**DRAFT DATED 31 AUGUST 2023**

**GROWTH PARTICIPATION PLAN OF [COMPANY]**

**DATED** [⚫]

**PARAMETERS SUMMARY**

|  |  |
| --- | --- |
| **Type of asset** | Phantom Shares |
| **Company** | [⚫], a company established and existing under the laws of [⚫] Republic, ID No. [⚫], with its registered office at [⚫],[⚫] Republic, registered in the Commercial Register maintained by Municipal Court of [⚫], File No. [⚫] |
| **Name of the ESOP Plan** | [⚫] |
| **Eligibility** | Employees and contractors (individuals or entities); [min six months with the Company] |
| **Size of the GPP** | Phantom Shares [⚫] corresponding to a notional [10]% shareholding interest in the Company, i.e. 1 Phantom Share corresponds to [⚫]% shareholding interest in the Company as to [date do be completed] |
| **Vesting period** | [⚫] years |
| **Cliff** | [⚫] year |
| **Vesting schedule** | Linear monthly after Cliff |
| **Vesting period suspension** | Unpaid leave over one month |
| **Exit definition** | Sale over [75]% of the Company |

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1. Interpretation
   1. In addition to terms defined elsewhere in these Terms, capitalised terms used in these Terms have the following meaning:
2. **Affiliate** means in relation to a person or other entity (a) any person Controlling, Controlled by or under common Control with another person and (b) in relation to a natural person, close persons within the meaning of Section 22 of the Civil Code;
3. **Award** means a written offer from the Company of Phantom Share(s) to which these Terms and any other terms and conditions stipulated thereunder shall apply;
4. **Bad Leaver Event** means any event specified in clause 13.4 of these Terms;
5. **BCA** means
6. **Bonus** means monetary or in-kind consideration from the Company for cancellation of all and/or a portion of the vested Phantom Shares of the Participant to be received by the Participant upon the occurrence of an event specified in these Terms triggering its payment;
7. **Civil Code** means
8. **Cliff** has the meaning ascribed to this term in clause 7.2(b) of these Terms;
9. **Company** means [⚫], a company established and existing under the laws of [⚫] Republic, ID No. [⚫], with its registered office at [⚫],[⚫] Republic, registered in the Commercial Register maintained by Municipal Court of [⚫], File No. [⚫];
10. **Contract** means the binding agreement between the Company and the Participant created upon the Participant’s written acceptance of the Award. The Contract is governed by these Terms and the Award;
11. **Control, Controlled, Controlling** means mean the ability to exercise decisive influence on a corporation within the meaning set out in Section 74 of the BCA;
12. **Conversion** means the Company’s reservation of rights to convert this GPP based on Phantom Shares into the Share Option Plan;
13. **Conversion Shares** means direct or indirect shares/shareholding interests or other share equivalents in the Company or Affiliate following a Conversion decision by the Company in its sole discretion as part of the Share Option Plan;
14. **Exit Event** means any event specified in clause 9 of these Terms;
15. **Good Leaver Event** means a Leaver Event other than a Bad Leaver Event;
16. **GPP** means the **[**⚫**]** Growth Participation Plan of the Company provided under these Terms;
17. **Group** means the Company and its Affiliates;
18. **Initial Value** means the fair market value of the Phantom Shares or other value determined by the Company as initial value on the Starting Date, determined in accordance with these Terms;
19. **Leaver Event** means any event, whereby a Relationship Agreement is terminated without replacement, and thus the Participant ceases, regardless of the reason, to have a valid contractual relationship with Group company;
20. **No Cliff** means that the Phantom Shares vest under Vesting Period schedule without any Cliff, i.e., defined period from the Starting Date during which the Participant is not entitled to enjoy any benefits of the Phantom Shares;
21. **Participant Entity** means any legal entity providing services to Group company eligible to participate in the GPP provided it has received approval from the Company
22. **Participants** means employees, managers, advisors, service providers and/or other persons meeting the eligibility criteria under clause 3 for participation in the GPP to whom Phantom Shares were awarded under these Terms, and each individually a **Participant**;
23. **Phantom Shares** has the meaning ascribed to this term in clause 4.1 of these Terms;
24. **Relationship Agreement** means any agreement establishing a binding, employment, performance of an office, or service provider contractual relationship between the Company and/or Affiliate on the one hand and the Participant on the other hand;
25. **Share Option Plan** means direct awards of shares or shares equivalents, upon Conversion, whereby the Participant will be entitled to receive:
    1. Conversion Shares; and/or
    2. options to acquire Conversion Shares,

subject to further terms and conditions stipulated in the option or other award agreement concluded with the Participant as part of the Conversion;

