hr/> <p>[Founder[s]]</p> <p>Date: (x)</p>
<hr/> <p>[Lead Investor] or [Investors]</p> <p>Date: (x)</p>

### 4.3. Model contract 3

**The comments and descriptions in blue italics in the document are for explanatory purposes only and do not form part of the contract.**

**This sample convertible loan agreement sets out typical provisions (including descriptions) of a convertible loan agreement used for investments in a (Company). Please note that the transaction structures of such investments vary (sometimes heavily) on a case by case basis. Thus, the transaction structure and provisions as outlined in this sample convertible loan agreement must be adapted to the needs of each individual case. The persons involved in the preparation of this sample convertible loan agreement do not assume any liability for the content and correctness of this sample convertible loan agreement and shall not be responsible for loss which may arise from reliance on information contained herein. This sample convertible loan agreement does not constitute or contain investment, legal, accounting, regulatory, taxation or other advice.**

#### *Introduction*

- 1. A convertible loan is a loan that can be converted into shares of the company under certain conditions. The lender does not acquire the position of a shareholder by concluding the convertible loan agreement. Under certain predefined conditions, however, the lender is entitled or obliged to convert the outstanding loan amount into shares of the company. The lender thus becomes a new shareholder of the company or – in case the lender is already an existing shareholder of the company – increases his/her shareholding in the company as he/she receives additional shares.*
- 2. In principle, a convertible loan is repayable and thus usually (with few exceptions) qualifies as debt investment that only turns into equity upon conversion. Alternatively, it is possible that the investor grants the company a non-repayable cash contribution instead of a loan. In return, the investor receives shares in the company upon occurrence of predefined events (similar to the conversion events). Compared with a convertible loan, a so-called SAFE (Simple Agreement on Future Equity) does not grant the investor any repayment claim and is therefore immediately qualified as equity.*
- 3. Concluding a convertible loan agreement can serve various purposes. For example, a convertible loan agreement may be entered into when the company needs short-term financing. In such case, the lender is often an existing shareholder of the company, who grants a convertible loan to "his/her" company. Apart from that, companies may conclude a convertible loan agreement for medium-term financing. In this case, the lender is typically not a shareholder of the company yet, and concluding a convertible loan agreement helps keep the company's cap table clean until the next (or first) equity financing round takes place. In this case, the lender may receive the right to nominate a member of a (corporate) advisory board or is granted certain information rights (see comments in section "other optional provisions"). Depending on the purpose of the convertible loan agreement, its provisions can vary significantly.*
- 4. Convertible loan agreements can set forth the right or the obligation to convert the convertible loan into shares of the company upon certain predefined trigger events or upon maturity. Depending on the terms, the conversion right grants the lender or the company the right to demand a conversion into shares in the company, whereas in the case of a conversion obligation, the parties are obliged to*



convert the outstanding loan into shares. **This sample agreement sets forth a Conversion Right upon a Financing Round, which can be exercised by the lender (section 4) and a Conversion Obligation in the event of an Exit (section 5) and upon Maturity (section 6).**

5. Usually (and as set forth in this sample agreement), the conversion of the loan is executed by way of an ordinary share capital increase in which the lender is admitted to subscribe for this capital increase to the extent agreed. In return, the lender waives repayment of the entire outstanding loan amount (and accrued interest) subject to registration of the capital increase with the commercial register. In this case, all shareholders holding a share of the company at the time of the conversion have to be obliged to come to a resolution on the ordinary share capital increase, to waive their statutory subscription rights and to let the lender subscribe for the share capital increase to the extent agreed.

Alternatively, the conversion may be executed by transferring existing shares from existing shareholders (on a pro rata basis) to the lender. In such case, the existing shareholders must be obliged to actually assign shares to the lender by concluding a separate sale and transfer agreement ("SPA", which requires a notarial deed) with the lender.

6. Agreements on the (future) transfer of shares of a **(Company)** generally require a notarial deed. This also applies to the subscription of shares in the course of a capital increase. There is no case law by the Supreme Court (to date) on the question of whether convertible loan agreements require a notarial deed, too. For reasons of legal security, we highly recommend concluding convertible loan agreements as notarial deeds (even though common practice often dispenses with the requirement of a notarial deed). Otherwise, especially convertible loan agreements that set forth a conversion obligation may turn out to be unenforceable.
7. As already pointed out, the shareholders' participation is required for the issuance of new shares to the lender to the extent agreed. Basically, there are two ways to ensure the existing shareholders' obligation to participate: (i) all shareholders enter into the convertible loan agreement which sets forth their obligation to take all legal steps required for the issuance of shares to the lender in the course of the conversion (see section 7.1) as contracting parties or (ii) in case the convertible loan agreement is concluded by the lender and the company only, all shareholders submit binding and irrevocable declarations of commitment in advance, containing their obligation to implement and effect the issuance of the respective shares delivered to the lender in the event of a conversion. In any case, shareholders' approval of the conclusion of the convertible loan agreement alone is not sufficient.



## CONVERTIBLE LOAN AGREEMENT

This convertible loan agreement (the "**Agreement**") is entered into by and between:

1. **[Name of individual]**, born on **[●]**, resident at **[●]** / **[Name of legal entity]**, with its seat in **[●]** and its business address at **[●]**, registered with the **[name of the corporate register]** of **[court or institution of registration]** under registration number **[●]** ("**Definition**");
2. **[Name of individual]**, born on **[●]**, resident at **[●]** / **[Name of legal entity]**, with its seat in **[●]** and its business address at **[●]**, registered with the **[name of the corporate register]** of **[court or institution of registration]** under registration number **[●]** ("**Definition**");

the parties listed under 1. and 2. are collectively referred to as the "**Shareholders**";

3. **[Name of individual]**, born on **[●]**, resident at **[●]** / **[Name of legal entity]**, with its seat in **[●]** and its business address at **[●]**, registered with the **[name of the corporate register]** of **[court or institution of registration]** under registration number **[●]** (the "**Lender**");

and

4. **[●] Co**, with its seat in **[●]** and its business address at **[●]**, registered with the commercial register of **[court of registration]** under registration number **[●]** (the "**Company**");

the Shareholders, the Lender and the Company are individually referred to as a "**Party**" and collectively as the "**Parties**".

*Parties to this sample convertible loan agreement are one lender, the company, and each of the existing shareholders. Shareholders of the company may be both natural persons or entities. The same applies to the lender(s).*

*The conclusion of a convertible loan agreement with two or more lenders is possible, too. In such case, the provisions will need to be adapted accordingly.*

## PREAMBLE

The preamble should provide a brief but precise overview of the company and the transaction contemplated by the agreement.

- (A) The Company is an (Nationality) limited liability company with a current share capital in the nominal amount of EUR [●], which is paid up in cash in the amount of EUR [●].

*This provision states that the company is already founded and duly existing.*

- (B) The Lender has agreed to grant to the Company a loan in the total amount of up to EUR [●] which shall be convertible into shares of the Company subject to the terms and conditions of this Agreement.

*This provision describes the essential content of this agreement, namely the intention of the lender to grant the company a loan in the amount of EUR X which shall be convertible into shares of the company.*

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the Parties hereby agree as follows:

### 1. Loan

- 1.1 The Lender grants a loan to the Company in the total amount of EUR [●] (the "Loan").

*This provision sets out the principal amount of the loan granted by the lender to the company.*

- 1.2 The Loan shall be payable by the Lender in cash and due for payment within [●] Business Days (whereby "Business Day" shall mean a day on which banks in (Country of the Company) are open for business) following the date of this Agreement or such later date as the Parties may agree to in writing to the Company's account at [Bank], [Business Angels network, if it is needed] : [●], [other parties]: [●], free of any deductions and/or withholdings, including, without limitation, banking fees.

*This provision sets out the payment mechanism of the loan. Usually (as set forth in this sample agreement) the lender is obliged to pay the entire loan amount at once to the company's account within a certain period. However, it may also be agreed that the loan is paid in several tranches. In such case, it needs to be clearly defined when and under which conditions each tranche is payable (e.g. upon request by the company or achievement of milestones).*

- 1.3 The Lender herewith declares and the Company herewith agrees that the Loan including any and all interest accrued thereon shall constitute an unconditional, unsecured obligation of the Company and shall in case of insolvency of the Company be subordinated to any other debt of the Company. The subordination shall also apply prior to an insolvency of the Company, but only if and to the extent payments on the Loan and interest accrued thereon would result in an over-indebtedness or illiquidity of the Company (in terms of Country of the Company insolvency laws). The Lender further declares that no insolvency proceedings need to be initiated because of the Loan or any interest accrued thereon.

*This provision sets out that the loan is qualified subordinated. Subordination means that the lender is subordinated in rank to any other creditor of the company. In the event of an insolvency of the company, the lender will only receive repayment of its loan amount after all other creditors have received their payments. Qualified subordination also means that the company shall not be required*



*to pay back any loan amount, if such repayment would result in an over-indebtedness or illiquidity of the company.*

*This qualified subordination of the loan is necessary because otherwise there may be a risk that the issuance of loans constitute a banking transaction, in particular when several loans are issued to several investors at similar conditions.*

*Furthermore, the raising of loans, in particular in the early phase of a company, could very quickly lead to an arithmetical over-indebtedness of the company and consequently to the obligation to file for insolvency proceedings according to **Specify the national Law applicable to each case** if the management is unable to provide a positive prognosis for the company's continued existence. A violation of such obligation can lead to a personal liability of the managing director. The existence of such an arithmetical over-indebtedness can be avoided by agreeing on a subordination clause.*

## **2. Interest**

- 2.1 Interest on the outstanding portion of the principal amount of the Loan shall amount to a rate per annum equal to **[●]%**. Interest will be calculated on the basis of a **365-day year** and shall be paid in **euro**.

