**SUBSCRIPTION AGREEMENT**

**Explanatory Note**

A subscription agreement sets out the terms and conditions pursuant to which an investor (or group of investors) will subscribe for shares in a company.

This model subscription agreement assumes:

* a Singapore incorporated private company and its founders are entering into a subscription agreement with multiple investors for a Series-A financing round, with one investor leading such financing round;
* Series-A preference shares are being issued by the company to the investors;
* prior to the issuance of the Series-A preference shares, the founders are the only shareholders of the company and hold ordinary shares in the company;
* all the investors that are party to this agreement will subscribe for the Series-A preference shares, and pay the corresponding subscription price, at the same time;
* signing and completion of this agreement occurs at the same time; and
* a shareholders' agreement between the company, the investors and the founder will come into effect at completion of this agreement.

Further explanatory notes are included in this model subscription agreement.

|  |
| --- |
| DATED **[●]** |
| **THE INVESTORS**  **and**  **THE FOUNDERS**  **and**  **THE COMPANY** |
| **SUBSCRIPTION AGREEMENT**  **relating to [●]** |
|  |

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**This Agreement** is made on **[•]** **among:**

**(1)** The persons whose names and addresses are set out in Part 1 of Schedule 1 (together the "**Investors**" and each an "**Investor**");

**(2)** The persons whose names and addresses are set out in Part 2 of Schedule 1 (together the "**Founders**" and each a "**Founder**"); and

**(3)** **[●]** (Company Registration Number: **[•]**), a company incorporated under the laws of Singapore) whose registered office is at **[●]** (the "**Company**"),

(collectively, the "**Parties**" and each, a "**Party**").

**Whereas:**

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

**(B)** As at the date of this Agreement, the Company has an issued and paid-up capital of **[[●]** comprising **[●]** Ordinary Shares**]**. Further details of the Company's share capital are set out in Part 1 of Schedule 3.

**(C)** The Investors have agreed to subscribe for, and the Company has agreed to allot and issue to the Investors, the Subscription Shares on the terms and subject to the conditions of this Agreement. Immediately following Completion, the shareholding structure of the Company will be as set out in Part 2 of Schedule 3.

**It is agreed** as follows:

# Subscription for and Issuance of Subscription Shares

## Subject to the provisions of Clauses 2.1 and 2.2, each Investor agrees to subscribe for, and the Company agrees to allot and issue to such Investor, at Completion the number of Subscription Shares set opposite its name below, free from any Encumbrances, in consideration for the aggregate subscription price (the "**Subscription Consideration**") set opposite its name below:

| **(1)**  **Name of Investor** | **(2)**  **Number of**  **Subscription Shares** | **(3)**  **Subscription Consideration (S$)** |
| --- | --- | --- |
| **[•]** | **[•]** | **[•]** |
| **[•]** | **[•]** | **[•]** |
| Total | **[•]** | **[•]** |

## Each Founder hereby irrevocably waives any and all pre-emption rights or rights of first refusal he may have, pursuant to the Company's constitution or otherwise, in relation to the allotment and issue of the Subscription Shares under this Agreement.

# Completion

## Completion shall take place on the date of this Agreement.[[1]](#footnote-2)

## At Completion the following events shall occur:

## each Investor shall:

## subscribe for the relevant Subscription Shares set out against its name in the second column of the table in Clause 1.1 and pay the relevant Subscription Consideration by electronic funds transfer to the bank account of the Company as set out below and payment made in accordance with this Clause 2.2.1(i) shall constitute a good discharge for each Investor of its obligations under this Clause 2.2.1(i):

Account name : **[•]**

Bank : **[•]**

Account number : **[•]**

Swift Code : **[•]**

## **[enter into the Shareholders' Agreement and deliver to the Company a number of original copies for the other parties thereto, duly executed by it;]**

## the Company shall deliver to each Investor a copy of the written resolutions passed by the Board,[[2]](#footnote-3) in a form approved by **[the Lead Investor]** prior to Completion, under which the Board shall have:

## approved the allotment and issue of the Subscription Shares credited as fully paid to the Investors and the entry of the Investors in the Company's electronic register of members in respect thereof;

## adopted the Amended Constitution;

## approved and authorised the execution and delivery to each Investor of a share certificate for the relevant number of Subscription Shares set out against its name in the second column of the table in Clause 1.1;

## **[noted the resignations of each of [●] and [●] as directors of the Company;]**[[3]](#footnote-4)

## approved the appointment of **[●]** as a director of the Company;

## **[approved and authorised** **the execution by the Company of the Shareholders' Agreement;] [and]**

## **[approved and authorised** **the execution by the Company of the Employment Agreements;]** **[and]**

## **[*insert such other resolutions as may be required for the Board to approve in relation to the transactions to be effected in connection with Completion*][; and]**

## passed such other resolutions as may be required to carry out the obligations of the Company under this Agreement;

## the Company shall deliver to each Investor a copy of the written resolutions passed by the Shareholders, in a form approved by **[the Lead Investor]** prior to Completion, under which the Shareholders shall have:[[4]](#footnote-5)

* + - 1. authorised the allotment and issue of the Subscription Shares and any Ordinary Shares to be allotted and issued on the conversion of any Subscription Shares; **[and]**
      2. adopted the Amended Constitution; **[and]**
      3. **[waived pre-emption rights in respect of the allotment and issue of the Subscription Shares; and]**

## the Company shall allot and issue to each Investor the relevant number of Subscription Shares set out against its name in the second column of the table in Clause 1.1 credited as fully paid to such Investor;

## the Company shall lodge the relevant return of allotment with the Registrar to update the Company's electronic register of members to reflect each Investor as the holder of the relevant number of Subscription Shares set out against its name in the second column of the table in Clause 1.1;

## subject to the Company's electronic register of members being updated, the Company shall issue and deliver to each Investor a share certificate for the relevant number of Subscription Shares set out against its name in the second column of the table in Clause 1.1;

## **[the Company shall enter into the Shareholders' Agreement and deliver to each Investor an original copy duly executed by it and all the other parties thereto (save for such Investor);] [and]**

## **[the Company and each of [the Founders] shall enter into the Employment Agreements;] [and]**

## **[*insert other Completion items, as relevant*]**.

## An Investor shall not be obliged to perform any of its obligations under this Clause 2 unless the Company simultaneously performs its obligations under this Clause 2, and *vice versa*.

# Post-Completion Undertakings [[5]](#footnote-6)

**[*insert any post-Completion undertakings by the Company and/or the Founders*]**

# Warranties

## The Warrantors **[jointly and severally] / [severally and not jointly]** warrant to the Investors that each and every Warranty set out in Schedule 4 is true, accurate and not misleading at the date of this Agreement.

## The Warranties are qualified by the facts and circumstances Fairly Disclosed and subject to any exceptions expressly provided for under this Agreement. No other knowledge of any Investor relating to any Group Company (actual, constructive or imputed) prevents or limits a claim made by any Investor for breach of Clause 4.1. The Warrantors shall not invoke any Investor's knowledge (actual, constructive or imputed) of any fact or circumstance which might make a Warranty untrue, inaccurate or misleading as a defence to a Claim for breach of Clause 4.1 or to reduce any amount recoverable.

## Each Warranty is to be construed independently and (except where this Agreement provides otherwise) is not limited by any provision of this Agreement or another Warranty.

## The rights and remedies of each Investor in respect of any breach of any Warranty shall not be affected by Completion or any investigation made by or on behalf of any Investor into the affairs of the Group Companiesexcept a specific and duly authorised written waiver or release.

## Without limitation to the rights of the Investors under this Agreement, in the case of a Claim against the Company by any Investor, the Company undertakes not to make any counterclaim or claim for a right of contribution or indemnity against the other Warrantors and, in the case of a Claim against any or all of the other Warrantors, each of the other Warrantors undertakes not to make any counterclaim or claim for a right of contribution or indemnity against any Group Company or any other Warrantor.

## Any Warranty qualified by the Warrantors' awareness, the expression "**so far as the Warrantors are aware**" or any similar expression shall, unless otherwise stated, be deemed to refer to the actual knowledge of the Warrantors and such knowledge which the Warrantors would have had if they had made reasonable enquiry of all relevant persons.

## Each Founder undertakes not to make any claim against the Group Companies or their respectivedirectors, officers, employees or agents which he may have in respect of a misrepresentation, inaccuracy or omission in or from information or advice provided by such person(s) for the purpose of assisting such Founder to make any representation, give any Warranty or prepare the Disclosure Letter. The Founders hereby irrevocably waive any and all claims against the Group Companies and their respectivedirectors, officers, employees and agents in respect of any information or advice so provided.

## The Warrantors hereby covenant with each Investor to indemnify and save harmless such Investor from and against any and all Losses which such Investor may at any time and from time to time sustain, incur or suffer as a result of or arising out of any breach of any Warranty.