1. **Shareholders** means certain shareholders of Group that committed to the Company to notionally dedicate the value of a certain portion of their Shares to the GPP;
2. **Shares** means ordinary shares issued by the Company;
3. **Starting Date** means the starting date of the Vesting Period, that may differ from the starting date of the Relationship Agreement;
4. **Termination** has the meaning ascribed to this term in clause 11.1 of these Terms;
5. **Terms** means these terms and conditions for participation in the GPP;
6. **Time based Vesting Period schedule** 
   1. “monthly” means that the Phantom Shares vest on a monthly basis, i.e., on the same day of each month corresponding to the Starting Date, 1/12 of the Phantom Shares vesting within the relevant year vest, i.e., 1/12 of the yearly total. Each month only whole Phantom Shares vest. If a fraction of a Phantom Share vests in a certain month, said fraction will be added to the amount of Phantom Shares vesting in the following month;
   2. “quarterly” means that the Phantom Shares vest on a quarterly basis, i.e., on the same day of each quarter corresponding to the Starting Date, 3/12 of the Phantom Shares vesting within the relevant year vest, i.e., 3/12 of the yearly total. Each quarter only whole Phantom Shares vest. If a fraction of a Phantom Share vests in a certain quarter, said fraction will be added to the amount of Phantom Shares vesting in the following quarter; and
   3. “yearly” means that the Phantom Shares vest on a yearly basis, i.e., on the same day of each year corresponding to the Starting Date, yearly total of the Phantom Shares vesting within the relevant year vest. Each year only whole Phantom Shares vest. If a fraction of a Phantom Share vests in a certain year, said fraction will be added to the amount of Phantom Shares vesting in the following year;
7. **Vesting Period** means a period the Participant must have a valid Relationship Agreement with Group company to benefit from the Phantom Shares as further specified in clause 7.2 of these Terms; and
8. **Vesting Schedule** means a percentage division of the Phantom Shares to be vested to Participant as a yearly total under the Vesting Period.
9. Introduction
   1. The Shareholders committed to the Company to dedicate the value of a portion of their Shares for the purpose of establishing the GPP.
   2. The Company establishes this GPP whereby the Company awards Phantom Shares to the Company’s and/or Affiliates’ personnel, managers, advisors, or other service providers meeting the eligibility criteria specified in these Terms who may receive the Bonus based on the Phantom Shares in the future if certain conditions of these Terms and the Award are met.
   3. The Award of Phantom Shares serves as a retention scheme to retain talented individuals in the Group and/or maintain cooperation with service providers under the Relationship Agreement. The Award of Phantom Shares is not linked to any performance criteria.
   4. The Award of Phantom Shares by the Company under the GPP is at the sole discretion of the Company and does not entitle Participants who have been awarded Phantom Shares in the past to receive any Phantom Shares in the future, whether or not the Company expressly states in each particular case that the Award of Phantom Shares is discretionary.
   5. Participation in the GPP is voluntary.
   6. The acceptance of participation in the GPP means full acceptance of all conditions and circumstances under which the GPP is implemented by the Company; no partial acceptance or partial refusal or waiver is permissible.
   7. The Participants understand that nothing contained in these Terms and/or the Contract shall be interpreted as (i) establishing a relationship between the Participant and the Shareholders, and/or (ii) giving rise to rights of the Participant to make any claim relating to the GPP against the Shareholders.
   8. The Participants understand that nothing in these Terms shall give a Participant any rights concerning, or impose any restrictions on, the business operations of the Company, in particular the Terms shall in no event prevent the Company from incurring and/or extending debt financing, issuing options on new shares or increasing the issued capital or increasing participation programmes (including this GPP), or introducing further participation programmes, irrespective of whether by virtue of Phantom Shares or interests or similar rights to cash payments or by virtue of granting options to acquire new or existing shares of the Company.
10. Eligibility Criteria
    1. Persons eligible for Award of the Phantom Shares under the Terms are:
       1. employees or managers of the Group, who have valid and effective Relationship Agreement of employment or performance of an office with the Group company on the date the Phantom Shares are awarded to them; and
       2. consultants, advisors and/or service providers, who have a valid and effective Relationship Agreement for the provision of consultancy, advisory or other services with a Group company or hold a position in one of the Group company’s bodies or committees (including, in particular, the Company’s and/or Affiliates’ advisory board, if applicable), on the date the Phantom Shares are awarded to them,

[in each case, provided that [at least six months ***OR*** probationary period] has/have elapsed since the person started work/providing services under Relationship Agreement.]