*In most cases, the convertible loan is granted subject to interest. Accrued interest will usually be converted into shares together with the principal amount, which means that the conversion amount and therefore the shares issued to the lender increase. However, sometimes it is agreed that interest shall be repaid upon request by the lender and/or the company irrespective of the conversion of the loan.*

- 2.2 Interest payment shall be due on the Maturity Date (as defined in section 3.1).

*In order to avoid burdening the company's liquidity with ongoing interest payments, the parties usually agree that the entire amount of interest will be paid on the maturity date. Interest payments during the year are very rarely found in convertible loan agreements.*

- 2.3 The Company shall not pay interest on the accrued interest.

*Usually, interest on accrued interest is excluded in convertible loan agreements.*

## **3. Repayment**

- 3.1 The portion of the principal amount of the Loan that has not been repaid together with all accrued and unpaid interest thereon shall be due and payable on **[●]** (the "Maturity Date").

*This provision sets out that the outstanding loan has to be repaid at the end of the agreed term if the conversion has not taken place (because the predefined conditions were not met). It is possible but very rare for the parties to agree that the loan does not have to be repaid at all.*

- 3.2 Subject to the prior written consent of the Lender, the Company has the right but not the obligation to repay the Loan at any given time prior to the Maturity Date, in whole or in part, without penalty or premium, but with the unpaid interest that has accrued as per the date of repayment on the amount of principal repaid.

*Usually, the company is not entitled to repay the loan at any given time prior to the maturity date without the prior consent of the lender. If the company shall be entitled to repay the loan at any given*



*time prior to the maturity date without the consent of the lender, the repayment generally entails the payment of a penalty or premium.*

- 3.3 All payments due and payable by the Company to the Lender under this Agreement shall be made in **euro**. Payments will be made to a bank account as indicated by the Lender in writing.

*This provision sets out that repayments by the company must be made in **euro** and the lender must provide the company with its bank account details in writing.*

#### **4. Conversion Right upon a Financing Round**

- 4.1 Under this Agreement, "Financing Round" shall mean the next issuance of shares of the Company in which the Company receives equity proceeds from new investments (not including the conversion of the Loan or other loans) by the shareholders of the Company and/or new investors (the "FR Investors").

*This provision defines a "financing round" as a conversion triggering event. "Financing Round" (as set forth in this sample agreement) is defined as the contribution of "real" equity proceeds to the company by an investor (external investor or existing shareholder) against issuance of shares (by capital increase or share transfer). Equity-like or mezzanine investments (like convertible loans) are usually not included under the term "financing round" and therefore do not trigger the conversion of the loan.*

*Alternatively, the triggering event may be defined as a "qualified financing round", which means that the conversion of the loan only takes place if the financing round reaches a certain minimum investment amount (which presumably makes the subscription price underlying the conversion more reliable). In such case, section 4.2 would usually provide for a conversion obligation instead of the conversion right of the investor.*

- 4.2 If, prior to the Maturity Date and provided that (i) the Loan (including interest) has not been repaid in full in accordance with this Agreement and (ii) no repayment has been requested by the Lender due to an Event of Default, a binding investment agreement or a similar agreement regarding a Financing Round is signed (the "FR Signing Date"), the Lender shall have the right to irrevocably waive the repayment of the entire unpaid portion of the principal amount of the Loan ("Outstanding Principal Amount") and all accrued and unpaid interest due as of the FR Signing Date (the "FR Accrued Interest") against issuance of shares in the Company issued in the course of the Financing Round (the "FR Conversion Shares") at an issue price of **EUR 1 per each EUR 1** (the "Conversion Issue Price") of the subscribed nominal amount of FR Conversion Shares.

*This provision sets out the lender's right to convert the entire outstanding loan (including or excluding interest, see comments in section 2) into shares of the company in the event that the company signs a binding investment agreement or a similar agreement regarding a financing round. The lender has to exercise his/her conversion right according to section 4.3. As already mentioned in the comments to section 4.1, alternatively, a conversion obligation may be agreed upon instead of the conversion right of the lender, in particular in case section 4.1 provides for a "qualified financing round" as a triggering event for the conversion.*

*The conversion of the loan into shares is executed by way of an ordinary share capital increase in which the lender is admitted to subscribe for the newly issued shares to the extent stipulated in section 4.4. In return, the lender waives repayment of the entire outstanding loan amount (and accrued interest) subject to registration of the capital increase with the commercial register.*



*The "Conversion Issue Price" corresponds to the nominal amount of the shares issued to the lender and needs to be paid in at the time of subscription of the shares (see comments in section 7.2 below).*

*Alternatively, the conversion into shares may be executed by transferring existing shares from existing shareholders to the lender (see comments in section "Introduction").*

- 4.3 At the latest four weeks prior to the FR Signing Date, the Company shall inform the Lender in writing about such date no later than four weeks prior to the FR Signing Date. The exercise of the conversion right of the Lender shall require a written document signed by the Lender (the "**Exercise Notice**") which shall be delivered to the Company and the (other) Shareholders no later than two weeks prior to the FR Signing Date. The Exercise Notice is deemed to be delivered timely if it has been dispatched within the aforementioned period. If the Lender fails to deliver the Exercise Notice within the aforementioned period, its conversion right shall be deemed not exercised. For the avoidance of doubt, if the Lender does not exercise its conversion right pursuant to this section 4, any other conversion rights pursuant to this Agreement shall not be forfeited.

*This provision sets forth the company's obligation to inform the lender in writing about a financing round signing date in order to give the lender time to decide whether or not he/she wants to exercise his/her conversion right set forth in section 4.2.*

*The lender has to exercise the conversion right by delivering an exercise notice to the company and the (other) shareholders expressing his/her will to exercise his/her conversion right. After delivery of the lender's exercise notice, the shareholders must come to a resolution on the capital increase, taking into account the lender's conversion right.*

*In case of a conversion obligation instead of a conversion right of the lender, this section 4.3 needs to be replaced by a provision that only provides for the obligation of the company to inform the lender about the upcoming financing round.*

- 4.4 The nominal amount of FR Conversion Shares to be issued to the Lender in the course of the Financing Round at the Conversion Issue Price shall be determined as follows:
- Outstanding Principal Amount,
  - plus FR Accrued Interest,
  - divided by the subscription price (nominal amount + contribution/premium) to be paid by the FR Investor(s) for each EUR 1 of the nominal amount of shares subscribed in the course of the Financing Round less a discount of [●]% (the "**Discount**").

*This provision sets forth the calculation of the nominal amount of shares (FR Shares) to be issued to the lender upon conversion. In principal, the conversion is based on the valuation of the company underlying the financing round. The amount to be converted is usually comprised of the outstanding principal amount and accrued interest at the time of the financing round. Such total amount divided by the subscription price (share price) to be paid by the investors in the financing round determines the nominal amount of shares (FR Shares) to be issued to the lender. Thus, the higher the valuation of the financing round, the higher the share price and the lower the nominal amount of shares (FR Shares) to be issued to the lender.*

*Usually (and as set forth in this sample agreement), it is agreed that the lender receives a discount on the share price to be paid by the investors in the financing round to offset the lender's potentially increased risk.*



*Sometimes convertible loan agreements also provide for a maximum valuation ("cap") and/or minimum valuation ("floor") for the conversion of the loan, which means that the conversion takes place (i) based on the minimum valuation if the financing round valuation is below the floor and (ii) based on the maximum valuation if the financing round valuation is above the cap.*

*From a tax perspective, it should be noted that there may be a certain risk that the conversion, which due to a discount or cap is based on a value that is below the market valuation (higher valuation of the financing round), may lead to an exchange tax for the lender.*

- 4.5 The FR Conversion Shares delivered to the Lender shall have the same rights, obligations, preferences and privileges as the shares delivered to the FR Investor(s) in the course of the Financing Round.

*It is very important and highly recommended to agree on the essential rights and obligations (e.g. information rights, approval rights, liquidation preferences, anti-dilution rights, transfer restrictions, tag-along rights, drag-along rights) which shall be associated with shares delivered to the lender in the course of the conversion.*

*In case a financing round serves as the triggering event for the conversion, it is usually agreed (as set forth in this sample agreement) that the shares issued to the lender shall have the same rights, preferences and privileges as the shares delivered to the other investors in the course of the financing round.*

*Alternatively, it is possible to attach a term sheet, which sets out the essential parameters of the future legal relationship between the shareholders after conversion. Obviously, it is within the lender's interest that those rights which are granted to him/her upon conclusion of the convertible loan agreement are not limited in the course of the conversion. On the other hand, it should be noted that rights granted to the lender may also impact negotiations with future investors as they might ask for the same conditions.*

## 5. Mandatory Conversion in the event of an Exit

- 5.1 An "**Exit Event**" under this Agreement shall mean the execution of a binding agreement regarding any of the following events:

*This provision sets forth the definition of an exit event:*

- (a) a transfer or sale of more than 50% of the share capital of the Company in one transaction or a series of related transactions; or

*Usually, a transfer or sale of more than 50% of the share capital of the company in one transaction/a series of related transactions to one or more buyer(s) is defined as an exit (exit by way of a "share deal"). However, the percentage limits may vary.*

- (b) the sale, lease, license or other transfer or disposal of all or substantially all assets of the Company in one transaction or a series of related transactions ("**Asset Sale**"); or

*A transfer or sale or license of all or almost all of the company's most important assets is also defined as an exit (exit by way of an "asset deal" or "licence deal").*

- (c) an initial public offering of the Company on any recognized stock exchange or regulated market in an OECD member state after conversion of the Company into an (Nationality of the Company) joint stock company ("**IPO**").