# Limitations on Warranty Claims

## Notwithstanding any other provision in this Agreement, the limitations set out in this Clause 5 shall not apply to any Claim in relation to paragraphs **[1 and 2]** of Schedule 4.

## The Warrantors shall not be liable in respect of any Claim unless written notice of such Claim (with reasonable details) shall have been given to the Warrantors within:

## **[in the case of a Claim in relation to paragraphs [•] of Schedule 4, [●] years following Completion; and**

## **in the case of any other Claim, [two] years following Completion,]**

## but failure to give reasonable details of any Claim shall not prevent the Investors from proceeding with such Claim otherwise made in accordance with this Agreement.

## The aggregate liability of the Warrantors in respect of any and all Claims by an Investor shall be limited to:

## in the case of the Company, an amount equal to **[the Subscription Consideration paid by such Investor pursuant to this Agreement]**; and

## in the case of each Founder, S$**[●]**.

## **[The Warrantors shall not be liable in respect of any Claim by an Investor unless:**

## **the amount recoverable from the Warrantors in respect of such Claim exceeds S$[•]. Where any number or a series of Claims by such Investor arises out of the same or substantially similar facts or circumstances, such Claims shall be aggregated and form a single Claim for the purposes of this Clause 5.4.1; and**

## **the aggregate amount recoverable from the Warrantors in respect of that Claim, and any other Claims from such Investor that exceed the threshold in Clause 5.4.1, exceeds S$[•],**

## **in which case, subject as provided elsewhere in Clause 5, the Warrantors shall be liable for the entire amount of all such Claims and not merely the excess over S$[•].]**

## The Warrantors shall not be liable in respect of any breach of any Warranty:

## if such breach occurs by reason of any matter which would not have arisen but for the passing of, or any change in, after the date of this Agreement, any law not actually or prospectively in effect at the date of this Agreement or by reason of any change to any Taxing Authority's Taxing practice occurring after the date of this Agreement;

## to the extent that proper allowance, provision or reserve has been made in the Financial Statements or in the Management Accounts for the matter giving rise to the Claim; or

## to the extent that such breach arises as a result of any change in the accounting policy, bases or practice of **[the Company]** / **[any Group Company]** introduced or having effect after the date of this Agreement (unless such changes are required to correct errors or because relevant generally accepted accounting principles have not been complied with).

## An Investor shall be entitled to make a Claim in respect of liability which is contingent provided that written notice of such Claim (giving as far as practicable the amount and details of the Claim) is given to the Warrantors before the expiry of the period specified in Clause 5.2.

## Any Claim notified by an Investor to the Warrantors pursuant to this Clause 5 shall (if it has not been previously satisfied, settled or withdrawn) be deemed to be irrevocably withdrawn **[six]** months after notice of such Claim has been given by an Investor or, in the case of any contingent liability, **[six]** months after such contingent liability becomes an actual liability and is due and payable, unless legal proceedings in respect of it:

## have been commenced by being both issued and served; and

## are being and continue to be pursued with reasonable diligence.

## An Investor may not recover from the Warrantors in respect of a Claim under this Agreement more than once for the same loss.

## Nothing in this Agreement shall prejudice an Investor's common law duty to mitigate any loss suffered by it as a result of a breach of a Warranty and which is the subject of a Claim.

## Nothing in this Agreement shall have the effect of limiting or restricting any liability of the Warrantors in respect of a Claim arising as a result of any fraud, dishonesty, wilful concealment or wilful misrepresentation by or on behalf of a Warrantor.

# Confidentiality

## Each Party undertakes to keep confidential and at all times not disclose publicly or to any third party without the prior written consent of the other Parties the existence and subject matter of this Agreement, the Shareholders' Agreement and all other agreements entered into pursuant to this Agreement, the substance of any negotiations between the Parties relating to this Agreement (and any such other agreements) and any other information received or obtained as a resulting of entering into this Agreement (and any such other agreements), unless and to the extent that:

## the disclosure is required by law, any governmental or regulatory body or any recognised stock exchange on which the shares of any Party are listed;

## the disclosure is required for the purpose of any judicial proceedings arising out of this Agreement or any other agreement entered into pursuant to this Agreement;

## the disclosure is made to the professional advisers, consultants, related corporations or affiliates of any Party (collectively, the "**Representatives**") for the purpose of this Agreement or for a purpose connected or related to the operation of this Agreement, on terms that each Representative receiving the information agrees to comply with the provisions of this Clause 6.1 in respect of such information as if it were a party to this Agreement;

## the information is or becomes publicly available (other than by breach of this Agreement);

## the Party whose information is to be disclosed has given prior written approval to the disclosure; or

## the information is independently developed by the recipient or is lawfully in its possession prior to the disclosure to it of the information,

## provided that prior to disclosure of any information pursuant to Clause 6.1.1, the Party concerned shall, to the extent permitted by law, promptly notify the other Party or Parties (as the case may be) of such requirement.

## Clause 6.1 shall not prohibit disclosure of any information by any Investor for the purpose of effecting a sale of Shares by such Investor, if such disclosure is made to a third party which had entered into *bona fide* discussions with such Investor to purchase such Shares (the "**Potential Purchaser**"), or to the professional advisers or financiers of the Potential Purchaser, and if the Potential Purchaser and such professional advisers or financiers (as the case may be) agree to keep such information confidential on terms which are reasonable for the protection of the interests of the Group by the execution of confidentiality agreements in favour of the Company.

## The obligations contained in this Clause 6 shall endure, even after the termination of this Agreement, without limit in point of time except and until any confidential information enters the public domain as set out above.

# Variation

No variation of this Agreement shall be effective unless in writing and signed by or on behalf of each Party.

# Assignment

## All rights and obligations hereunder are personal to the Parties and a Party may not assign or transfer all or part of its rights or obligations under this Agreement without the prior written consent of the other Parties.

# Indulgence, Waiver, etc.

## No failure on the part of any Party to exercise and no delay on the part of any Party in exercising any right hereunder will operate as a release or waiver thereof, nor will any single or partial exercise of any right under this Agreement preclude any other or further exercise of it.

# Costs

## The Company shall pay at Completion all legal, accounting and due diligence fees and disbursements of **[the Lead Investor]** in relation to the negotiation, preparation, execution, performance and implementation of this Agreement, each document referred to in it and other agreements forming part of the transaction, up to a maximum aggregate amount of S$**[●]**.

## The Company, the Founders and the other Investors shall bear their own costs and disbursements incurred in the negotiations leading up to and in the preparation of this Agreement and of matters incidental to this Agreement.

# Whole Agreement

## This Agreement contains the whole agreement between the Parties relating to the subject matter of this Agreement at the date of this Agreement to the exclusion of any terms implied by law which may be excluded by contract and supersedes any previous written or oral agreement between the Parties in relation to the matters dealt with in this Agreement.

## So far as is permitted by law and except in the case of fraud, each Party agrees and acknowledges that its only right and remedy in relation to any representation, warranty or undertaking made or given in connection with this Agreement shall be for breach of the terms of this Agreement to the exclusion of all other rights and remedies (including those in tort or arising under statute).

## In Clauses 11.1 to 11.2, "**this Agreement**" includes **[the Disclosure Letter]** **[and]** **[all documents entered into pursuant to this Agreement]**.

# Notices

## Any notice, communication and/or information to be given in connection with this Agreement (each, a "**Notice**"):

## must be in writing in English;

## must be addressed to the Party to whom it is to be given ("**Addressee**") at the address or e-mail address set out below or to any other address or e-mail address as notified by the Addressee for the purposes of this Clause:

## if to the Company:

## Address: **[●]**

## Attention: **[●]**

## Title: **[●]**

## E-mail address: **[●]**

## if to any Investor, at the address or e-mail address set out against its name in Part 1 of Schedule 1; or

## if to any Founder, at the address or e-mail address set out against his name in Part 2 of Schedule 1;

## must be either:

## delivered by hand or sent by pre-paid registered post (by registered airmail in the case of international service) to the Addressee; or

## sent by e-mail to the Addressee's e-mail address; and

## is deemed to be received by the Addressee in accordance with Clause 12.2.

## A Notice sent according to Clause 12.1 shall be deemed to have been received:

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

## if sent by pre-paid registered post, on the **[second]** Business Day after the date of posting (or if sent by registered airmail, on the **[sixth]** Business Day after the date of posting); or

## if sent by e-mail, when the sender receives an automated message confirming delivery,

except that if a Notice is received on a day which is not a Business Day or is after 5.30 p.m. (Addressee's time) on a Business Day, it shall be deemed to have been received at 9:30 a.m. (Addressee's time) on the following Business Day.

# General

## **Rights of Third Parties**: A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act, Chapter 53B of Singapore.

## **Remedies**: No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy which is otherwise available at law, in equity, by statute or otherwise, and each and every other remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity, by statute or otherwise. The election of any one or more of such remedies by any of the Parties shall not constitute a waiver by such Party of the right to pursue any other available remedies.