* 1. If a Participant is a Participant Entity, it is obliged to (i) disclose to the Company the Participant Entity shareholding and corporate structure (including ultimate beneficial owners and directors), (ii) appoint individual(s) that will perform services for the Group company, and (iii) notify the Company of any change of the above and seek consent to such change before it is made. Any change according to the preceding sentence made without the prior written consent of the Company is considered a material breach of these Terms.
  2. The Company may, in its absolute discretion and with immediate effect, amend the eligibility requirements for participation in the GPP, such as admitting new Participants who do not fulfil the criteria stated in clause 3.1 above or excluding specific Participants with respect to future Awards of Phantom Shares. Any previous Award of Phantom Shares shall remain unaffected thereby.

1. Nature of the Phantom Shares
   1. The Phantom Shares awarded to Participants under these Terms represent a conditional right (and the only right) of the respective Participant to receive a certain monetary or in-kind consideration from the Company and/or another Group company in the amount determined hereunder (the **Phantom** **Shares**), which amount is derived from the value of Shareholders’ Shares notionally dedicated to the GPP.
   2. The Phantom Shares:
      1. are a form of compensation derived from the value of Shares but without actual ownership of any Shares;
      2. do not entitle the Participants to any ownership of Shares and/or any claim against Shareholders;
      3. do not entitle the Participants to exercise any rights associated with Share ownership in the Company or any other Group company according to applicable law or internal regulations (e.g., the right to vote at a general meeting, demand information from the Company and/or Affiliate, exercise any oversight or similar authority over the Company and/or Affiliate); and
      4. do not oblige the Participants to provide the Company and/or other Group company with a contribution to its share capital or a contribution to other capital funds.
2. Size of the GPP
   1. There are in total **[100,000] Phantom Shares** in the GPP. These Phantom Shares correspond in total to a notional [10]%shareholding interest in the Company (and one Phantom Share thus corresponds to a notional [0.0001]% shareholding interest in the Company) as of [insert date].
   2. In case of any subsequent share capital increase of the Company after the effective date of these Terms, the shareholding interest notionally dedicated to the GPP specified in clause 5.1 shall be decreased (diluted) proportionally unless the Shareholders notionally dedicate additional Shares to the GPP pool.
   3. If the issued share capital of the Company and/or shareholding interest of any of the Shareholders increases after the effective date of these Terms (e.g. as a result of a Shareholder purchasing additional shares from other shareholders of the Company), the shareholding interest notionally dedicated to the GPP specified in clause 5.1 shall not be increased accordingly and no Participant shall be entitled to any increase of the number of Phantom Shares awarded to the Participant, nor to any increase of the Bonus or the calculation thereof, unless the Shareholders notionally dedicate additional Shares to the GPP pool.
   4. No Participant shall be entitled to any increase of the number of Phantom Shares awarded to them, nor to any increase of the Bonus or the calculation thereof, in the event of an increase of the total number of Phantom Shares under these Terms or the existence or introduction of further participation programmes.
3. Award Procedure
   1. The Company will award to the Participant Phantom Shares.
   2. Acceptance of the Award is valid only if it is received by the Company before the deadline specified in the Award.
   3. Each Award shall specify the number of Phantom Shares awarded to the Participant.
   4. The Award may be subject to additional terms as detailed in the Award, in particular, but without limitation, to a requirement for the Relationship Agreement to continue for a specific period of time. The Award terms may vary for each Participant and are at the sole discretion of the Company.
4. Vesting
   1. The entitlement to benefit from the Award of Phantom Shares is conditional on the existence of a Relationship Agreement with the Group company, and the Award shall specify the Starting Date and the duration of the Vesting Period.
   2. The Vesting Period schedule shall be as follows:
      1. during the first year as of the Starting Date, the Participant will not be entitled to enjoy any benefits of the Phantom Shares;
      2. on the first anniversary of the Starting Date, [25]% of the awarded Phantom Shares will vest (the **Cliff**);
      3. on the second anniversary of the Starting Date, an additional [25]% of the awarded Phantom Shares will have vested in total;
      4. on the third anniversary of the Starting Date, an additional [25]% of the awarded Phantom Shares will have vested in total; and
      5. on the fourth anniversary of the Starting Date, an additional [25]% of the awarded Phantom Shares will have vested in total,

i.e., after Cliff, the Phantom Shares vest on a monthly basis, i.e., on the same day of each month corresponding to the Starting Date, 1/12 of the Phantom Shares vesting within the relevant year vest, i.e., 1/12 of the yearly total.