*The conversion of the company into an Austrian AG followed by the IPO of the AG is also defined as an exit.*

- 5.2 Upon the occurrence of an Exit Event prior to the Maturity Date, provided that (i) the Loan (including interest) has not been repaid in full in accordance with this Agreement and (ii) no repayment has been requested by the Lender due to an Event of Default, the Lender shall have the right and the obligation to irrevocably waive the repayment of the then Outstanding Principal Amount and all accrued and unpaid interest due as of the date of signing a binding agreement regarding an Exit Event (the "**Exit Accrued Interest**") against issuance of shares in the Company (the "**Exit Conversion Shares**") at the Conversion Issue Price prior to the closing of the Exit Event.

*This provision sets out the lender's obligation to convert the entire outstanding loan (including or excluding interest, see comments in section 2) into shares of the company in case of the occurrence of an exit event. Usually (as set forth in this sample agreement) in case of an exit event, a conversion obligation of the lender is agreed. Alternatively, a conversion right may be agreed, whereby it needs to be taken into account that the lender's refusal to convert its loan in the course of the exit may prevent the exit or at least make it more difficult.*

*The conversion of the loan into shares is executed by way of an ordinary share capital increase in which the lender is admitted to subscribe to the newly issued shares to the extent stipulated in section 5.4. The ordinary share capital increase has to be executed prior to the closing of the exit event. In return, the lender is obliged to irrevocably waive repayment of the entire outstanding loan amount (and accrued interest) subject to registration of the capital increase with the commercial register.*

*The "Conversion Issue Price" corresponds to the nominal amount of the shares issued to the lender and needs to be paid in at the time of subscription of the shares (see comments in section 7.2 below).*

*Alternatively, the conversion into shares may be executed by transferring existing shares from existing shareholders to the lender (see comments in section "Introduction").*

- 5.3 The Company shall inform the Lender in writing of the execution of a binding agreement regarding an Exit Event.

*This provision sets forth the company's obligation to inform the lender in writing of the occurrence of an exit event.*

*In practice, lenders of a convertible loan will usually be informed about an intended exit before a binding agreement regarding such exit is signed, so that the conversion can already be taken into account when preparing the whole exit process. However, due to the conversion obligation of the lender in the case of an exit, such exit may also be concluded (signed) without informing the lender in advance, e.g. by defining the conversion as closing condition for the exit, which then takes place after signing (before closing).*

- 5.4 The nominal amount of Exit Conversion Shares to be issued to the Lender in the course of the Exit Event at the Conversion Issue Price shall be determined as follows:

- Outstanding Principal Amount,
- plus Exit Accrued Interest,
- divided by the purchase price to be paid by any acquirer(s) for each EUR 1 of the nominal amount of acquired shares in the Company in the course of the Exit Event less the Discount.

(in case of an Asset Sale or IPO the foregoing formula shall be applied *mutatis mutandis* based on the valuation underlying the Asset Sale or IPO).

*This provision sets forth the calculation of the nominal amount of shares (Exit Conversion Shares) to be issued to the lender upon conversion in an exit event. The description of section 4.4 above also applies to this section 5.4, provided that the conversion is based on the valuation of the company underlying the exit event instead of the financing round.*

*In case the financing round conversion (section 4.4) provides for a discount, a maximum valuation ("cap") and/or a minimum valuation ("floor"), the same is usually set forth for a conversion in case of an exit event (for details please see the description of section 4.4).*

- 5.5 The Exit Conversion Shares delivered to the Lender at the Conversion Issue Price shall have the same rights, obligations, preferences and privileges as the highest class of shares outstanding on the date a binding agreement regarding an Exit Event is signed.

*It is very important and highly recommended to agree on the essential rights and obligations (e.g. information rights, approval rights, liquidation preferences, anti-dilution rights, transfer restrictions, tag-along rights, drag-along rights) that shall be associated with the shares delivered to the lender in the course of the conversion.*

*In case an exit serves as the triggering event for the conversion, it is usually agreed (as set forth in this sample agreement) that the lender receives shares corresponding to the highest class of shares outstanding immediately before the exit event. In case the lender is already a shareholder of the company, it is sometimes agreed that he/she shall receive shares corresponding to the class of shares he/she already holds in the company at the time of the execution of the convertible loan agreement. However, in the case of a 100% exit, only some of the rights and obligations, in particular the liquidation preference and tag-along and drag-along rights, apply.*

## 6. Mandatory Conversion as of the Maturity Date

- 6.1 If, at the time of the Maturity Date, (i) the Loan (including interest) has not been repaid in full in accordance with this Agreement, (ii) no repayment has been requested by the Lender due to an Event of Default and (iii) no conversion according to sections 4 or 5 has occurred, the Lender shall have the right and the obligation to irrevocably waive the repayment of the then Outstanding Principal Amount and all accrued and unpaid interest due as of the Maturity Date (the "**MD Accrued Interest**") against issuance of shares in the Company (the "**MD Conversion Shares**") at the Conversion Issue Price on or around the Maturity Date.

*This provision sets out the lender's obligation to convert the entire outstanding loan (including or excluding interest, see comments in section 2) into shares of the company at the maturity date.*

*The conversion of the loan into shares is executed by way of an ordinary share capital increase in which the lender is admitted to subscribe to the newly issued shares to the extent stipulated in section 6.2. In return, the lender is obliged to irrevocably waive repayment of the entire outstanding loan amount (and accrued interest) subject to registration of the capital increase with the commercial register.*

*The "Conversion Issue Price" corresponds to the nominal amount of the shares issued to the lender and needs to be paid in at the time of subscription of the shares (see comments in section 7.2 below).*

*Alternatively, it may be agreed that at the maturity date, it is upon the sole discretion of the company to either repay the loan or request the conversion or that the lender shall have the choice to request either the repayment or the conversion of the loan.*

6.2 The nominal amount of MD Conversion Shares to be issued to the Lender on or around the Maturity Date at the Conversion Issue Price shall be determined as follows:

- Outstanding Principal Amount,
- plus MD Accrued Interest,
- divided by a share price of EUR [●] per each EUR 1 of the newly subscribed nominal amount of the MD Conversion Shares. Such share price is based on the current outstanding share capital of the Company in the amount of EUR [●] and a pre-money valuation of the Company of EUR [●].

*This provision sets forth the calculation of the nominal amount of shares (MD Conversion Shares) to be issued to the lender upon conversion at the maturity date. The descriptions of section 4.4 and 5.4 above also apply to this section 6.2 with the difference that in case of a conversion at the maturity date, no reference valuation exists upon which to base the conversion.*

*Therefore, the parties are forced to find other ways to determine the valuation (share price) underlying the conversion on the maturity date. One possibility (as set forth in this sample agreement) is to determine a fixed conversion valuation (share price) directly in the convertible loan agreement. However, such valuation forecasts (especially over a period of several years) are extremely difficult, and therefore the parties often agree that conversion valuation shall be the valuation of the last financing round prior to or the valuation at the time of the execution of the convertible loan agreement. Another way would be to let an independent expert determine the valuation of the company at the time of the maturity date, in case the parties are not able to reach a mutual agreement on the underlying valuation at that time.*

6.3 The MD Conversion Shares delivered to the Lender at the Conversion Issue Price shall have the same rights, obligations, preferences and privileges as the highest class of shares outstanding on the Maturity Date.

*It is very important and highly recommended to agree on the essential rights and obligations (e.g. information rights, approval rights, liquidation preferences, anti-dilution rights, transfer restrictions, tag-along rights, drag-along rights) that shall be associated with the shares delivered to the lender in the course of the conversion.*

*In case of a conversion on the maturity date, it is usually agreed (as set forth in this sample agreement) that the lender receives shares corresponding to the highest class of shares outstanding on the maturity date. Alternatively, a term sheet can be attached to the convertible loan agreement, which sets out the essential parameters of the future legal relationship between the shareholders after conversion. In case the lender is already a shareholder of the company, it may also be agreed that he/she shall receive shares corresponding to the class of shares he/she already holds in the company at the time of the execution of the convertible loan agreement.*

## 7. General Provisions regarding a Conversion

7.1 All Parties to this Agreement hereby separately and irrevocably agree to give all declarations, sign all documents, pass all resolutions and undertake all acts that might become necessary to implement and effect the issuance of the respective shares delivered to the Lender in the event of a conversion (the "**Conversion Shares**"). In particular, the Shareholders will, without any further consideration, waive their statutory subscription rights and/or come to a resolution on

the exclusion of statutory subscription rights (if necessary) with respect to the respective Conversion Shares.

*This provision sets forth the obligations of the company and the (existing) shareholders to take all legal steps required for the issuance of shares to the lender in the course of the conversion. It is important that all shareholders holding a share in the company at the time of the conversion be bound by this provision because otherwise they would be able to prevent the issuance of shares and thus the entire conversion (e.g. by exercising subscription rights).*

- 7.2 The Conversion Issue Price for the Conversion Shares has to be paid by the Lender upon subscription of the Conversion Shares and shall be due and payable within **10 Business Days** from the date on which the shareholders' resolution regarding the issuance of the Conversion Shares is passed.

*The "Conversion Issue Price" corresponds to the nominal amount of the shares subscribed for by the lender in the course of the conversion. According to mandatory **(Nationality of corporate law applicable to each case)**, the nominal amounts need to be paid in **(.....)**.*

- 7.3 The Parties agree to enter into a new shareholders' agreement or amend any existing shareholders' agreement, the articles of the Company or any other agreement, to the extent required or useful in connection with the issuance of Conversion Shares, immediately upon or in connection with any conversion pursuant to sections 4 to 6, in particular the Parties shall ensure that the Lender receives the rights, obligations, preferences and privileges mentioned in sections 4.5, 5.5 and 6.3.