## **Severance**: If any provision of this Agreement or part thereof is rendered void, illegal or unenforceable by any legislation to which it is subject, it shall be rendered void, illegal or unenforceable to that extent and it shall in no way affect or prejudice the enforceability of the remainder of such provision or the other provisions of this Agreement.

## **Counterparts**: This Agreement may be signed in any number of counterparts and by the Parties on separate counterparts, each of which, when so executed, shall be an original, but all counterparts shall together constitute one and the same document. Signatures may be exchanged by e-mail, with original signatures to follow. Each Party agrees to be bound by its own electronic signature and that it accepts the electronic signature of the other Parties.

## **Governing Law**: This Agreement shall be governed by, and construed in accordance with, the laws of Singapore.

## **Dispute Resolution**

## In event of any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination (the "**Dispute**"), a Party may give notice to the other Parties to submit the Dispute to mediation to the Singapore Mediation Centre ("**SMC**").[[6]](#footnote-7)

## If the Parties agree to submit such Dispute to SMC, the Parties will have **[30 days]** from the date of submission of such Dispute to SMC to resolve such Dispute in accordance with SMC's Mediation Procedure in force for the time being. Unless otherwise agreed by the Parties, the mediator(s) will be appointed by SMC and the mediation will take place in Singapore in the English language and the Parties shall be bound by any settlement agreement reached.

## If the Parties do not agree to submit the Dispute to SMC or the Parties are unable to resolve the Dispute through mediation during the period set out in Clause 13.6.2, in such case,

## **[OPTION 1: COURT]**

## **[the Parties irrevocably agree that the courts of Singapore are to have exclusive jurisdiction to settle any such Dispute.][[7]](#footnote-8)**

## **[OPTION 2: ARBITRATION]**

## **[the Dispute shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre[[8]](#footnote-9) in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force, which rules are deemed to be incorporated by reference in this Clause. The seat of the arbitration shall be Singapore. The Tribunal shall consist of one arbitrator. The language of the arbitration shall be English.]**

## **[Process Agent: [•] irrevocably appoints [•] (the "Process Agent") with its address at [•] as its agent to receive, for it and on its behalf, service of process in Singapore in any legal action or proceedings arising out of or in connection with this Agreement. Items served at this address must be marked for the personal attention of [•]. Such service shall be deemed completed on delivery to the Process Agent (whether or not it is forwarded to and received by [•]). If for any reason the Process Agent ceases to be able to act as such or no longer has an address in Singapore, [•] irrevocably agrees to appoint a substitute Process Agent acceptable to [•], and to deliver to [•] a copy of the new Process Agent's written acceptance of that appointment, within thirty days.][[9]](#footnote-10)**

# Interpretation

In this Agreement, unless the context otherwise requires:

## **Definitions**

"**Act**" means the Companies Act, Chapter 50 of Singapore;

"**Addressee**" shall have the meaning ascribed to it in Clause 12.1.2;

"**Amended Constitution**" means the amended constitution of the Company in the agreed form to be adopted on or prior to Completion;

"**Board**" means the board of directors for the time being of the Company;

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

"**Business Day**" means a day on which banks are open for business in Singapore (excluding Saturdays, Sundays or public holidays);

"**Business Plan**" means the business plan for the Group Companies in the agreed form;

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

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

"**Completion**" means completion by the Parties of their respective obligations in accordance with Clauses 2.1 and 2.2;

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

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

"**Computer Software**" means the computer programs owned or used by the Company and all related manuals and documentation;

"**Computer System**"means the Computer Hardware, Computer Data and Computer Software;

"**Constitution**" means the constitution of the Company as may be amended, restated or replaced from time to time;

"**Data Protection Legislation**" means all laws and regulations relating to the collection, storage, transfer, disclosure, use or processing of Personal Data or personally identifiable information in any jurisdiction in which the Company operates, including the PDPA;

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

"**Dispute**" shall have the meaning ascribed to it in Clause 13.6.1;

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

"**Encumbrance**" means any mortgage, charge, security interest, lien, pledge, assignment by way of security, equity, claim, right of pre-emption, option, covenant, restriction, reservation, lease, trust, order, decree, judgment, title defect (including retention of title claim), conflicting claim of ownership or any other encumbrance of any nature whatsoever (whether or not perfected other than liens arising by operation of law);

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

"**Financial Statements**" means **[the audited financial statements of the Company] / [the audited [consolidated] financial statements of the [Group Companies]]** for the period ended on the Financial Statements Date;

"**Financial Statements Date**" means **[●]**;

"**Grant Funding**" means any funding, grant or other monetary aid or assistance from any government or regulatory body or authority, any statutory undertaking or any other public body or authority;

"**Group**" means the Group Companies, taken as a whole;

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

"**GST**" means goods and services tax charged under the Goods and Services Tax Act, Chapter 117A of Singapore;

"**Initial Subscription Price Per Share**" means **[•]**;

"**Intellectual Property**" means all intellectual property rights, whether registered or not, including pending applications for registration of such rights and the right to apply for registration or extension of such rights including patents, petty patents, utility models, design patents, designs, copyright (including moral rights and neighbouring rights), database rights, rights in integrated circuits and other sui generis rights, trade marks, trading names, company names, service marks, logos, the get‑up of products and packaging, geographical indications and appellations and other signs used in trade, internet domain names, social media user names, rights in know‑how and any rights of the same or similar effect or nature as any of the foregoing anywhere in the world;

"**IRAS**" means the Inland Revenue Authority of Singapore;

"**Lead Investor**" means **[●]**;

"**Losses**" means all losses, liabilities, costs (including legal costs and experts' and consultants' fees), charges, expenses, actions, proceedings, claims and demands;

"**Liquidity Event**" shall mean:

(i) a liquidation, dissolution or winding up of the Company;

(ii) a consolidation, merger, scheme of arrangement or amalgamation of the Company with or into any other corporation or corporations or non-corporate business entity or any other corporate reorganisation, in which the shareholders of the Company immediately prior to such consolidation, merger or reorganisation, own less than a majority of the surviving or acquiring entity's voting power immediately after such consolidation, merger or reorganisation;

(iii) a sale, lease or disposition of all or substantially all of the assets of the Company; or

(iv) a transaction or series of transactions in which more than 50 per cent. of the voting power of the Company is disposed of;

"**Management Accounts**" means the management accounts of the **[Company]** for the period starting on the Financial Statements Date and ending on **[●]** 20**[●]**, in the agreed form;

"**Notice**" shall have the meaning ascribed to it in Clause 12.1;

"**Open Source Code**"means any software code that is distributed as "free software" or "open source software" or is otherwise distributed publicly in source code form under terms that permit modification and redistribution of such software, which includes, without limitation, software code that is licensed under the GNU General Public License, GNU Lesser General Public License, Mozilla License, Common Public License, Apache License, BSD License, Artistic License, or Sun Community Source License;

"**Ordinary Shares**" means ordinary shares in the capital of the Company;

"**PDPA**" means the Personal Data Protection Act 2012 (No. 26 of 2012 of Singapore);

"**Personal Data**"means all data which is defined to be "personal data" under the PDPA and all data which is protected as "personal data" or an equivalent, under any applicable Data Protection Legislation;

"**Potential Purchaser**" shall have the meaning ascribed to it in Clause 6.2;

**["Process Agent" shall have the meaning ascribed to it in Clause 13.7;]**

"**Properties**" means the properties described in Schedule 5;

"**Qualifying IPO**" means the closing of a firmly underwritten public offering of shares of the Company at a per share public offering price (prior to underwriting commission and expense) with a pre-money valuation of not less than S$**[•]**, for the purpose of and in connection with the admission of the Company to the Official List of the Singapore Exchange Securities Trading Limited or any other recognised securities exchange agreed by the Investors and the listing of the shares of the Company on such securities exchange, resulting in net proceeds of not less than S$**[•]** being raised;

"**Registrar**" means the Registrar of Companies appointed under the Act;

"**Representatives**" shall have the meaning ascribed to it in Clause 6.1.3;

"**Series A Shares**" means the series A preference shares in the capital of the Company having the rights set out in the Amended Constitution, including the terms and conditions set out in Schedule 6;

"**Shareholder**" means any shareholder of the Company from time to time (but excludes the Company holding Shares as Treasury Shares from time to time);

"**Shareholders' Agreement**" means the shareholders' agreement in relation to the Company to be entered into **[on even date with this Agreement]** among the Investors, the Founders and the Company;

"**Shares**" means issued shares in the capital of the Company, including the Ordinary Shares and the Series A Shares;

"**Singapore Dollar(s)**" and the sign "**S$**" mean the lawful currency of Singapore;

"**SMC**" shall have the meaning ascribed to it in Clause 13.6.1;

"**Subscription Consideration**" shall have the meaning ascribed to it in Clause 1.1;

"**Subscription Shares**"means the Series A Shares to be subscribed for by the Investors pursuant to Clause 1.1 and to be issued by the Company to the Investors pursuant to this Agreement;

"**Subsidiary**" means any subsidiary of the Company from time to time **[which as at the date of this Agreement include those, brief particulars of which, are set out in Part 2 of Schedule 2]**;

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

"**Taxing Authority**" means any governmental, state, federal, provincial, local governmental or municipal authority, body or official whether of Singapore or elsewhere in the world, which is competent to impose or collect Tax;

"**Treasury Shares**" means shares in the capital of the Company held by the Company as treasury shares;

"**Warranties**" means the warranty statements given by the Warrantors pursuant to Clause 4 and set out in Schedule 4 and "**Warranty**" means any one of them; and

"**Warrantors**" means the Company and each of the Founders.[[10]](#footnote-11)

## **Affiliate**: The word "**affiliate**" means, with respect to any specified person, any other person who, directly or indirectly, controls, is controlled by, or is under common control with such person, including without limitation any general partner, managing member, officer, director or trustee of such person, or any venture capital fund or investment company now or hereafter existing that is controlled by one or more general partners, managing members or investment adviser of, or shares the same management company or investment adviser with, such person.