* 1. The Award may stipulate a different Vesting Period schedule.
  2. If the Award does not stipulate the Starting Date, the Starting Date is the date when the Award was accepted by the Participant.
  3. Any period of unpaid leave or temporary suspension of a Relationship Agreement, if allowed under applicable laws, for more than one month of:
     1. a Participant who is an individual; or
     2. an individual working for a Participant Entity who is approved by the Company to provide services to Group through the Participant Entity, if the Participant is a Participant Entity,

does not count for the purposes of the Vesting Period, i.e., the Vesting Period is suspended for such period. In case of doubt, the Company will determine whether the unpaid leave and/or temporary suspension triggers the suspension of the Vesting Period.

* 1. The Vesting Period schedule stipulated in clause 7.2 assumes a full-time cooperation between the Group Company and the Participant under the Relationship Agreement. The Company may in its sole discretion adjust, even prolong, the Vesting Period schedule to reflect changes in agreed and/or performed working hours.

1. Consideration for the Phantom Shares
   1. The Participant will be entitled to receive a Bonus in case any of the following events occur:
      1. an Exit Event as described in section 9 below;
      2. a buy-out of the vested Phantom Shares of the Participant undergoing a Good Leaver Event, provided that the Company opted for a buy-out, as described in clause 13.2;
      3. Termination of the GPP or individual buy-out as described in clause 11 below,

whereas the calculation of the Bonus for each event is specified in the relevant section (clause) of these Terms.

* 1. It is within the full discretion of the Company to decide whether the Company or other Group company will provide the Bonus to the Participant and whether the Bonus will be provided to the Participant in cash or in kind and/or to determine the ratio between cash and in-kind consideration if the Bonus is provided as a combination of both.
  2. Subject to clause 9.4 hereof, if anywhere in these Terms it is necessary to determine a fair market value of any parameter of the Bonus, such fair market value shall be determined based on the internal methodology of the Company. Notwithstanding the above, the Company may appoint an independent expert to determine the fair market value for the purposes of calculation of the Bonus in its sole discretion at any time. In such a case, the expert’s valuation shall be binding upon the Company and the Participants. This applies to the determination of any fair market value anywhere in the Terms.

1. Exit
   1. A vested Phantom Share entitles the Participant to receive a single pay-out of Bonus if any of the following Exit Events occur:
      1. liquidation of the Company (unless it is as a part of the Group restructuring);
      2. *bona fide* sale or any other transfer of at least [75]% of the shares in the Company to a third party or third parties, including Shares notionally dedicated to the GPP pool;
      3. merger, dissolution or other corporate transaction with a third party resulting in the relevant Shareholder receiving a certain monetary or in-kind consideration (e.g. a share in another company) in exchange for its Shares notionally dedicated to the GPP in the Company (unless it is as a part of the Group restructuring);
      4. sale of the business of the Company or all of the Company’s assets;
      5. granting of an exclusive licence to all intellectual property of the Company; and
      6. another event determined as an Exit Event by the Company and approved by the Shareholders.
   2. The amount of the Bonus upon an Exit Event shall be calculated by using the following formula:

**Where:**

**Bonus** is the monetary or in-kind amount of the Bonus the Company pays or procures the payment of to the eligible Participant (subject to any tax deductions and other deductions as specified in clause 15 hereof).

**F** is the amount of the monetary or in-kind consideration that the respective Shareholders would have received in connection with the Exit Event for their Shares notionally dedicated to the GPP pool.

**VPS** is the total number of the respective Participant’s Phantom Shares which had vested prior to the time of the Exit Event.

**TPS** is the total number of Phantom Shares in the GPP pool at the time of the Exit Event.

**IV** is Initial Value of the respective Participant’s all Phantom Shares that had vested prior to the occurrence of the Exit Event.