*With the conversion of the loan, the lender becomes a new shareholder of the company or – if he/she is already a shareholder – increases his/her shareholding in the company. Thus, the rights and preferences but also the obligations associated therewith need to be determined in the articles of association and/or an existing or new shareholders' agreement and all shareholders need to be obliged to enter into such agreement. If the lender is not an existing shareholder of the company, an obligation of the lender to accede to any shareholder's agreement existing at the time of the conversion needs to be included in the convertible loan agreement.*

*For a detailed description of the rights and obligations that shall be associated with the shares issued to the lender in the course of the conversion, see comments in sections 4.5, 5.5 and 6.3.*

- 7.4 Except as set forth in this Agreement, the Loan shall not be otherwise convertible into shares of the Company.

*This clause sets forth that only the provisions of this convertible loan agreement shall apply for the conversion of the loan.*

- 7.5 Any waiver of the principal amount of the Loan in connection with a conversion shall be effective as of the date of registration of the respective capital increase with the commercial register.

*Since the Conversion Shares only come into existence upon registration of the capital increase with the commercial register, the effectiveness of the waiver of the loan needs to be linked to such registration.*

*From a tax perspective, it should be noted that there is a certain risk that the waiver of the loan may lead to taxable operating income at the level of the company if the loan does not represent a valuable claim (nicht werthaltige Forderung) at the time of the conversion. This might be the case in particular if the company is in crisis at the time of the conversion and would therefore not be able to repay the loan at all. Accordingly, attention should be paid to this issue especially in the case of a conversion on*

*the maturity date in which the company does not receive additional funding (as is the case in a conversion upon a financing round).*

- 7.6 If at any time prior to the Maturity Date, any of the outstanding shares of the Company are changed into, or exchanged for, a different number or kind of shares or securities of the Company through reorganization (e.g. a merger) or if the Company is transformed into an Austrian joint stock company, an appropriate adjustment shall be made to this Agreement, if necessary, in the number, kind or conversion price of shares into which the Loan is convertible.

*This is a general clause which shall ensure that the provisions of the convertible loan agreement (in particular the provisions on the conversion of the loan) shall remain applicable even after a possible reorganization or transformation of the company.*

## 8. Event of Default

- 8.1 An "**Event of Default**" under this Agreement shall mean the occurrence of any of the following:
- (a) the failure of the Company to perform its obligations under this Agreement and the failure of the Company to remedy such default within **20 Business Days** of written notice of the default by the Lender; or
  - (b) the opening of insolvency proceedings regarding the assets of the Company or the rejection of an application for the opening of insolvency proceedings due to a lack of assets covering the costs for such proceedings.
- 8.2 Upon the occurrence of an Event of Default prior to the Maturity Date, the entire unpaid portion of the principal amount of the Loan and all accrued but unpaid interest shall – as far as legally permissible – become immediately due and payable upon request by the Lender.

*In case of a breach of contract or an insolvency of the company (or other predefined events of default), the lender shall have the right to request the immediate repayment of the loan. Also, in the event of default, the repayment restrictions, in particular the qualified subordination of the loan (see section 1.3), need to be considered.*

## 9. Shareholders' Resolution

For the avoidance of doubt, the Shareholders, as all shareholders of the Company, agree to pass a resolution in writing and herewith unanimously approve the execution of this Agreement by the Company.

*In this written shareholders' resolution, the shareholders approve the execution of the convertible loan agreement by the company. In case not all shareholders of the company are parties to the convertible loan agreement, a separate written shareholders' resolution is required.*

## 10. Miscellaneous

- 10.1 This Agreement may be amended and any provision hereof waived only with the written consent of all Parties.
- 10.2 Unless otherwise provided in this Agreement, each Party undertakes to consider as strictly confidential and not to disclose to any third party, the contents of this Agreement or any document it relates to unless made (i) with the prior written consent of the other Parties, (ii) as required by applicable mandatory laws or regulations, or (iii) by a Party to its directors, managers,



employees, professional advisers or its affiliates. Information will not be regarded as confidential, however, (A) if it is already available to the recipient party on a non-confidential basis, or (B) if it becomes generally available to the public other than as a result of a disclosure by or on behalf of the recipient party in violation of the terms of this section 10.2.

- 10.3 All notices and other communications under this Agreement shall be in writing in the English language and shall be given or made by delivery in person, by courier service, by e-mail or by registered mail to the respective Parties at the addresses set out in the Parties' section (or at such other address for a Party as shall be specified in a notice given in accordance with this section 10.3). Except as otherwise provided in this Agreement, each such notice shall be deemed given and received (i) at the time delivered by hand, if personally delivered or when receipt acknowledged, (ii) (no later than) five Business Days after being deposited in the mail, postage prepaid, if mailed, (iii) after receipt of a reading confirmation or an e-mail acknowledging receipt, if e-mailed, and (iv) the next Business Day following timely delivery to the courier, if sent by overnight courier guaranteeing next-day delivery.
- 10.4 If any term or provision of this Agreement shall be invalid, illegal or unenforceable for any reason, the validity, legality and enforceability of the remaining provisions thereof shall not be affected or impaired thereby, and any invalidity, illegality or unenforceability in any jurisdiction shall not affect the validity, legality or enforceability of any such term or provision in any other jurisdiction. The invalid, illegal or unenforceable provision shall be deemed to be replaced by such valid provision as most closely corresponds to the economic purpose and substantive effect of the invalid, illegal or unenforceable provision. The same applies *mutatis mutandis* with regard to supplementary interpretation of this Agreement.
- 10.5 This Agreement embodies the entire agreement and understanding between the Parties with respect to the subject matter thereof and supersedes all prior agreements and understandings between them with respect to the subject matter.
- 10.6 Each Party shall bear its own costs and expenses (including advisor fees incurred by the relevant Party) incurred in connection with negotiating, preparing and implementing this Agreement, provided that the costs of the notary public, if any, in connection with the execution of this Agreement shall be borne by the Company.
- 10.7 This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of (Country), with the exception of (i) the UN Sales Convention and (ii) the conflict of law rules of (Country) private international law.
- 10.8 Each Party hereto agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement or the transactions contained in or contemplated by this Agreement, exclusively before the [competent court to be included].

[Rest of page intentionally left blank. Signature page follows.]



### **Other optional provisions:**

#### *Reps & Warranties:*

*In cases involving high loan amounts (above EUR 100,000 per lender), lenders sometimes require certain representations and warranties from the existing shareholders and/or the company (e.g. regarding ownership of shares, due incorporation of the company, ownership of intellectual property, business licenses). If so, it is important to clearly determine the scope and effective date (time of granting the loan or time of conversion) of the representations and warranties and the indemnification procedures in case of a breach.*

#### *Information Rights:*

*Due to the fact that the lenders of a convertible loan do not hold a share in the company until conversion (except if they already are shareholders), they do not have any information and/or inspection rights regarding the company. Thus, lenders of a convertible loan sometimes require that they be provided with certain financial documents on a regular basis (e.g. the annual financial statement, quarterly/monthly financial reports, etc).*

#### *Advisory Board:*

*In case the lender of a convertible loan is an external lender (and not a shareholder already), the lender does not have any voting rights in the company until conversion. Therefore, lenders of a convertible loan sometimes require the establishment of a corporate advisory board with the lenders as members having several approval, consent or veto rights with respect to certain business and/or corporate measures. Establishing a corporate advisory board is subject to the shareholders' meetings resolution.*



\_\_\_\_\_ / \_\_\_\_\_. \_\_\_\_\_.  
(Place) (Date)

### The Company

\_\_\_\_\_  
[•]

### The Lender

\_\_\_\_\_  
[•]

### The Shareholders

\_\_\_\_\_  
[•]

\_\_\_\_\_  
[•]

\_\_\_\_\_  
[•]

\_\_\_\_\_  
[•]

## 4.4. Model contract 4

### SHAREHOLDER'S AGREEMENT

LEGAL DISCLAIMER: THIS DOCUMENT IS INTENDED TO SERVE AS A STARTING POINT ONLY AND SHOULD BE TAILORED TO MEET YOUR SPECIFIC LEGAL AND COMMERCIAL REQUIREMENTS. KEEP IN MIND THAT A SHAREHOLDER'S AGREEMENT CANNOT CONFLICT IN ANY MANNER WITH THE ARTICLES OF ASSOCIATION AND MUST THEREFORE BE ADAPTED TO THE ARTICLES OF ASSOCIATION OF THE UNDERTAKING. THE DOCUMENT SHOULD NOT BE CONSTRUED AS LEGAL ADVICE FOR ANY PARTICULAR FACTS OR CIRCUMSTANCES. CONSULT YOUR LAWYER TO ENSURE THAT THE DOCUMENT FITS, AND IS BEING ADAPTED FOR, YOUR SPECIFIC NEEDS AND WHETHER AND TO WHAT EXTENT THE RIGHTS AND OBLIGATIONS CONTEMPLATED IN THE DOCUMENTS ARE VALID AND ENFORCEABLE. EBAN GIVES NO OPINION OR ASSURANCES AS TO THE SUITABILITY, ADEQUACY, VALIDITY AND ENFORCEABILITY OF THE DOCUMENT AND ITS PROVISIONS.

#### Parties

[[[ of [ (Investor)

[[[ of [ (Company)

[[[ of [ (Existing Shareholders)

[[[ of [ (Founders)

#### Background

1. The Investor is a shareholder in the Company with effect from the date of this agreement.
2. All parties have agreed to enter into this agreement for the purpose of recording the terms of this arrangement and their respective relationships with each other.