## **Control**: The word "**control**" (including its correlative meanings, "**controlled by**", "**controls**" and "**under common control with**") shall mean, with respect to a corporation, the right to exercise, directly or indirectly, more than 50 per cent. of the voting rights attributable to the shares of the controlled corporation and, with respect to any person other than a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person.

## **Clauses, Schedules, etc.**: References to this Agreement include any Recitals and Schedules to it and references to Clauses and Schedules are to the clauses of, and schedules to, this Agreement. References to paragraphs and Parts are to paragraphs and parts of the Schedules. The Schedules form part of this Agreement and have the same force and effect as if expressly set out in the body of this Agreement.

## **References to Subsidiaries, Holding Companies and Related Corporations**: The words "**subsidiary**", "**holding company**" and "**related corporation**" shall have the same meanings in this Agreement as their respective definitions in the Act.

## **Headings**: The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

## **Including**: Unless a contrary indication appears, a reference in this Agreement to "**including**" shall not be construed restrictively but shall mean "**including without prejudice to the generality of the foregoing**" and "**including, but without limitation**".

## **Interpretation Act**: The Interpretation Act, Chapter 1 of Singapore, shall apply to this Agreement in the same way as it applies to an enactment.

## **Subsidiary Legislation**: References to a statute or statutory provision include any subsidiary or subordinate legislation made from time to time under that statute or statutory provision.

## **Modification etc. of Statutes**: References to a statute or statutory provision include that statute or statutory provision as from time to time modified, re-enacted or consolidated (whether before or after the date hereof), so far as such modification, re-enactment or consolidation applies or is capable of applying to any transaction entered into prior to Completion and (so far as liability thereunder may exist or can arise) shall also include any past statute or statutory provision (as from time to time modified, re-enacted or consolidated) which such statute or provision has directly or indirectly replaced.

## **Others**

## References to "**this Agreement**" includes all amendments, additions, and variations thereto agreed between the Parties.

## References to "**day**", "**month**" or "**year**" is a reference to a day, month or year respectively in the Gregorian calendar.

## References to a person include any company, limited liability partnership, partnership, business trust or unincorporated association (whether or not having separate legal personality).

## Except where the context specifically requires otherwise, reference to a party or parties is to a Party or Parties.

## Any reference to a document being "**in the agreed form**" is to a document in a form agreed between the Company and **[the Lead Investor]** and initialled or otherwise identified by, or on behalf of, each of them as such, with such alterations as may be agreed in writing between the Company and **[the Lead Investor]**.

## References to those of the Parties that are individuals include their respective legal personal representatives.

## References to "**writing**" or "**written**" include any non-transitory form of visible reproduction of words.

## Reference to "**issued Shares**" of any class or Shares of any class "**in issue**" shall exclude any Shares of that class held as Treasury Shares from time to time, unless stated otherwise.

## Reference to the "**holders**" of a class of Shares shall exclude the Company holding Shares of that class as Treasury Shares from time to time, unless stated otherwise.

## References to one gender include all genders and references to the singular include the plural and *vice versa*.

## References to a person connected with or to another person shall be interpreted within the meaning of "**connected person**" as defined in Section 2 of the Securities and Futures Act, Chapter 289 of Singapore.

## The expression "**electronic register of members**" refers to the electronic register of members of the Company kept and maintained by the Registrar pursuant to Section 196A of the Act.

## References to "**fully-diluted**" means on the basis of the total number of outstanding Ordinary Shares assuming all convertible securities (including preference shares) are converted or exchanged and all rights, options or warrants to subscribe for or acquire shares are exercised and including all Ordinary Shares reserved or authorised for future issuance or grant under any equity incentive, share option or similar plan of the Company.

## **[Save as otherwise expressly provided, all warranties, representations, undertakings, covenants and obligations given or made by the Warrantors are given or made on a joint and several basis.]**

## Any thing or obligation to be done under this Agreement which is required or falls to be done on a stipulated day, shall be done on the next succeeding Business Day, if the day upon which that thing or obligation is required or falls to be done falls on a day which is not a Business Day.

## 

1. Particulars of the Investors and the Founders

Part 1

The Investors

| **Name** | **Address and Notice Details** |
| --- | --- |
| **[●]** | Address: **[●]**  E-mail address: **[●]** |
| **[●]** | Address: **[●]**  E-mail address: **[●]** |

Part 2

The Founders

| **Name** | **Address and Notice Details** |
| --- | --- |
| **[●]** | Address: **[●]**  E-mail address: **[●]** |
| **[●]** | Address: **[●]**  E-mail address: **[●]** |

1. Particulars of the Company [and the Subsidiaries]

[Part 1]

**Particulars of the Company**

|  |  |
| --- | --- |
| Registered number: |  |
| Registered office: |  |
| Date and place of incorporation: |  |
| Directors: |  |
| Secretary: |  |
| Financial year end: |  |
| Charges: |  |
| Auditors: |  |
| Issued share capital  (including Treasury Shares): |  |

**[Part 2**

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

|  |  |
| --- | --- |
| Name of company: |  |
| Registered number: |  |
| Registered office: |  |
| Date and place of incorporation: |  |
| Directors: |  |
| Secretary: |  |
| Financial year end: |  |
| Charges: |  |
| Auditors: |  |
| Issued share capital  (including treasury shares):**]** |  |