* 1. All Phantom Shares awarded to the Participant under these Terms shall be cancelled and the GPP shall terminate upon the occurrence of an Exit Event and pay-out of the Bonus in accordance with clause 9.2 hereof.
  2. To the extent that the consideration in connection with the Exit Event is paid not in cash but in shares or other interests in another entity or other in-kind consideration, the Bonus shall be calculated on the basis of the fair market value of such consideration in kind as follows:
     1. if the parties involved in the Exit Event have determined a cash valuation of such consideration in kind, such valuation shall be binding for the purposes of the calculation of the Bonus as well; and
     2. if the parties involved in the Exit Event have not determined the cash value according to clause 9.4(a), the fair market value of such consideration in kind shall be determined based on the internal methodology of the Company.
  3. Transfers of the Shareholders’ shares related to the Company’s financing (i.e., share transfers with the primary purpose of raising additional funds for the Company arising out of the Shareholders’ commitments and/or warranties under the financing documentation), or any share reorganisation between existing shareholders, any reorganisation of the Group or any issuance of new shares shall not be considered an Exit Event and shall not entitle Participants to a Bonus.
  4. The Participant shall receive the Bonus from the Company or other relevant Group company (if the company assigns and relevant Group company assumes the obligation of the Company to pay the Bonus) within 45 days of the day the Company receives funds for the pay-out of the relevant monetary or in-kind consideration as a result of the Exit Event, unless different payment terms are agreed within the Exit Event transaction that would reasonably defer the payment of the Bonus.
  5. Each of the Participants acknowledges that any right to receive a Bonus (or part of it) is subordinated to any shareholder’s rights that, according to the Company’s Articles of Association and/or effective shareholders’ agreement in respect of the Company, should be satisfied in priority to the rights of shareholders holding ordinary shares or should otherwise be satisfied in priority to the shares notionally dedicated by the Shareholders to the GPP.
  6. If a person (particularly a Shareholder) other than the Company is entitled to receive monetary or in-kind consideration because of an Exit Event, such person may assume the obligation of the Company to pay the Bonus (the **Assumption**). By accepting the Award, each of the Participants:
     1. consents to the Assumption;
     2. undertakes not to raise any claims against the Company due to the Assumption; and
     3. acknowledges and agrees that the Company is released from payment of the Bonus after the Assumption.
  7. If the Participant nonetheless raises a claim against the Company due to the Assumption, such action will, as a material breach of these Terms, be treated as a Bad Leaver Event in relation to the Participant.

1. Conversion to Share Option Plan
   1. The Company may in its sole discretion convert this GPP based on Phantom Shares into the Share Option Plan (i.e., the Conversion).
   2. Each of the Participants acknowledges the right of the Company to initiate the Conversion, demand the exchange from the Participants and supersede this GPP through the Conversion, and Participants undertake to take any action and to provide any cooperation as may be reasonably required by the Company to effect the Conversion. A breach of the obligations in this clause 10.2 by a Participant shall be considered a material breach triggering a Bad Leaver Event.
   3. The Participants further acknowledge that certain conditions that are commonly implemented in share option plans and/or direct award schemes, such as (but without limitation to) vesting, bad leaver and good leaver conditions, share transfer restrictions, buy-out rights, rights forcing the participants to sell the Conversion Shares or cancel the option right in respect of Conversion Shares, the exclusion of voting rights and other conditions deferring the rights associated with the Conversion Shares, and subordination in respect of distribution of the proceeds on the Conversion Shares, shall be implemented in the Share Option Plan and shall be binding upon the Participants for as long as the Participants hold the Conversion Shares or options in respect of the Conversion Shares under the Share Option Plan.
2. Termination of the GPP and Individual Buy-Outs
   1. In addition to settlement upon the Exit Event and/or Conversion, the GPP may be terminated by the Company’s decision on termination and settlement of the GPP (the **Termination**). In such case, all Phantom Shares will be cancelled, whereupon the consideration to be paid to the Participants for cancellation of:
      1. unvested Phantom Shares will be zero; and
      2. vested Phantom Shares will be calculated based on the following formula:

**Where:**

**Bonus** is the monetary or in-kind amount of the Bonus the Company must pay or procure is paid to the eligible Participant at the time of Termination of the GPP.

**F** is the fair market value of the shares/shareholding interests notionally dedicated by the Shareholders to the GPP pool at the time of Termination of the GPP.

**VPS** is the total number of vested Phantom Shares awarded to the relevant Participant which vested prior to the time of Termination of the GPP.

**TPS** is the total number of Phantom Shares in the pool of the GPP at the time of Termination of the GPP.

**IV** is theInitial Value of the Phantom Shares awarded to the relevant Participant which vested prior to the time of Termination of the GPP.