#### Definitions and Interpretation

## ARTICLE 1. DEFINITIONS AND INTERPRETATION

### 1. Definitions

In this agreement the following definitions apply:

- **Affiliated Party** means a legal or natural entity of which a legal or natural entity or its ultimate parent company or shareholder, has directly or indirectly 50% or more of the nominal value of the subscribed share capital of the Company or has the voting right in the General Meeting or has the authority to appoint the majority of the Managers/Directors or alternatively has the right of control over the activities of the Company, or any other legal or natural entity that can be considered as a “subsidiary” or part of a “group” as stipulated in .....
- **Budget** means the strict budget (with profit and cash-flow forecasts) of the Company and any subsidiaries, referring to the next [ ] financial years.
- **Business Sale** means the completion of a sale or series of sales by the Company (or any Subsidiary) of all or substantially all of the business and assets of the Company and its Subsidiaries to one or more third parties.
- **Class** means a class of Shares having attached to them identical rights, privileges, limitations and conditions.
- **Closing date means** [ ] or another date the Parties have agreed upon in writing
- **Confidential Information** has the meaning set out in article 10.
- **Constitution** means the constitution of the Company.
- **Deed of Accession** means a deed of accession in the agreed form pursuant to which a person who acquires Shares agrees to be bound by the terms of this agreement.
- **Directors** means the directors for the time being of the Company.
- **Dispose** means any dealing with a Share or with any interest in or rights attaching to a Share including to grant options or rights of pre-emption over, sell, transfer, assign, part with the benefit of, declare a trust over, or deal with an ownership interest in a Share.
- **Drag-Along Event** has the meaning set forth in Article 8.5.1 of this Agreement.
- **Drag-Along Notice** has the meaning set forth in Article 8.5.1 of this Agreement.
- **Drag-Along Right** has the meaning set forth in Article 8.5.2 of this Agreement.
- **Encumbrance** means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, claim, covenant, easement or any other security arrangement or any other arrangement having the same effect.
- **Expert** has the meaning set forth in Article 8.6.2 of this Agreement.
- **Financial Year** means the period of 12 months ending on ..... in each year.
- **General Meeting** means the General Meeting of Shareholders of the Company
- **Good Leaver** means any Existing Shareholder who ceases to be employed by the Company for any of the following reasons:

- death in service;
  - compulsory retirement;
  - becoming permanently incapable of discharging efficiently the duties of his employment or any other comparable employment with the Company or a Subsidiary by reason of ill health or infirmity of mind or body, injury or disability (evidenced to the satisfaction of the Management Board);
  - redundancy; or
  - dismissal in circumstances which have resulted in a claim against the Company for unfair dismissal where the claim is successful on the grounds that the dismissal was unfair pursuant to [REDACTED]
- **Investor Share** means an "A" Preference Share in the Company.
  - **Major Investor** means a holder of Investor Shares who has paid at least [REDACTED] as the total issue price for all of their Shares.
  - **Management Agreement** means the management agreements between the Company and the Shareholders attached as [REDACTED]
  - **Management Board** means the management board of the Company
  - **Management** means the members of the Management Board
  - **Meeting of Holders of Preferred Shares** means the General Meeting of holders of Preferred Shares of the Company
  - **New Securities** means any securities (including convertible securities) in the Company unissued at the date of this agreement but excluding:
    - Shares issued or issuable upon conversion of Preference Shares to Ordinary Shares.
    - Shares issuable upon exercise of any options or rights to purchase any securities of the Company outstanding as of the date of this agreement and any securities issuable upon the conversion thereof.
    - Shares issued pursuant to a share split.
  - **Option Parties** has the meaning set forth in Article 8.6.1 of this Agreement.
  - **Ordinary Share** means an ordinary share in the Company.
  - **Parties** means, collectively the Shareholders, the Founders, and the Company and any other person that becomes a Party to this Agreement and Party means any one of them
  - **Purchase Option** has the meaning set forth in Article 8.6.1 of this Agreement.
  - **Redundancy** means in respect of an Existing Shareholder the termination of the Existing Shareholder's employment with the Company or any Subsidiary by reason of a restructure or a state

of affairs within the Company or the Subsidiary whereby the position previously occupied by that person no longer exists within the Company or the Subsidiary and where the Management Board in its absolute discretion determines that such an event qualifies as a redundancy for the purposes of these Rules.

- **Relevant Selling Shareholder(s)** has the meaning set forth in Article 8.5.1 of this Agreement.
- **Relevant Shares** has the meaning set forth in Article 8.3.1 and 8.4.1 of this Agreement.
- **Restricted Party** has the meaning set forth in Article 8.6.1 of this Agreement.
- **Right of First Refusal** has the meaning set forth in Article 8.3.2 of this Agreement.
- **Right of First Refusal Event** has the meaning set forth in Article 8.3.1 of this Agreement.
- **Right of First Refusal Exercise Notice** has the meaning set forth in Article 8.3.3 of this Agreement.
- **Right of First Refusal Notice** has the meaning set forth in Article 8.3.1 of this Agreement.
- **Respective Proportion** means the number of Shares held by a Shareholder divided by the total number of Shares.
- **Selling Shareholder(s)** has the meaning set forth in Article 8.3.1 and 8.4.1 of this Agreement.
- **Shareholders** means the shareholders in the Company and includes any person who subsequently becomes a shareholder and who adheres to this agreement.
- **Shares** means shares in the Company, including the Ordinary Shares and the Investor Shares.
- **Share Sale** means an acquisition of Shares by way of transfer which results in one or more third parties holding Shares having a right to exercise more than [50%] of the votes which may be cast on a poll at a general meeting of the Company on all, or substantially all, matters.
- **Subsidiary** has the meaning given to that term in the ..... but also includes an entity that would be considered a subsidiary under generally accepted accounting principles.
- **Tag-Along Event** has the meaning set forth in Article 8.4.1 of this Agreement.
- **Tag-Along Exercise Notice** has the meaning set forth in Article 8.4.3 of this Agreement.
- **Tag-Along Notice** has the meaning set forth in Article 8.4.1 of this Agreement.
- **Tag-Along Right** has the meaning set forth in Article 8.4.2 of this Agreement.
- **Triggering Event** has the meaning set forth in Article 8.6.1 of this Agreement.

## 2. Interpretation

In the interpretation of this agreement, the following provisions apply unless the context otherwise requires:

Headings are inserted for convenience only and do not affect the interpretation of this agreement.

A reference in this agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in .....

If the day on which any act, matter or thing is to be done under this agreement is not a business day, the act, matter or thing must be done on the next business day.

A reference in this agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

A reference in this agreement to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.

A reference to an article, part, schedule or attachment is a reference to an article, part, schedule or attachment of or to this agreement.

An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

References to the word 'include' or 'including' are to be construed without limitation.

Any schedules and attachments form part of this agreement.

## **Financial participation in the corporation**

### **ARTICLE 2. EQUITY PARTICIPATION**

Each of the Shareholders represents and warrants to each other and to the Company that:

- such Shareholder at the date hereof (or, if such Shareholder becomes a Party following the date of this Agreement, at the date such Shareholder acquired its Shares), owns beneficially and of record the number of Shares set forth opposite such Shareholder's name on Schedule ..... attached hereto, as applicable (as such schedules may be amended from time to time to reflect changes in shareholdings);
- the Shares held by such Shareholder are held beneficially and of record by such Shareholder, such Shares are not subject to any mortgage, lien, charge, pledge, encumbrance, security interest or adverse claim and no Person has any rights to become a holder or possessor of any of the Shares or of the certificates representing the same, if applicable;
- if the Shareholder is an individual, that such Shareholder has the capacity to enter into and give full effect to this Agreement;
- if the Shareholder is a corporation, that it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation and that it has the corporate power and capacity to own its assets and to enter into and perform its obligations under this Agreement;
- if the Shareholder is a trust, partnership or joint venture, that it is duly constituted under the laws that govern it and that it has the power to own its assets and to enter into and perform its obligations under this Agreement;
- this Agreement has been duly authorized by such Shareholder and duly executed and delivered by such Shareholder and constitutes a valid and binding obligation enforceable in accordance with its terms, subject to the usual exceptions as to bankruptcy and the availability of equitable remedies;

that the execution, delivery and performance of this Agreement does not and shall not contravene the provisions of its articles, by-laws, constating documents or other organizational documents or the documents by which such Shareholder was created or established or the provisions of any indenture, agreement or other instrument to which such Shareholder is a party or by which such Shareholder may be bound; and that, subject to the terms of this Agreement, all of the foregoing representations and warranties shall continue to be true and correct during the continuance of this Agreement.