1. Capitalisation

Part 1

Fully-diluted Capitalisation immediately prior to Completion

**[*insert capitalisation table*]**

**Part 2**

Fully-diluted Capitalisation immediately following Completion

**[*insert capitalisation table*]**

1. Warranties[[11]](#footnote-12)
2. Share Capital
   1. Part 1 of Schedule 3 sets out a true, complete, accurate and not misleading list of, as at immediately prior to Completion, all holders of Shares or options or other rights convertible into or exchangeable for shares of the Company, together with the number of Shares or rights held by each of them.
   2. Part 2 of Schedule 3 sets out a true, complete, accurate and not misleading list of, as at immediately after the allotment and issuance of the Subscription Shares at Completion, all holders of Shares or options or other rights convertible into or exchangeable for shares of the Company, together with the number of Shares or rights held by each of them.
   3. The Subscription Shares, when issued at Completion, will comprise **[•]** per cent. of the Company's allotted and issued share capital **[on a fully diluted and as-converted basis]**, will be duly authorised, properly allotted and issued as fully paid free of any Encumbrances, and will have the rights, powers and preferences of the Series A Shares as set out in Schedule 6 (Series A Share Terms).
   4. The Ordinary Shares issuable upon the conversion of the Series A Shares, when issued upon such conversion, will be duly authorised, properly allotted and issued as fully paid free from any Encumbrances.
   5. There is no Encumbrance, and there is no agreement, arrangement or obligation to create or give any Encumbrance, in relation to any of the Subscription Shares or shares or equity interests in the capital of any Group Company.
   6. Other than this Agreement, there is no agreement, arrangement or obligation requiring the issue, transfer, redemption or repurchase of, or the grant to a person of the right (conditional or not) to require the issue, transfer, redemption or repurchase of, the Shares or any shares or equity interests in the capital of any Group Company (including, without limitation, any right of pre-emption or options or other rights convertible into or exchangeable or exercisable for any shares or equity interests in the capital of any Group Company).
   7. Other than as set out in Part 2 of Schedule 2, no Group Company has or has ever had any subsidiary and has not at any time been the holding company of any company or a member of or the beneficial owner of any shares, securities or other interest in any company or other person.
3. Capacity and Authority
   1. The Company is duly incorporated and validly existing under the laws of Singapore and each other Group Company is duly incorporated under the respective laws of its jurisdiction of incorporation, registration or organisation and has been in continuous existence since its incorporation, registration or organisation.
   2. Each Warrantor has full right and authority to enter into and perform its obligations under this Agreement on the terms and conditions hereunder and this Agreement represents its legal, valid and binding obligations enforceable in accordance with its terms.
   3. The execution and delivery by the Warrantors of this Agreement and the documents referred to herein, and compliance with their respective terms, shall not breach or constitute a default under the Company's constitution, or any other agreement or instrument to which any Warrantor is a party or by which any Warrantor is bound, and shall not constitute a breach under any order, judgment, decree or other restriction applicable to any Warrantor.
4. Information
   1. All information contained in the Disclosure Letter, as at the date of this Agreement, and the information contained or referred to in the Recitals and Schedule 2, Schedule 3 and Schedule 5, is true, complete and accurate and not misleading.
   2. All information which has been provided by or on behalf of the Company or its authorised representatives to the Investors, and their respective advisers or agents in the course of the due diligence conducted by the Investors and the negotiations leading to this Agreement is true, complete, accurate and not misleading.
   3. All information about the Subscription Shares and each Group Company's business which might be material for disclosure to a buyer of the Subscription Shares has been disclosed to the Investors in writing.
5. Business Plan
   1. The Business Plan has been diligently prepared by the Warrantors in good faith and each of the Warrantors believes that, as at the date of this Agreement, it represents a realistic plan in relation to the future progress, expansion and development of the Business.
   2. The financial forecasts, projections or estimates contained in the Business Plan have been diligently prepared, are fair, valid and reasonable and have not been disproved in the light of any events or circumstances which have arisen subsequent to the preparation of the Business Plan up to the date of this Agreement.
   3. The assumptions upon which the Business Plan has been prepared have been carefully considered and are believed to be reasonable, having regard to the information available and to the market conditions prevailing at the time of their preparation.
6. Financial Statements and Management Accounts
   1. The Financial Statements:
      1. have been prepared in accordance with accounting principles, standards and practices which are generally accepted in Singapore and on the same basis and in accordance with the same accounting policies as the corresponding accounts for the preceding **[three]** financial years;
      2. comply with the requirements of the Act and any other applicable law; and
      3. give a true and fair view of the state of affairs of the Group as at the Financial Statements Date and of the profits and losses for the period concerned.
   2. The accounting records of each Group Company are accurate, up to date, in its possession or under its control and properly completed in accordance with the applicable laws and accounting standards.
   3. The Management Accounts:
      1. have been prepared on a basis consistent with the Financial Statements;
      2. reasonably reflect the financial affairs of the Group at the date to which they have been prepared and its results for the period covered by the Management Accounts; and
      3. are not inaccurate or misleading in any material respect.
7. Events since the Financial Statements Date

Since the Financial Statements Date:

* + 1. each Group Company has carried on its business in the ordinary course and so as to maintain the same as a going concern;
    2. each Group Company has not (i) acquired or disposed of or agreed to acquire or dispose of any business or any material asset (other than trading stock in the ordinary course of the business carried on by it) or (ii) assumed or acquired any material liability (including a contingent liability);
    3. each Group Company has not declared, paid or made a dividend or distribution nor has it repaid any loan capital or other debenture;
    4. each Group Company has not redeemed or purchased or agreed to redeem or purchase any of its share capital;
    5. each Group Company has not borrowed monies (except in the ordinary course of the business carried on by it or from its bankers under agreed loan facilities);
    6. there has been no adverse change in the financial or trading position or prospects of any Group Company; and
    7. no material change has occurred in the assets and liabilities shown in the Financial Statements.

1. Tax
   1. Each Group Company is only liable to pay Taxes in the jurisdictions in which the relevant Group Company is incorporated. Each Group Company is not liable to pay and has at no time incurred any liability to Tax chargeable under the laws of any jurisdiction other than the jurisdiction in which the relevant Group Company is incorporated.
   2. Each Group Company has paid all Tax which it has become liable to pay and is not, and has not been, liable to pay any penalty, surcharge, fine or interest in connection with Tax.
   3. Each Group Company has correctly deducted or withheld all Tax which it has been obliged by applicable laws to deduct or withhold from amounts paid by it, and has properly accounted to the relevant Taxing Authority for all amounts of Tax so deducted or withheld.
   4. Each Group Company has filed all returns, provided all such information and maintained all such records as required to be filed or provided or maintained by it under Applicable Laws.
   5. Each Group Company is not involved in any dispute with any Taxing Authority in relation to Tax.
   6. All acquisitions or disposals of assets by each Group Company and all supplies of services by and to each Group Company have occurred at arm's length between unconnected persons and for a consideration in cash at market value.
   7. The Company is registered for the purposes of the Goods and Services Tax Act, Chapter 117A of Singapore (and has not at any time been treated as a member of a group of companies for such purpose). The Company has complied with all statutory provisions, regulations and notices relating to GST and has duly and punctually accounted for and/or paid IRAS all amounts of GST which it ought to have so accounted for and/or paid.
2. Litigation
   1. Neither any Group Company nor, so far as the Warrantors are aware, any person for whose acts and defaults it may be vicariously liable, is at present engaged whether as claimant, defendant or otherwise in any legal action, proceeding or arbitration which is either in progress or is threatened or, so far as the Warrantors are aware, is pending (other than as claimant in the collection of debts arising in the ordinary course of the business carried on by it none of which exceeds S$**[•]** and which do not exceed S$**[•]** in aggregate) or is being prosecuted for any criminal offence and no governmental, regulatory or official investigation or inquiry concerning a Group Company is threatened or in progress or so far as the Warrantors are aware pending.
   2. There are no circumstances known to any of the Warrantors likely to lead to any such claim or legal action, proceeding or arbitration, prosecution, investigation or inquiry.
   3. Neither any Group Company nor any of the Founders nor, so far as the Warrantors are aware, any person acting for or on behalf of any Group Company is being prosecuted for an offence, nor are they or have they been the subject of any investigation, or inquiry by, or on behalf of, any governmental, administrative or regulatory authority, in respect of any offence or alleged offence, under any applicable laws or regulations of any jurisdiction (including anti-corruption laws or regulations), and there are no circumstances known to any of the Warrantors likely to give rise to any such prosecution, investigation or inquiry.
3. Properties
   1. Schedule 5 sets out true, accurate and not misleading information of all the Properties in which any of the Group Companies have an interest in or occupy.
   2. Each relevant Group Company is the sole owner of and has a good and marketable title to the relevant Property. The title documents for the relevant Properties are held by the relevant Group Company and are in good order. No Property is subject to any Encumbrance.
   3. The Properties have the benefit of adequate access rights to enable the Group Companies to enjoy undisturbed beneficial occupation.
   4. Each relevant Group Company has duly complied with the obligations affecting the relevant Properties and no termination notice has been given (by the landlord or the tenant) in relation to any lease relating to any of the relevant Properties.
   5. There are no outstanding liabilities (actual, anticipated or contingent) in relation to any of the Properties (including, without limitation, outstanding rent reviews and future duties to reinstate alterations) or in relation to any property formerly owned or occupied by any Group Company.
   6. The Properties are fully insured and the relevant Group Companies have appropriate rights to ensure any damage by an insured risk is reinstated.
   7. All prudent land title and property information searches, extraction of road and railway plans and legal requisitions to relevant government agencies have been undertaken and no adverse matter has been revealed.
4. Intellectual Property
   1. The operations of the Group Companies and any products or services supplied by them do not use or infringe the rights of any person or infringe any right of privacy and the Warrantors are not aware of any claims in relation to the same.
   2. All Intellectual Property, which is or is likely to be material to the business of the Group Companies:
      1. is (or in the case of applications will be) legally and beneficially owned and vested exclusively in the Group Companies; or
      2. is licensed to the relevant Group Company by third parties by way of an agreement and/or licence which enable the relevant Group Company to use the Intellectual Property as it requires in the ordinary course of its business,

and, in each case true, accurate and not misleading details of which are set out in the Disclosure Letter.