* 1. After the settlement at Termination, all Phantom Shares will be cancelled, the GPP will be terminated, and the Participants will have no further rights under the GPP.
  2. In addition to the full settlement and termination of the GPP, the Company can (but it is not obliged) at its own discretion and on an individual basis submit to the Participant(s) an offer to buy-out the Phantom Shares awarded to the Participant(s). If the respective Participant is interested in a buy-out, and thus cancellation of all or a portion of the Participant’s Phantom Shares; the conditions of the buy-out and the consideration to be paid for the buy-out of Phantom Shares from the Participant will be agreed on a case-by-case basis.

1. Transferability of the Phantom Shares
   1. None of the Participants may transfer to any third party their Phantom Shares or their right to monetary or in-kind consideration from the Company or encumber the Phantom Shares in any way (in particular sell, donate, dispose of, split, surrender, deposit, assign, rent, transfer, create any legal or beneficial right in favour of any third parties or take any other action having a similar effect). Any transfer or encumbrance of Phantom Shares contrary to these restrictions shall be null and void from the beginning and shall have no effect on the Shareholders and the Company. This shall not apply if the Company has given its prior written consent to the transfer or encumbrance of particular Phantom Share(s).
   2. Any and all Phantom Shares of a Participant and all rights and/or claims such Participant may have or may have had under the Terms shall lapse in case of any violation by the Participant of the transfer restrictions set forth in clause 12.1.
2. Leaver
   1. The Participant’s participation in the GPP will terminate upon the occurrence of a Leaver Event. Notwithstanding anything to the contrary under these Terms, all the Participant’s rights and Company’s obligations arising out of the Contract (except for terms that the parties expressly or impliedly intended to survive termination) shall cease to exist on the occurrence of a Bad Leaver Event.
   2. If the Participant’s participation in the GPP terminates due to a Good Leaver Event, the Participant will be entitled to keep their vested Phantom Shares and receive benefits from their vested Phantom Shares under the terms herein. Any entitlement to receive any benefit from the unvested Phantom Shares, i.e., any Bonus or other value and all other claims such Participant may have or may have had under the Terms and/or the Award in respect of the unvested Phantom Shares will cease to exist and the Award in respect of the unvested Phantom Shares will be cancelled. Notwithstanding the foregoing, the Company may, in its sole discretion, decide to pay to the Participant undergoing a Good Leaver Event any benefit from the vested Phantom Shares, i.e., any Bonus, even prior to the Exit Event, based on the fair market value determined in accordance with these Terms applicable at the moment the Bonus on the vested Phantom Shares is paid out to the Participant. After such pay-out of all vested Phantom Shares, all vested Phantom Shares of the Participant undergoing the Good Leaver Event will be cancelled and such Participant will have no further rights under the GPP.
   3. If the Participant undergoing a Good Leaver Event keeps any Phantom Shares, provisions in respect of Bad Leaver Events under these Terms still apply to such Participant and the Participant may become a Participant undergoing a Bad Leaver Event if a Bad Leaver Event in respect of such Participant occurs.
   4. Notwithstanding anything to the contrary under these Terms, if the Participant’s participation in the GPP terminates for any of the reasons specified in this clause 13.4 (a **Bad Leaver Event**), the Participant shall not be entitled to receive any benefit from any vested or non-vested Phantom Shares, i.e. any Bonus or other value and all other rights and claims such Participant may have or may have had under the Terms and/or the Award and/or the Contract will cease to exist and the Award, the Contract and all Phantom Shares of the Participant will be terminated and cancelled:
      1. the Participant is in material breach of these Terms or the Award, particularly, but without limitation to, a breach of the obligations under clauses 3.2, 9.9 and 10.2 hereof;
      2. the Participant is in material breach of their obligations arising from a Relationship Agreement with Group company referred to in clause 3.1 hereof and such breach has not been remedied (i.e. the consequences have not been entirely removed) within 30 days of the Participant having received a written notice of breach from the Company or the relevant Group company;
      3. the Relationship Agreement of the Participant with Group company referred to in clause 3.1 hereof is terminated in any manner for reasons related to material misconduct of such Participant;
      4. the Participant has been convicted of a wilful crime and the applicable judgement has taken legal effect, or the Participant has been convicted of a crime committed during the performance of the Participant’s duties or in direct connection with such duties and the applicable judgement has taken legal effect;
      5. the Participant violates their confidentiality obligation under these Terms;
      6. the Participant violates their non-compete or non-solicitation or confidentiality obligation set out in a Relationship Agreement or other agreement with any Group company;