## **Operative Provisions**

### **ARTICLE 3. MANAGEMENT BOARD**

1. The Management Board of the Company shall consist of [Shareholder A] and [Shareholder B]. The members of the Management Board are [independent / jointly] authorized to represent the Company.
2. The Management Board shall act in accordance with the articles of association of the Company, this Agreement and the Management Agreements.
3. The Founders commit themselves vis-à-vis the Investors for a period of at least [ ] years after the Closing Date, to be available on a full-time basis to work for the Company to the best of their abilities.
4. The General Meeting shall appoint, dismiss or suspend Managers.
5. The Management Board shall not take any of the following actions without prior written approval of the General Meeting:
  - (a) the takeover of or participation in a company or undertaking or the entry into or termination of strategic cooperation with any other company;
  - (b) substantial amendment, extension or limitation of the activities;
  - (c) any capital expenditure on any one item, or series of related items, in excess of € [ ], to the extent that the amount is not included in the approved Budget;
  - (d) any actions not in the normal course of business or not at arm's length;
  - (e) the provision of a loan to third parties or the provision of security to third parties;
  - (f) the initiation of a lawsuit or the conduct of legal proceedings for any claims exceeding the amount of € [ ], save for legal action in the event of urgency to secure the position of the Company, in which case approval is to be obtained without the least possible delay after initiating the legal proceedings;
  - (g) the entry into or termination of any agreement with a Manager or shareholder of the Company or any person who is an Affiliated Party to a Manager or shareholder of the Company;



- (h) the granting, amendment or withdrawal of any authority to represent the Company;
- (i) the hiring of personnel, amendment of the terms and conditions of employment, or amendment of the Management Agreements, including amendment of the management fee, to the extent not included in the Budget;
- (j) the disposal of or encumbrance of intellectual or industrial property rights of the Company, or the granting of a licence on those rights, except for the granting of licences in the normal course of Company business;
- (k) the raising of new financing from current or new finance providers;
- (l) the appointment or change of the Company accountant;
- (m) the exercise of voting rights attached to shares in subsidiaries of the Company;
- (n) applying for a moratorium or the filing for bankruptcy;
- (o) redeeming the Company's own shares.

6. If the Company establishes or acquires a subsidiary, the Management Board shall ensure that the Management Board of these subsidiaries shall not take any of the above actions regarding the Company's subsidiaries without prior written approval of the General Meeting.

#### **ARTICLE 4. SUPERVISORY BOARD**

7. The Company shall have a Supervisory Board. The Supervisory Board will monitor the general policy and strategy and advise the Management Board.

8. The Supervisory Board shall consist of at least ..... members and will be formed on the Closing Date by [ ] (chairman) and [ ].

9. The Meeting of Holders of Preferred Shares has the right to appoint one of the members of the Supervisory Board. The other members including the chairman shall be appointed by the General Meeting. The General Meeting shall assess the amount of remuneration.

10. The body that has the right to appoint a member of the Supervisory Board, also has the right to suspend or dismiss the respective member of the Supervisory Board.

11. Notwithstanding the statutory rights of the Supervisory Board, the Management Board shall issue the financial information that is provided to the Participants under Article 5 at the same time to the Supervisory Board.

#### **ARTICLE 5. THE GENERAL MEETING**

12. Each share has one vote.

13. All resolutions are adopted by simple majority except for the following resolutions which require a two-thirds majority of the votes:

(a) to appoint, dismiss or suspend Managers and members of the Supervisory Board;

(b) to adopt the financial statements and dividend distributions;

(c) to amend the articles of association;

(d) to enter into a legal merger or legal division, or to file for bankruptcy;

(e) to dissolve the Company;

(f) to issue shares or depository receipts of shares, or to authorize a corporate body to do so;

(g) to exclude a shareholder of its statutory pre-emption right;

(h) to reduce the share capital of the Company;

(i) to approve actions of the Management Board as referred to in Article 2.5.

## **ARTICLE 6. INFORMATION**

### **1. Basic financial information**

The Company will provide promptly to each Major Investor:

- Annual unaudited financial statements for each Financial Year, including an unaudited balance sheet as of the end of such Financial Year, an unaudited statement of operations and an unaudited statement of cash flows of the Company for such year, all prepared in accordance with generally accepted accounting principles and practices.
- Quarterly unaudited financial statements for each quarter of a Financial Year of the Company (except the last quarter of the Company's Financial Year), including an unaudited balance sheet as of the end of such quarter, an unaudited statement of operations and an unaudited statement of cash flows of the Company for such quarter, all prepared in accordance with generally accepted accounting principles and practices, subject to changes resulting from normal year-end audit adjustments.
- Prior to the commencement of each Financial Year, the proposed annual business plan together with an operating and capital expenditure budget of the Company as approved by the Management Board.

If the Company has audited records of any of the foregoing described in article 3.1, it shall provide those in lieu of the unaudited versions.

### **2. Confidential information**

Notwithstanding anything in this agreement to the contrary, no Investor by reason of this agreement shall have access to any trade secrets or confidential information of the Company.

### **3. Investor obligations**

Each Investor agrees that such Investor will keep confidential and will not disclose, divulge, or use for any purpose (other than to monitor its investment in the Company) any confidential information

obtained from the Company pursuant to the terms of this agreement other than to any of the Investor's legal advisers, accountants, consultants, and other professionals, to the extent necessary to obtain their services in connection with monitoring the Investor's investment in the Company.

#### **4. Inspection rights**

The Company shall permit each Major Investor to visit and inspect the Company's properties, to examine its books of account and records and to discuss the Company's affairs, finances and accounts with its officers, all at such reasonable times as may be requested by such Investor.

#### **ARTICLE 7. ISSUES OF NEW SECURITIES**

1. If the Management Board resolves to make an issue of New Securities, it must give written notice of such intention to the Major Investors setting out the terms of the proposed issue of New Securities.
2. Within ..... business days each Major Investor may give written notice to the Company that it wishes to acquire its Respective Proportion of the New Securities on the same terms.
3. Within ..... days thereafter the Company may issue on the same terms as offered to the Major Investors any New Securities not acquired by the Major Investors pursuant to article 7.2.
4. In the event that the Company has not issued the New Securities within such ..... day period, then the Company shall not thereafter issue or sell any New Securities without again first offering such New Securities to the Major Investors pursuant to this article 7.4.
5. In the event that the Company issues New Securities to a third party under article 7.3 and such New Securities have rights, preferences or privileges that are more favourable to the Shareholder than the terms of the Investor Shares, the Company shall take such action in accordance with all laws to provide substantially equivalent rights for the Investors in relation to the Investor Shares as are attached to the New Securities (with appropriate adjustment for economic terms or other contractual rights and subject to such Investor's execution of any

relevant documents executed by the holders of the New Securities in subscribing for the New Securities).

## **ARTICLE 8. RESTRICTIONS ON TRANSFER OF SHARES**

### **1. General**

A Shareholder must not Dispose of any Shares, except:

- in accordance with this agreement; or
- with the consent of each other Shareholder.

Any transfer not in accordance with this article 8 has no effect.

### **2. No Encumbrances**

The Shares shall not be pledged, assigned by way of security or otherwise used as security and shall remain free and clear of any liens, encumbrances, charges or any other third party rights.

### **3. Right of First Refusal of the Company and the Shareholders**

#### **3. 1. Notification**

If a Shareholder wishes to Transfer all [or a part] of its Shares (for purposes of this Article 8.3, the "Relevant Shares") to a third party (including another Shareholder) (the "Right of First Refusal Event"), such Shareholder(s) (for purposes of this Article 8.3, the "Selling Shareholder(s)") shall submit an offer to the Company and all other Shareholders stating in writing the price and terms of the proposed Transfer in accordance with the notice provision set forth in Article 12 (the "Right of First Refusal Notice"). If the Selling Shareholder(s) has/have received a bona fide purchase offer from a third party (including another Shareholder), the terms of such offer from the proposed acquirer shall be disclosed to the other Shareholders in the notice. The Company shall inform each Shareholder forthwith but not later than ..... Calendar days after receipt of the Right of First Refusal Notice about (i) the date it received the Right of First Refusal Notice and (ii) the day the ..... Calendar day period mentioned in Article 8.3.3 for exercising the Right of First Refusal expires.

### **3. 2. Grant of Right of First Refusal**

Each of the Shareholders hereby grants to the other Shareholders and to the Company:

the right (but not the obligation) to acquire all or part of the Relevant Shares from the Selling Shareholder(s) upon the occurrence of a Right of First Refusal Event (the "Right of First Refusal") at the price and terms set out in the Right of First Refusal Notice. Such price and terms shall either be the price and terms of the bona fide purchase offer from a third party or, in the absence of such a third party offer, the price and terms offered by the Selling Shareholder. If all Rights of First Refusal validly exercised do not, in the aggregate, result in the exercise of Rights of First Refusal for of all Relevant Shares, the Rights of First Refusal shall be deemed not exercised and Article 8.3.5 shall apply.

### **3. 3. Exercise of Right of First Refusal**

Each beneficiary of the Right of First Refusal wishing to exercise its right in respect of the Relevant Shares shall so notify the Company and the Selling Shareholder(s) in accordance with the notice provision set forth in Article 12 within a period of ..... Calendar days from receipt of the Right of First Refusal Notice (the "Right of First Refusal Exercise Notice") by the Company. If no Right of First Refusal Exercise Notice is submitted by a beneficiary within the period of ..... Calendar days from receipt of the Right of First Refusal Notice by the Company, the Right of First Refusal of that beneficiary shall be deemed to have been forfeited with respect to the respective Right of First Refusal Event (but not for any other or subsequent Right of First Refusal Event(s)).

The terms and conditions for the acquisition of the Relevant Shares including, without limitation, the purchase price, shall be equal to the terms offered in the Right of First Refusal Notice (i.e. the bona fide offer by the proposed acquirer or, in the absence of such bona fide offer, the price and terms offered by the Selling Shareholder(s)).

### **3. 4. Consummation of Transfer of Relevant Shares upon Exercise of Right of First Refusal**

The Transfer of the Relevant Shares shall be consummated within ..... Calendar days from receipt of the Right of First Refusal Notice by the Company unless the terms of the bona fide purchase offer provided for longer terms, in which case the terms of such bona fide purchase offer shall apply. The

Transfer price shall, unless other terms are stated in the Right of First Refusal Notice, be paid in cash against registration of the acquiring Shareholder(s) [or, as the case may be, the Company] as holder(s) of the respective number of Relevant Shares in the share register of the Company.