* 1. All Intellectual Property which is registered in the name of a Group Company, or in respect of which the relevant Group Company has made application for registration, is:
     1. valid and enforceable and not subject to any claims of opposition from any third party;
     2. so far as the Warrantors are aware, not being (or has not been) infringed, misappropriated or used without permission by any other person; and
     3. not subject to any licence, estoppel or authority or similar right in favour of any other person, except as set out in the agreements listed in the Disclosure Letter.
  2. Nothing has been done or omitted to be done whereby any of the Intellectual Property owned or used by any Group Company have ceased or might cease to be valid and enforceable or whereby any person is or will be able to seek cancellation, rectification or any other modification of any registration of any such Intellectual Property.
  3. Each Group Company has not granted and is not obliged to grant a licence, assignment or other right or Encumbrance in respect of any of the Intellectual Property (either owned or used by the relevant Group Company) to any person.
  4. No party to an agreement relating to the use: (a) by a Group Company of any Intellectual Property owned by another person; or (b) by a third party of any Intellectual Property owned by a Group Company and licensed to such third party, has at any time been, in breach of the agreement and so far as the Warrantors are aware no circumstances exist which would give rise to any breach of any such agreement or to any such agreement being terminated, suspended, varied or revoked without the relevant Group Company's consent (other than termination without cause upon notice in accordance with the terms of the agreement).
  5. None of the Intellectual Property owned by a Group Company has been the subject of any opposition, invalidation, revocation or cancellation proceeding or any other proceeding concerning its validity, enforceability, or the relevant Group Company's title to such right. No such proceedings have been threatened. So far as the Warrantors are aware, no fact or circumstance exists which might give rise to a proceeding of that type.
  6. So far as the Warrantors are aware, there has not been any infringement, misappropriation, misuse, violation or other unauthorised use by third parties of any of the Intellectual Property owned by a Group Company.
  7. Each Group Company has not knowingly disclosed or permitted to be disclosed to any person (other than to the Investors and to their agents, employees or professional advisers) any of its know-how, trade secrets, confidential information or lists of customers or suppliers.
  8. No Company Product contains, is derived from, is distributed with, or is being or was developed using Open Source Code that is licensed under any terms that:
     1. impose or could impose a requirement or condition that any Company Product or part thereof:
        1. be disclosed or distributed in source code form;
        2. be licensed for the purpose of making modifications or derivative works; or
        3. be redistributable at no charge; or
     2. otherwise impose or could impose any other material limitation, restriction, or condition on the right or ability of a Group Company to use or distribute any Company Product or to enforce Intellectual Property.
  9. Each Group Company has in place adequate back-up, disaster recovery and other systems and procedures (details of which have been provided to the Investors) to enable its business to continue without material adverse change in the event of a failure of the Computer System.

1. Assets
   1. No Group Company has not granted any Encumbrance over any part of its undertaking or assets.
   2. Each asset used by any Group Company is: (i) legally and beneficially owned solely by the relevant Group Company free from any Encumbrance; (ii) not subject to any finance lease or hire purchase agreement or sale on deferred, credit or conditional terms; and (iii) where capable of possession, in the possession or under the control of the relevant Group Company.
   3. Each Group Company owns or has the right to use each asset necessary for the effective operation of its business.
   4. All plant, machinery, vehicles and equipment owned, possessed or used by each Group Company are in good condition and working order, have been regularly and properly maintained and are in compliance with all applicable laws.
   5. Each Group Company's **[inventory or stock]** is of satisfactory quality and saleable in the ordinary course of its business.
2. Related Party Agreements
   1. Other than this Agreement and the Shareholders' Agreement, there has not been, any agreement or arrangement (legally enforceable or not) between, on the one hand, any Group Company and, on the other hand, (i) the Founder, (ii) any of its affiliates, (iii) any shareholder, director or manager of any Group Company, the Founder or any of their affiliates, or (iv) any person connected with any of them (including immediate family members).
   2. No Founder nor any person connected with a Founder owns any property used by the Company.
3. Employment and Consultancy Arrangements
   1. The Disclosure Letter sets outs full details of all contracts of service or for services and other arrangements (including, without limitation, length of service, details of notice periods, confidentiality obligations, intellectual property rights and obligations and all remuneration) of all officers, employees, workers and consultants of each Group Company or copies are annexed thereof.
   2. Each Group Company is not involved in any dispute with any trade union or organisation representing the employees or a group of employees and there are no circumstances likely to give rise to any such dispute.
   3. There are no agreements or arrangements (whether legally enforceable or not) in relation to which a Group Company has incurred, will incur or could incur any liability or responsibility for or in relation to the provision of any share incentive, share option, profit sharing, bonus or other incentive arrangements, or any pensions, allowances, lump sums gratuities or other like benefits on redundancy, retirement, withdrawal from service or on death or during periods of sickness or disablement or accident for or in respect of any director or former director, or employee or former employee, of a Group Company or any person who has at any time agreed to provide services to a Group Company or any dependants of any such persons and no proposals or announcements have been made about the introduction, continuance, variation of, or payment of any contribution towards any such agreements or arrangements.
   4. There is no outstanding dispute or complaint in relation to the types of benefits described in paragraph 13.3 of this Schedule 4.
   5. Each Group Company has, in relation to its current and former employees, directors or workers, complied with all applicable laws and has no outstanding liabilities for termination of any such employment contracts or owe any other amounts to such persons other than remuneration accrued during the month in which this Agreement has been entered into.
4. Compliance with Law
   1. Each Group Company has conducted its business in all material respects in accordance with all applicable laws and all permits, authorities, licences and consents have been obtained and all conditions applicable thereto complied with and so far as the Warrantors are aware there are no circumstances which might lead to the suspension, alteration or cancellation of any such permits, authorities, licences or consents, nor is there any agreement which materially restricts the fields within which such Group Company may carry on its business.
   2. No Founder has been disqualified from being a company director.
   3. No person, not being a director of a Group Company, has any actual or ostensible authority, whether under a power of attorney, agency agreement or otherwise, to commit such Group Company to any obligation other than an obligation of a nature which is usual for it to incur in the ordinary course of its business.
   4. Each Group Company:
      1. has complied with Data Protection Legislation;
      2. has not received any notice, letter or complaint alleging a breach by it of any of the provisions of Data Protection Legislation or requesting information as to its data protection policies or practices and no circumstances exist which may give rise to any of the above;
      3. has not awarded compensation to an individual under Data Protection Legislation, no claim for such compensation is outstanding and so far as the Warrantors are aware there is no reason to believe that any circumstances exist which might lead to any claim for compensation being made; and
      4. is not the subject of any order or direction made against it under Data Protection Legislation, no application for such an order or direction is outstanding and, so far as the Warrantors are aware there is no reason to believe that any circumstances exist which might lead to any application for such an order or direction being made.
   5. In respect of any Grant Funding provided to each Group Company full details of which are set out in the Disclosure Letter:
      1. such Group Company has complied in all respects with the terms and conditions on which any Grant Funding has been provided to the relevant Group Company;
      2. the entry into this Agreement and the fulfilment of the Business Plan will not:
         1. breach any terms or conditions of any Grant Funding; or
         2. alter or abrogate any rights of the relevant Group Company under any Grant Funding; and
      3. no Grant Funding will be terminated or be required to be repaid as a result of the entry into this Agreement or the fulfilment of the Business Plan.
5. Records

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

1. Insurance

The Disclosure Letter contains **[full and accurate details] / [a summary]** of all insurance policies held by the Group Companies. In respect of such insurances:

* + - 1. all premiums have been duly paid to date;
      2. all the policies are in full force and effect; and
      3. there are no circumstances which would or might give rise to any claim and no insurance claim is outstanding.

1. Agreements and Capital Commitments
   1. Each Group Company:
      1. has no material capital commitments;
      2. is not a party to any contract, arrangement or commitment (whether in respect of capital expenditure or otherwise) which is of an unusual, onerous or long-term nature or which involves or could involve a material obligation or liability;
      3. is not bound by any guarantee or contract of indemnity or suretyship under which any liability or contingent liability is outstanding;
      4. has not entered into any agreement which requires or may require, or confers any right to require, the sale (whether for cash or otherwise) or the transfer by it of any asset;
      5. is not a party to any joint venture, consortium, partnership, unincorporated association or profit sharing arrangement or agreement;
      6. is not a party to nor does it enjoy the benefit of any agreement requiring registration or notification under or by virtue of any statute; or
      7. is not in default of any agreement or arrangement to which it is a party.
   2. Each Group Company has not been and is not a party to any contract or arrangement binding upon it for the purchase or sale of property or the supply of goods or services at a price different to that reasonably obtainable on an arm's length basis.
   3. So far as the Warrantors are aware, no fact or circumstance exists which might invalidate or give rise to a ground for termination of any agreement, arrangement or obligation to which a Group Company is a party. No party with whom a Group Company has entered into any agreement, arrangement or obligation has given notice of its intention to terminate such agreement, arrangement or obligation.
   4. Neither any Group Company nor any party with whom a Group Company has entered into any agreement, arrangement or obligation is in breach of such agreement, arrangement or obligation. So far as the Warrantors are aware, no fact or circumstance exists which might give rise to a breach of this type.
2. Borrowings and Facilities

Full details of all limits on each Group Company's bank overdraft facilities and all borrowings of each Group Company are set out in the Disclosure Letter and no Group Company is in breach of any of such terms and none of such facilities or terms of borrowing will be terminated as a result of the entry into of this Agreement.

1. The Properties

**[*insert details of the Properties***

***(see paragraph 9 (Properties) of Schedule 4)*]**

1. Series A Share Terms[[12]](#footnote-13)

**Terms and Conditions of the Series A Shares**

The Series A Shares shall have the following rights and be subject to the following conditions.