      7. the Participant engages in any pattern of conduct that involves the making or publishing of written or oral statements or remarks (including, without limitation, the repetition or distribution of derogatory rumours, allegations, negative reports or comments) which are disparaging, deleterious, or damaging to the integrity, reputation or good will of the Group or their management;
      8. the Participant uses or allows the use of any of the Company’s patents, inventions, copyrights, trademarks, domain names, trade secrets, know-how, business names, or other intellectual property or proprietary rights in violation of the Relationship Agreement or other agreement with the Group company (if applicable);
      9. the Participant creates or helps to create any patent, invention, copyright, trademark, domain name, trade secret, know-how, business name, or other intellectual property or proprietary right (each, an **Intellectual Property**) for a third party, if such an Intellectual Property could have been regarded as work and/or deliverable of the Participant for the Group under or in connection with the Relationship Agreement; and
      10. the Participant causes any substantial damage to the Group or their reputation which has not been remedied (i.e., the consequences have not been entirely removed) within 30 days of the Participant having received the first written notification from a Group company.
3. Succession
   1. In the event of the Participant’s death, the unvested Phantom Shares of the Participant will cease to exist. Any vested Phantom Shares and any other claims under these Terms shall pass to the Participant’s legal successor(s), provided that such legal successor(s) prove(s) such legal succession by the submission of a relevant decision of inheritance or other evidence prior to, or within six months of, the first event triggering the payment of a Bonus (or a portion of it). Otherwise, all vested Phantom Shares held by the deceased Participant and all claims under the Terms shall cease to exist and lapse without compensation.
   2. The Company may, in its sole discretion, deviate from the provisions under clause 14.1, particularly the Company may accept other evidence of inheritance, extend the deadline for submission of evidence of inheritance and/or opt to pay out the Bonus on the vested Phantom Shares to the legal successor. The rules for the calculation of the Bonus as in the case of a Good Leaver Event shall apply.
   3. Any (i) winding-up of the Participant Entity with liquidation, (ii) a merger of Participant Entity with another company, or (iii) another transformation of the Participant Entity triggering the succession in title in respect of the Phantom Shares is subject to the Company’s consent and other conditions that the Company may stipulate. Otherwise, all Phantom Shares held by the cancelled Participant Entity and all claims under the Terms shall cease to exist and lapse without compensation.
4. Taxes and Withholdings
   1. For the avoidance of any doubt, the Company and the Participants acknowledge that any tax liability associated with the Bonus and any other levies or contributions will be settled under the local laws in force and effect at the time of provision of the Bonus. The Company and the Participants hereby acknowledge that the obligation to pay income tax or other levies or contributions may arise both on the part of the relevant Group company making the payment and on the part of the Participant receiving the payment. The Participant shall be solely responsible for the fulfilment of any obligations on the Participant’s side unless otherwise agreed in advance in writing in a particular case or required by applicable law.
   2. The Participant agrees and acknowledges that in case the Bonus will be subject to any withholdings, the amount of Bonus will be calculated and paid to the Participant net after these withholdings. Such withholdings may consist of, but are not limited to, mandatory wage or income tax, social security, and health insurance contributions that are required to be withheld from the Bonus according to respective legislation applicable at the time of Bonus payment. Provided that a Group company is obliged to pay any mandatory income or wage tax, social security, health insurance, or any other liabilities that directly relate to the Bonus payment. The Participant agrees to reimburse the Group company for all these payments. The Participant explicitly agrees that any such mandatory income or wage tax, social security, health insurance, or any other liabilities that directly relate to the Bonus payment may be offset against the Bonus payment.
   3. Each of the Participants agrees and acknowledges that the Bonus may be, prior to its payment to the Participant, subject to withholding of amounts equal to any costs and/or expenses related to the Exit Event transaction and/or related to the termination and settlement of the GPP. The costs and expenses will be calculated proportionally based on the portion of the Shares notionally dedicated to the pool of the GPP.
5. Confidentiality of Information
   1. For these Terms, confidential information means the content of these Terms, the number of Phantom Shares awarded to the Participant, and any other terms specified in the Award (the **Confidential Information**). Each of the Participants undertakes not to disclose or provide access to any Confidential Information to any third parties (including the Company’s personnel and any other Participants) and not to use any Confidential Information for their own or a third party’s benefit.