### **3. 5. Transfer to Proposed Acquirer**

In the event the Right of First Refusal is not exercised or not exercised for all Relevant Shares in accordance with Section 3, the Selling Shareholder(s) shall be free, subject only to Article 8.4, 8.5 and 9 to Transfer the Relevant Shares to the proposed acquirer, on terms not more favorable than those offered to the beneficiaries of the Right of First Refusal in the Right of First Refusal Notice, within a period of ..... months after expiry of the ..... Calendar days period to submit a Right of First Refusal Exercise Notice pursuant to Article 8.3.3. Thereafter, the procedure pursuant to this Article 8.3 shall be repeated prior to any such Transfer.

## **4. Tag-Along (Co-Sale Right)**

### **4. 1. Notification**

In the event an Investor (or a group of Investors) wishes to Transfer all or a part of its Shares (for purposes of this Article 8.4, the "Relevant Shares") in one or a series of related transactions to a proposed acquirer (including another Shareholder) on the basis of a bona fide purchase offer, and provided such Transfer of Shares would **[[result in a Change of Control] [or]]** [relate to ..... percent of all Shares (the "Tag-Along Event"), such Investor(s) (for purposes of this Article 8.4, the "Selling Shareholder(s)") shall notify the other Shareholders as well as the Company thereof, mutatis mutandis in accordance with Article 8.3.1 above (the "Tag-Along Notice"). Such a Tag-Along Notice may be part of a Right of First Refusal Notice according to Article 8.3. The Company shall inform each Shareholder forthwith but not later than ..... Calendar days after receipt of the Tag-Along Notice about (i) the date it received the Tag-Along Notice and (ii) the day the ..... Calendar day period for exercising the Tag-Along Right mentioned in Article 8.4.3 expires.

### **4.2. Grant of Tag-Along Right**

In addition to the Right of First Refusal pursuant to Article 8.3, each of the Shareholders hereby grants to the other Shareholders the right (but not the obligation) to join the Selling Shareholder(s) and co-sell (together with the Selling Shareholder(s)) [[upon the election of the relevant beneficiaries all their Shares to the proposed acquirer for the same consideration per Share and otherwise at the same terms and conditions as applicable to the Selling Shareholder(s) [(except for [(i)] any representations, warranties and/or indemnities other than (several and not joint) title warranties solely in respect of the Shares sold by such other Shareholder(s) [and (ii) payment of the consideration per Share, which must be in immediately available cash]]] upon the occurrence of a Tag-Along Event (the "Tag-Along Right").

#### **4. 3. Exercise of Tag-Along Right**

Each Shareholder wishing to exercise its Tag-Along Right with respect to the Relevant Shares shall so notify the Selling Shareholder(s) in accordance with the notice provision set forth in Article 12 within a period of ..... Calendar days from receipt of the Tag-Along Notice (the "Tag-Along Exercise Notice") by the Company. If no Tag-Along Exercise Notice is submitted by a Shareholder within the period of ..... Calendar days from receipt of the Tag-Along Notice by the Company, the Tag-Along Right of that Shareholder shall be deemed to have been forfeited with respect to the respective Tag-Along Event (but not for any other or subsequent Tag-Along Event).

If the proposed acquirer refuses to accept the purchase of the Shares from the Shareholders who provided a Tag-Along Notice, the Selling Shareholder(s) shall be prohibited from Transferring the Relevant Shares to the proposed acquirer.

#### **4. 5. Consummation of Transfer of Shares upon Exercise of Tag-Along Right**

The Transfer of Shares in case of a Tag-Along Event shall be consummated at the closing date agreed by and between the Selling Shareholder(s) and the proposed acquirer (such closing date not to be earlier than ..... Calendar days after the Company received the Tag-Along Notice) by payment [in cash] of consideration expressed to be payable per Share pursuant to the agreement with the acquirer against registration of the acquirer in the share register of the Company as holder of the respective number of Relevant Shares and the Shares co-sold pursuant to Article 8.4.

#### **4. 6. Transfer to Proposed Acquirer**



In the event the Right of First Refusal according to Article 8.3 is not exercised, the Selling Shareholder(s) shall be free, subject only to Article 9, to Transfer the Relevant Shares to the proposed acquirer on the terms disclosed to the other Shareholders in the Tag-Along Notice and the Right of First Refusal Notice within a period of ..... months starting after the expiry of the ..... Calendar days period to submit a Tag-Along Exercise Notice pursuant to Article 8.4.3. Thereafter, the procedure pursuant to this Article 8.4 shall be repeated prior to any such Transfer.

## **5. Drag-Along (Co-Sale Obligation)**

### **5.1. Notification**

In the event [a holder of Shares]/[a group of holders of more than ..... percent of Shares]/[all holders of Shares] wish[es] to Transfer ..... percent of [its]/[their] aggregate shareholdings in the Company in one or a series of related transactions to a proposed acquirer (including another Shareholder) who wishes to acquire all (but not less than all) Shares in the Company pursuant to a bona fide purchase offer (the "Drag-Along Event"), [that holder]/[that group of holders]/[all holders] of Shares (for purposes of this Article 8.5, the "Relevant Selling Shareholder[s]") shall notify the other Shareholders thereof, mutatis mutandis in accordance with Article 8.3.1 above (the "Drag-Along Notice").

The Company shall inform each Shareholder forthwith but not later than ..... Calendar days after receipt of the Drag-Along Notice about (i) the date it received the Drag-Along Notice and (ii) the day the ..... month period according to Article 8.5.3 expires.

### **5.2. Grant of Drag-Along Right**

[Without prejudice to the Right of First Refusal pursuant to Article 8.3, the] /[The] Relevant Selling Shareholder[s] shall have the right (but not the obligation) to require all other Shareholders to sell, and the other Shareholders hereby irrevocably agree to sell, all (but not less than all) of their Shares then held to the proposed acquirer [for the same consideration per Share and[, except as set forth in Article 8.5.5,]] otherwise at the same terms and conditions as applicable to the Relevant Selling Shareholder[s] upon the occurrence of a Drag-Along Event (the "Drag-Along Right").

### 5.3. Consummation of Transfer

The Transfer of Shares to the proposed acquirer shall be completed at the agreed closing date [(but no later than within a period of ..... months after the date of receipt of the Drag-Along Notice) by the Company] and otherwise in accordance with the proposed terms of the underlying agreement between the Relevant Selling Shareholder[s], [the other Shareholders] and the proposed acquirer.

### 5.4. Drag-Along Right Takes Precedence over Right of First Refusal

For the avoidance of doubt and notwithstanding anything to the contrary contained herein, Article 8.3 shall not apply in case of a Drag-Along Event.

### 5.5. Key Terms and Conditions

The terms and conditions of the Transfer of Shares shall include the following:

(a) For each Share the purchase price shall be the same. All considerations for the Shares shall be paid on the same date and in cash.

(b) Each other Shareholder's liability for representations and warranties shall, to the extent legally permissible, be limited to [the same percentage of its purchase price as applicable for the Relevant Selling Shareholder[s]' liability/a maximum of ..... percent of its purchase price], and be subject to the same time limitations as the Relevant Selling Shareholder[s]' liability. Each other Shareholder shall, upon request by the Relevant Selling Shareholder[s], be obliged to pay the same percentage of its purchase price for the same time periods into an escrow account in favor of the acquirer as the Relevant Selling Shareholder[s]. Disclosures shall only limit the other Shareholders' liability if expressly agreed with the acquirer. Each other Shareholder shall be [severally, and not jointly/jointly and severally with each of the other Shareholders] liable for the representations and warranties.

(c) Each other Shareholder shall give the representations and warranties which the acquirer or the Relevant Selling Shareholder[s] may reasonably request[, reflecting such Shareholder's stake in and position with respect to the Company (i.e. founder, senior manager, employee,

passive investor, [other])). Such representations and warranties shall include, but not be limited to, the following: ..... Representations and warranties regarding the future shall be excluded. Except as otherwise provided for herein and unless the Relevant Shareholders may reasonably request otherwise (in particular because they agreed to such term or condition with respect of their Shares), the terms and conditions of ..... regarding representations and warranties, indemnification and remedies shall apply, mutatis mutandis.

(d) Each Other Shareholder shall bear its own costs and taxes imposed on it.

## **6. Purchase Option**

### **6.1. Triggering Events**

The Parties (for the purposes of this Article 8.6 the "Option Parties") shall have an exclusive and irrevocable option (the "Purchase Option") to purchase the Shares of another Party (the "Restricted Party") in proportion to the nominal value of their shareholdings in the Company or in such other proportions and/or other terms as they may agree in writing between themselves if any of the following events (the "Triggering Event") occurs:

(a) the Restricted Party dies, becomes incapable to act or otherwise loses its capacity to exercise its rights and obligations under this Agreement;

(b) the Restricted Party becomes insolvent, bankrupt or petitions or applies to any court, tribunal or other body or authority for creditor protection or for the appointment of, or there shall otherwise be appointed, any administrator, receiver, liquidator, trustee or other similar officer of the Restricted Party or of all or a substantial part of the Restricted Party's assets;

(c) the Restricted Party commits a criminal act against the interests of a Party, of the Company or of any of its subsidiaries;

(d) the Restricted Party materially breaches this Agreement, unless such breach and its effects are fully cured within ..... Calendar days upon notification in writing of the breach and its effects by any other Party; a material breach shall include, without limitation:

- i. any delay in the payment of Shares subscribed for or payments into the reserves or loans to be granted to the Company pursuant to any written agreement;
- ii. any transfer, pledge or other encumbrance of Shares in violation of this Agreement.

(e) any board membership, employment or consultancy agreement, as the case may be, between a Restricted Party and the Company is terminated based on a material, willful or grossly negligent breach of the duties as a board member, the employment agreement or consultancy agreement by such Restricted Party (bad leaver);

(f) any board membership, employment or consultancy agreement, as the case may be, between a Restricted Party and the Company is ordinarily terminated (good leaver).