1. Dividends
   1. **[Each holder of the Series A Shares then outstanding shall be entitled to receive dividends and distributions payable on the Ordinary Shares as and when declared by the Board on an as-converted basis.]** / **[Each holder of the Series A Shares shall be entitled to receive a [cumulative] / [non-cumulative] fixed preferential dividend payable in cash equal to [•] per cent. of the Initial Subscription Price Per Share (as appropriately adjusted for any subdivisions, consolidations, share dividends or similar recapitalisations) per annum for each Series A Share held by such holder.]**
   2. The right of the holders of the Series A Shares then outstanding to receive such dividends shall rank **[on a *pari passu* basis with]** / **[senior and prior to and in preference to]** the dividend rights of the holders of Ordinary Shares and any other class of shares in the Company.
   3. No dividends or distributions (in whatever form) shall be declared or paid to the holders of the Ordinary Shares unless the holders of the Series A Shares then outstanding **[first receive or]** simultaneously receive in full a *pro rata* share of such dividends on an as-converted basis.
2. Liquidation Preference
   1. Upon the occurrence of any Liquidity Event:
      1. firstly, out of the assets and funds of the Company available for distribution, the Company shall pay to the holders of Series A Shares then outstanding, on a *pari passu* basis, prior to and in preference of any payments to holders of Ordinary Shares and all other holders of shares in the capital of the Company, an amount per Series A Share held by them equal to the aggregate of: **[(i)]** **[100]** per cent. of the Initial Subscription Price Per Share (as appropriately adjusted for any subdivisions, consolidations, share dividends or similar recapitalisations) in respect of each Series A Share**[; and (ii) any accrued and unpaid dividends in respect of each Series A Share]**; and
      2. secondly, if there are any assets and funds of the Company legally available for distribution after the payments referred to in paragraph 2.1.1 above, all holders of **[Series A Shares and]** Ordinary Shares then outstanding shall be entitled to participate *pro rata* in the residual assets and funds of the Company **[on an as-converted basis]**.
   2. In respect of a Liquidity Event arising pursuant to paragraphs (ii), (iii) or (iv) of such definition:
      1. the consideration (whether in the form of cash, securities of the buyer of the assets or shares of the Company or securities of the surviving entity) from such Liquidity Event shall be distributed to the holders of the Series A Shares and Ordinary Shares in accordance with paragraph 2.1 above; and
      2. the Company shall not effect any such transaction unless paragraph 2.2.1 above has been complied with.
   3. The Company shall give each holder of the Series A Shares then outstanding written notice of any impending Liquidity Event describing the material terms and conditions of such Liquidity Event as soon as practicable and in no event later than 10 Business Days prior to the occurrence of such Liquidity Event. The Company shall thereafter give such holders prompt notice of any material changes. The Liquidity Event shall not take place sooner than 10 Business Days after the Company has given the first notice or sooner than 10 Business Days after the Company has given notice of any material changes provided for herein. In the event that the requirements of this paragraph 2.3 are not complied with in respect of a Liquidity Event arising pursuant to paragraphs (ii), (iii) or (iv) of such definition, the Company shall either (i) cause the closing of such Liquidity Event to be postponed until such time as the requirements of this paragraph 2.3 have been complied with; or (ii) cancel such Liquidity Event.
3. Votes
   1. The holders of Series A Shares then outstanding are entitled to receive notice of, and to attend and speak at, general meetings of the Company, and to receive a copy of any written resolution circulated to eligible members on the circulation date in accordance with the Act.
   2. The holders of Series A Shares then outstanding may vote at general meetings or formally agree to written resolutions of the Company in the same manner as holders of Ordinary Shares on an as-converted basis and not as a separate class, unless otherwise specified in the Constitution or required by law.
   3. Each Series A Share is entitled to such number of votes as would be represented by the number of Ordinary Shares into which it is convertible (as of the record date for determining the shareholders entitled to vote) on all matters on which the Ordinary Shares are authorised to vote and shall vote together with the Ordinary Shares as a single class, except as provided by law or by the provisions of the Constitution.
4. Conversion
   1. **Optional Conversion**

At any time and from time to time, any holder of Series A Shares then outstanding shall have the right, at its option, to convert all or part of its Series A Shares then outstanding into Ordinary Shares.

* 1. **Automatic Conversion**

All the Series A Shares then outstanding shall be converted into Ordinary Shares:

* + 1. immediately prior to the consummation of a Qualifying IPO; or
    2. either with the prior written consent of holders of at least **[75]** per cent. of the total voting rights of the Series A Shares who would have been entitled to vote at a separate meeting of the holders of Series A Shares (the "**Series A Majority**") or with the sanction of a special resolution passed at a separate class meeting of the holders of the Series A Shares.
  1. **Conversion Rate**
     1. Each Series A Share subject to conversion shall be converted into such number of fully paid Ordinary Shares as is determined by dividing the Initial Subscription Price Per Share (as appropriately adjusted for any subdivisions, consolidations, share dividends or similar recapitalisations) by the then applicable conversion price per Series A Share ("**Conversion Price**") and, for the avoidance of doubt, except as required under applicable laws, no additional consideration shall be payable upon such conversion.
     2. The initial Conversion Price shall be equal to the Initial Subscription Price Per Share and shall thereafter be subject to adjustment from time to time in accordance with this paragraph 4.
  2. **Conversion Procedure** 
     1. In this paragraph 4, a "**Conversion Date**" is (i) in the event that paragraph 4.1 is applicable, the date on which the holder of Series A Shares then outstanding requires its Series A Shares then outstanding to be converted as specified in the Conversion Notice (as defined below) (or if the holder of Series A Shares then outstanding requires its Series A Shares then outstanding to be converted on a day which is not a Business Day, the next Business Day); and (ii) in the event that paragraph 4.2 is applicable, the day on which the Qualifying IPO is consummated.
     2. In the event that paragraph 4.1 applies, a holder of Series A Shares then outstanding may convert all or part of its Series A Shares then outstanding into Ordinary Shares by delivering a notice of conversion ("**Conversion Notice**") to the Company specifying the number of Series A Shares to be converted and the Conversion Date being a date at least five Business Days after the date of the Conversion Notice, together with the relevant share certificate for the relevant Series A Shares (or agreement for indemnification satisfactory to the Board in the case of a lost certificate). A Conversion Notice once given may not be withdrawn without the Company's written consent. The Company shall on the Conversion Date effect the conversion of the relevant Series A Shares for the number of Ordinary Shares to which the holder is entitled upon conversion and deliver a certified true copy of the updated register of members with the holder's name entered as holder of such number of Ordinary Shares, and as soon as practicable thereafter deliver to the holder a share certificate for such number of Ordinary Shares, pay in cash such amount in lieu of any fraction of an Ordinary Share otherwise issuable upon such conversion (as provided in paragraph 4.5) and pay all declared but unpaid dividends on Series A Shares converted.
     3. The conversion of Series A Shares pursuant to paragraph 4.2 shall be automatic and the holders of Series A Shares then outstanding shall be deemed to have served a Conversion Notice on the Company.
     4. The Ordinary Shares to which a holder of Series A Shares then outstanding is entitled upon conversion (the "**New Ordinary Shares**"):
        1. shall be credited as fully paid, free from all Encumbrances;
        2. shall rank *pari passu* in all respects and form one class with the Ordinary Shares then in issue; and
        3. entitle the holder of such New Ordinary Shares to be paid a *pro rata* share of all dividends and other distributions declared, made or paid on Ordinary Shares after the Conversion Date.
  3. **No Fractional Shares**

Upon each conversion, no fractions of New Ordinary Shares shall result from such conversion except as set out in this paragraph 4.4.4(iii). If more than one certificate representing Series A Shares are surrendered for conversion at one time by the same holder, for the purposes of determining the number of New Ordinary Shares that will be converted from such number of Series A Shares and whether any (and if so, what) fraction of a New Ordinary Share arises, the number of New Ordinary Shares arising from such conversion (including, for this purpose, fractions) shall first be aggregated. In lieu of any fraction of a New Ordinary Share arising after such aggregation, the Company shall pay to the relevant holder of Series A Shares, in cash, an amount equal to such fraction of the Conversion Price per issued New Ordinary Share.

* 1. **Adjustments to Conversion Price**
     1. **Consolidation or Subdivision of Ordinary Shares**: If any of the following events occur:

## there is a consolidation or sub-division of Ordinary Shares; or

## the share capital of the Company is reclassified or altered in any other way whatsoever not otherwise dealt with in this paragraph 4.6,

the then applicable Conversion Price shall be adjusted so that the holders of Series A Shares then outstanding shall be entitled to receive on conversion such number of New Ordinary Shares as it would have been entitled to receive had the Series A Shares then outstanding been converted immediately prior to such event.

* + 1. **Scrip Dividends**: If the Company makes a dividend or other distribution to the holders of Ordinary Shares payable in additional Ordinary Shares, the Conversion Price shall be adjusted by multiplying the then applicable Conversion Price by the following fraction:

**A/(A+B)**

where:

**A**  is the total number of Ordinary Shares outstanding immediately before the issue of additional Ordinary Shares; and

**B** is the number of additional Ordinary Shares issuable in payment of such dividend or distribution.

* + 1. **Issue of Shares or Share Equivalents below the Conversion Price**[[13]](#footnote-14)

## If the Company issues further shares or options or other securities convertible into or exchangeable or exercisable for shares (or securities) in the capital of the Company but excluding the shares or options or other securities set out in paragraph 4.6.3(ii) (the "**Additional Shares**") for a consideration or deemed or effective consideration or a price which equates to a price per Ordinary Share less than the then applicable Conversion Price, in such circumstances the then applicable Conversion Price shall be adjusted as follows:

**CP2 = CP1 \* [ (A + B) / (A + C)]**

where:

**CP2**  is the revised Conversion Price after adjustment;

**CP1**  is the applicable Conversion Price immediately prior to the adjustment;

**A**  is the total number of Ordinary Shares outstanding immediately before the new issue (which shall be deemed to include all Ordinary Shares issuable upon the exercise of, conversion of or exchange for all outstanding securities convertible into or exchangeable or exercisable for Ordinary Shares);

**B**  is the aggregate amount of consideration to be paid to the Company in respect of the Additional Shares divided by CP1; and

**C**  is the number of Additional Shares issued (on a fully-diluted basis).

## The adjustment under this paragraph 4.6.3 shall not be applicable to the issue of:

* + - * 1. any Ordinary Shares (or options or other securities convertible into or exchangeable or exercisable for Ordinary Shares) to employees, officers or directors of the Company pursuant to an employee share incentive scheme approved by the Board;
        2. any Ordinary Shares upon the conversion of the Series A Shares;
        3. Ordinary Shares or convertible securities convertible into or exchangeable for Ordinary Shares upon the exercise of options, or the issue of Ordinary Shares upon the conversion or exchange of convertible securities;
        4. any shares on or pursuant to a Qualifying IPO;
        5. any Ordinary Shares pursuant to a dividend or distribution on the outstanding Ordinary Shares as provided for in paragraph 4.6.2; or
        6. either with the consent in writing of the Series A Majority or with the sanction of a special resolution passed at a separate class meeting of the holders of the Series A Shares.

## For the purpose of this paragraph 4.6.3, the consideration received by the Company for the issue of Additional Shares shall be computed as follows:

* + - * 1. insofar as it consists of cash, the aggregate amount of the cash received by the Company; and
        2. insofar as it consists of property other than cash, the fair market value thereof at the time of such issue, as determined in good faith by the Board, provided that if the majority of the holders of Series A Shares then outstanding disagree with such valuation, the fair market value shall be determined by the Company's auditors for the time being (the "**Auditors**") (acting as experts and not as arbitrators) whose decision shall be final and binding on all concerned save in the case of manifest error.
  1. **Certificate as to Adjustments**

Upon the occurrence of any of the foregoing events which would require any adjustment to the Conversion Price, the Company shall within a reasonable period (not exceeding 10 Business Days) following such event deliver to each holder of Series A Shares a certificate, signed by the President or Chief Executive Office of the Company, setting out in reasonable detail the event requiring the adjustment and the method by which such adjustment was calculated and specifying the adjusted Conversion Price following such adjustment. If any dispute arises concerning an adjustment of the Conversion Price, the Board shall refer the matter to the Auditors (acting as experts and not as arbitrators) whose decision shall be final and binding on all concerned save in the case of manifest error.

* 1. **Merger, Consolidation or Reorganisation**

If at any time and from time to time there is any merger, consolidation or amalgamation of the Company with or into another entity (other than a merger, consolidation or amalgamation which constitutes a Liquidity Event) then in each such case, as a part of such merger, consolidation, amalgamation, each holder of Series A Shares then outstanding shall have the right to convert the Series A Shares then outstanding to receive the same (or as equivalent as practicable) class and number of shares or other securities or property to which it would have been entitled to receive on such merger, consolidation, amalgamation had it converted its Series A Shares then outstanding into Ordinary Shares immediately prior to the effective date of such merger, consolidation or amalgamation.

1. Variation of Rights
   1. The class rights attaching to the Series A Shares may be varied or abrogated either with the consent in writing of the Series A Majority or with the sanction of a special resolution passed at a separate class meeting of the holders of the Series A Shares. Without prejudice to the foregoing, the following matters shall constitute a variation of the rights attaching to the Series A Shares:
      1. the creation, allotment or issue of further Series A Shares otherwise than in accordance with any agreement of the **[Series A Majority]**;
      2. **[a reduction in the share capital of the Company; and**
      3. **the approval by the Board or the Company of any dividend on shares of any other class.]**

This Agreement has been executed on the date shown on the first page.

**The Company**

Signed by **[*insert name of director*]**

for and on behalf of **[*insert name of the Company*]**

………………………..

Director

Name:

in the presence of:

...............................

Witness

Name:

Address:

**[Investor 1]**

Signed by **[*insert name of director*]**

for and on behalf of **[*insert name of Investor 1*]**

………………………..

Director

Name:

in the presence of:

...............................

Witness

Name:

Address:

**[Investor 2]**

Signed by **[*insert name of director*]**

for and on behalf of **[*insert name of Investor 2*]**

………………………..

Director

Name:

in the presence of:

...............................

Witness

Name:

Address:

**[Founder 1]**

Signed by **[*insert name of Founder 1*]**

………………………..

**[*insert name of Founder 1*]**

in the presence of:

...............................

Witness

Name:

Address:

**[Founder 2]**

Signed by **[*insert name of Founder 2*]**

………………………..

**[*insert name of Founder 2*]**

in the presence of:

...............................

Witness

Name:

Address:

1. Drafting Note: This draft assumes that the signing of this Agreement and Completion occurs on the same day. Practically, this means that each Investor will need to ensure that all of its conditions for its investment are satisfied (e.g. due diligence on the Company having been completed to its satisfaction; or its investment committee has given its final approval for the investment) before it enters into this Agreement and funds the subscription price in connection with Completion.

   If there are conditions to Completion that are to be satisfied by the Company only after signing and before/on Completion (the "**Completion Conditions**”) (e.g. the obtaining of any regulatory approval for the conduct of the Company's business), there will be an intervening period between the date when the Parties enter into this Agreement and the date of Completion. Completion of the Investors' subscription for Subscription Shares will then only take place when each Completion Condition has either been satisfied or waived by the relevant Investors. In this case, certain additional considerations may need to be taken into account so as to ensure that the interests of the relevant Parties are safeguarded. [↑](#footnote-ref-2)
2. Drafting Note: The Board could, alternatively, convene and hold a meeting of the Board to pass the resolutions in relation to the same matters. [↑](#footnote-ref-3)
3. Drafting Note: In case there are any directors that are to resign on Completion. [↑](#footnote-ref-4)
4. Drafting Note: This should be included as a completion item to be delivered to the Investors, if not previously delivered prior to Completion. [↑](#footnote-ref-5)
5. Drafting Note: If there are any post-Completion undertakings required of the Company and/or the Founders in this Agreement, e.g. the adoption by the Company of an employee share option plan within a certain period from Completion; the obtaining of any key person insurance; or the entry by the Founders into a confidential information and proprietary rights assignment agreement, these may be set out here. [↑](#footnote-ref-6)
6. Drafting Note: The Singapore Mediation Centre's website may be accessed at: <http://www.mediation.com.sg/>. The Singapore International Mediation Centre is another designated mediation service provider in Singapore, and its website may be accessed at: <http://simc.com.sg/>. [↑](#footnote-ref-7)
7. Drafting Note: Parties may also wish to consider the Singapore International Commercial Court as a dispute forum and its website may be accessed at: <https://www.sicc.gov.sg/>. [↑](#footnote-ref-8)
8. Drafting Note: The Singapore International Arbitration Centre's website may be accessed at: <http://www.siac.org.sg/>. [↑](#footnote-ref-9)
9. Drafting Note: To be included where the chosen dispute resolution mechanism is court proceedings and a Party is not domiciled in Singapore. [↑](#footnote-ref-10)
10. Drafting Note: To be amended, as appropriate, depending on whether the Founders are required to be "Warrantors” for the purposes of this Agreement. [↑](#footnote-ref-11)
11. Drafting Note: Parties should note that this is only a sample set of warranties and intended to serve only as a possible starting point for Parties' discussion or use. For each transaction, Parties should consider and seek legal advice on the suitability of this set of warranties and the amendments that may need to be made to take into account the circumstances of the transaction. [↑](#footnote-ref-12)
12. Drafting Note: The preference share rights, terms and conditions would need to be set out in the Constitution of the Company in order to have legal effect. [↑](#footnote-ref-13)
13. Drafting Note: This agreement includes broad-based weighted average ratchet mechanism. There are two other main types of ratchets that may be considered: narrow-based weighted average ratchet and full ratchet, both of which are more advantageous to the investors. Parties to discuss their preference for which mechanism is appropriate for the transaction. [↑](#footnote-ref-14)