## **6.2. Exercise of Purchase Option**

The Restricted Party, its legal successor, receiver, insolvency judge or any other person with the right to act on behalf of the Restricted Party or its estate, shall notify the other Parties of the occurrence of any Triggering Event with respect to such Restricted Party. Upon receipt of such notice or upon a Triggering Event becoming known to the other Parties, such other Parties shall be entitled to purchase all or part of the Shares held by the Restricted Party, in proportion to the nominal value of their shareholdings or in such other proportions as they may agree in writing between them, and, in case of the occurrence of any of the Triggering Events (a) or (f), at the fair market value of the Shares. Without prejudice to any other rights or remedies, in case of the occurrence of any of the Triggering Events (b), (c), (d) or (e), the purchase price shall be the lower of the fair market value and the nominal value of the Shares.

If the Parties cannot agree on the fair market value, each Party may request its determination by [name of independent expert], or if [name of alternative independent expert] refuses or is not able to act, by an experienced international accounting firm appointed by ..... (the "Expert") on the basis of a valuation of the Company using methods customarily used at that time to establish the value of businesses in that industry, excluding any control premium for obtaining a majority of the voting rights in the Company or any block premium. The fair market value as determined by the Expert shall be binding and final on the Parties, unless based on calculation errors, in which case the fair market value as corrected by the Expert shall be binding.

The Option Parties who intend to exercise the Purchase Option shall notify the Restricted Party and the other Parties of their intent to exercise the Purchase Option within ..... Calendar days following receipt of notice of a Triggering Event or, as the case may be, following such Triggering Event becoming known to them, and shall thereafter commence the valuation procedure by mandating the Expert if no agreement on the price can be reached within another ..... Calendar days. The Option Parties shall exercise the Purchase Option no later than ..... Calendar days following agreement on the fair market value or receipt of the final determination of the fair market value from the Expert by giving written notice to the other Parties. The Restricted Party, on the one hand, and the Option Parties who announced their intent to exercise the Purchase Option, on the other hand, shall each bear half of the costs of the Expert.

#### **ARTICLE 9. DEED OF ACCESSION**

The Company must not allot or issue or register a transfer of any Shares to any person who is not a party to this agreement until that person has executed and delivered to the Company a Deed of Accession.

Any allotment, issue or transfer is void and of no effect unless and until the relevant Deed of Accession has been delivered.

#### **ARTICLE 10. NON-COMPETITION**

14. Each of the Shareholders - notwithstanding explicit written approval of all Shareholders - commit themselves to refrain during the period in which they directly or indirectly hold Shares and for a period of [ ] year thereafter, in the geographical areas in which the Company or its present and future subsidiaries operate or intend to operate, other than for the benefit of the Company, directly or indirectly:

1.14.1 to participate in or otherwise be financially involved with, and/or, be employed as adviser or employee, for a company that offers or develops products and/or services that are in competition with the products and/or services the Company or its present and future subsidiaries offer or develop;

1.14.2 to contact the employees of the Company to induce them to terminate their employment with the Company, or to offer them directly or indirectly an employment contract or management contract; or

1.14.3 to contact clients, customers, suppliers and/or other business relations of the Company for the purpose of offering them (on behalf of a third party) products and/or services that are in competition with the products and/or services of the Company or to induce them to break off their relationship with the Company.

15. On the occurrence of any event deemed to be a breach of paragraph 1 of this Article, the Party responsible for the breach shall pay the Company a penalty of € [ ] for each breach and an additional penalty of € [ ] for each day or part thereof that aforementioned breach continues, without prejudice to the Company's rights to recover damages in excess of the amount of such penalty.

#### **ARTICLE 11. CONFIDENTIAL INFORMATION**

No Shareholder shall, at any time or under any circumstances, without the consent of the Company, directly or indirectly communicate or disclose to any person (other than the other Shareholders and its or their employees, agents, advisors and representatives) or make use of any confidential knowledge or information howsoever acquired by such Shareholder relating to or concerning the customers, products, technology, trade secrets, systems or operations, or other confidential information regarding the property, business and affairs of the Company (Confidential Information) except for:

- Information that becomes generally known in the industry to which the business of the Company is related other than through a breach of this Agreement;
- Information that is lawfully obtained from a third party without breach of this Agreement by the Shareholder;
- Information that is reasonably required to be disclosed by a Shareholder to protect its interests in connection with any proposed Transfer of Shares that is pursuant or subject to this Agreement; or
- Information that is required to be disclosed by law or by the applicable regulations or policies of any regulatory agency of competent jurisdiction or any stock exchange, provided that the Shareholder gives the Company prompt written notice of the compelled disclosure and

cooperates with the Company, at the Company's expense, in seeking a protective order or any other protections available to limit the disclosure of the Information.

If a Shareholder ceases to be a shareholder of the Company, the Shareholder shall use all reasonable efforts to ensure that all information and all copies thereof are either destroyed or returned to the Company if the Company so requests, and shall not, directly or indirectly, use for the Shareholder's own purposes, any information discovered or acquired by the Shareholder or the Shareholder's advisors. The Shareholder's obligations in this shall be in addition to and not in derogation of any other obligation of confidentiality owed to the Company by other Shareholders who are employees of or consultants to the Company.

## **ARTICLE 12. NOTICES**

### **1. Giving notices**

Any notice or communication given to a party under this agreement is only given if it is in writing and sent in one of the following ways:

- Delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) set out below.
- Faxed to that party at its fax number and marked for the attention of the relevant department or officer (if any) set out below.

#### **[Company]**

Name: [Name]

Address: [Postal address]

Fax number: [Fax number]

Attention: [Name]

#### **[Shareholder 1]**

Name: [Name]

Address: [Postal address]

Fax number: [Fax number]

Attention: [Name]

**[Shareholder 2]**

Name: [Name]

Address: [Postal address]

Fax number: [Fax number]

Attention: [Name]

**2. Change of address or fax number**

If a party gives the other party three business days' notice of a change of its address or fax number, any notice or communication is only given by that other party if it is delivered, posted or faxed to the latest address or fax number.

**3. Time notice is given**

Any notice or communication is to be treated as given at the following time:

- If it is delivered, when it is left at the relevant address.
- If it is sent by post, two (or, in the case of a notice or communication posted to another country, nine) business days after it is posted.
- If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.



However, if any notice or communication is given, on a day that is not a business day or after 5pm on a business day, in the place of the party to whom it is sent it is to be treated as having been given at the beginning of the next business day.

## **ARTICLE 13. DURATION**

16. This Agreement is entered into for an indefinite period.

17. A Party shall cease to be a party to this Agreement for the purpose of receiving benefits and enforcing his rights from the date that 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 such cessation).

18. The Agreement shall be terminated by operation of law if all Shares are held by one party.

19. The provisions of Articles 10 (Confidential Information), 13.7 (Governing law and jurisdiction) shall survive termination of this Agreement.

## **ARTICLE 14. MISCELLANEOUS**

### **1. Approvals and consents**

Unless this agreement expressly provides otherwise, a party may give or withhold an approval or consent in that party's absolute discretion and subject to any conditions determined by the party. A party is not obliged to give its reasons for giving or withholding a consent or approval or for giving a consent or approval subject to conditions.

### **2. Assignments and transfers**

A party must not assign or transfer any of its rights or obligations under this agreement without the prior written consent of each of the other parties.

### **3. Costs**

Except as otherwise set out in this agreement, each party must pay its own costs and expenses in relation to preparing, negotiating, executing and completing this agreement and any document related to this agreement.

### **4. Entire agreement**

This agreement contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this agreement was executed.

#### **5. Execution of separate documents**

This agreement is properly executed if each party executes either this document or an identical document. In the latter case, this agreement takes effect when the separately executed documents are exchanged between the parties.

#### **6. Further acts**

Each party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this agreement and all transactions incidental to it.

#### **7. Governing law and jurisdiction**

This agreement is governed by the law of ..... The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

#### **8. Inconsistency with Constitution**

If there is any inconsistency between this agreement and the Constitution then the parties agree to abide by this agreement and to do everything required to change the Constitution so that it is consistent with this agreement.

#### **9. No partnership or agency**

Nothing contained or implied in this agreement will create or constitute, or be deemed to create or constitute, a partnership between the parties. A party must not act, represent or hold itself out as having authority to act as the agent of or in any way bind or commit the other parties to any obligation.

#### **10. Variation**

No variation of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.

#### **11. Waivers**

A waiver of any right, power or remedy under this agreement must be in writing signed by the party granting it. A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement does not amount to a waiver.

**12. Severability**

If at any time any provision of this agreement or any part thereof is or becomes invalid or unenforceable, then neither the validity nor the enforceability of the remaining provisions or the remaining part of the provision shall in any way be affected or impaired thereby. The parties agree to replace the invalid or unenforceable provision or part thereof by a valid or enforceable provision which shall best reflect the parties' original intention and shall to the extent possible achieve the same economic result.

This Agreement is signed on [ \_ ].

<p>on behalf of</p> <p>[ _ ]</p> <p>_____</p> <p>[***]</p>	<p>on behalf of</p> <p>[ _ ]</p> <p>_____</p> <p>[***]</p>
<p>on behalf of</p> <p>[ _ ]</p> <p>_____</p> <p>[***]</p>	<p>on behalf of</p> <p>[ _ ]</p> <p>_____</p> <p>[***]</p>
<p>on behalf of</p>	<p>on behalf of</p>

<p>[_]</p> <p>_____</p> <p>[***]</p>	<p>[_]</p> <p>_____</p> <p>[***]</p>
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