   2. The confidentiality obligation hereunder shall not apply to the disclosure of Confidential Information (a) to persons working for the Participant’s benefit (e.g., attorneys, auditors, or other advisors of the Participant) if they need to know such Confidential Information in order to perform their duties in connection with these Terms, (b) if the Company gave its prior written consent to the disclosure of Confidential Information or (c) in the case of a statutory obligation to prevent or report a crime or in the case of any other statutory notification obligation. In the case of point (c) above, the Participant shall be obliged to mark the information provided as a trade secret and to notify the Company of its disclosure without any undue delay (unless the Participant would be restricted to notify the Company under the applicable laws or by a governmental authority).
6. Final Provisions
   1. Neither the Shareholders, the Company, nor any other Group company makes any warranty or representation regarding the future value of the Phantom Shares or the Company. The Shareholders, the Company, or any other Group company and their managers, employees, or advisors are not liable for any loss or damage (including loss of profits) associated with the issue of the Phantom Shares under these Terms. For the avoidance of doubt, nothing in these Terms shall limit or exclude the Company’s liability for: (a) death or personal injury caused by its negligence, or the negligence of its employees, agents, or subcontractors; (b) fraud or fraudulent misrepresentation; or (c) any other matter for which liability may not be excluded or limited under applicable law.
   2. The Company may unilaterally amend these Terms. However, amendments to these Terms must not materially negatively affect any of the Participant’s rights that the Participant acquired in good faith prior to any such amendment. The Company shall notify each Participant in writing of the new version of these Terms at least seven days before the effective date of the new version. The Participant is entitled to reject such amendments by sending a written notice to the Company stating that they reject the amendments. In such case, the Participant is bound by the Terms prior to their amendments until they agree to their new version. If the Participant does not reject the amendments within seven days of notification, the Participant is deemed to have agreed to the new version of the Terms. Any Award of Phantom Shares following such an amendment of the Terms will be subject to the Participant agreeing to the new version of the Terms also with respect to all past Awards.
   3. The Company may assign its rights and obligations under the Terms and Contract to any other Group company. The Participant shall give any cooperation needed to give effect to such assignment.
   4. If there is any conflict between any provision of these Terms and any provision contained in the Award offer letter, then the provision in the Award offer letter shall prevail. If any provision of these Terms is or becomes invalid, ineffective, or unenforceable or if it is found invalid, ineffective or unenforceable by a competent court or public authority, the remaining provisions of these Terms shall remain valid and effective, provided that the nature or content of such a provision or the circumstances under which it was concluded do not imply that it is not severable from the remaining content of these Terms. The Company undertakes to replace any invalid, ineffective or unenforceable provision of these Terms with a new provision, the content and purpose of which shall most closely correspond to the original provision and these Terms as a whole.
   5. The parties agree that the applicability of these Terms to the Participant is subject to the acceptance of the Award and creation of the Contract and that any negotiation of the Award, and the Contract, is subject to the final approval of the Company. Thus, the Contract may not give rise to any claims under the provisions on pre-contractual liability under local laws. Each party is assuming the risk of changing circumstances. None of the parties shall be entitled to claim the renegotiation of the Contract due to a change in circumstances.
   6. These Terms and any rights and obligations of the parties not provided for therein shall be governed by the laws of the Czech Republic. The parties agree that business practices shall not take precedence over any statutory provisions including those statutory provisions that do not have coercive effects.
   7. The parties hereby agree to exert their maximum effort to amicably settle any disputes that may arise from time to time out of or in connection with these Terms and the Contract.
   8. If the parties fail to resolve any such dispute amicably, it will be finally resolved by the courts of the Czech Republic.
7. 1. Award Offer Letter

***[Name of the Participant]***

*[Address]*

 (the “**Participant**”)

On [*to be completed*]

**Offer to Participate in the GPP**

Dear [*to be completed*],

Subject to all terms and conditions set out in this Award Offer Letter (the “**Offer**”), and in the enclosed Terms & Conditions (the “**Terms**”) constituting an integral part of the Offer, we are pleased to announce to you, that you (Participant) have been granted an award of Phantom Shares as described below.

Your participation in the growth participation plan [*name if any*] (the “**GPP**”) of [*company name and info – as defined in the ESOP Terms*] (the “**Company**”) under this Offer is derived from your relationship with one of the Group companies based on the [*specification of the agreement*] dated [*date to be added*] (the “**Relationship Agreement**”). The Phantom Shares (entitlement to benefit from the Phantom Shares) vest according to the below Vesting Period schedule, provided that you continue performing work under the Relationship Agreement.

By accepting this Offer a valid contract between you and us will be created (the “**Contract**”). Under the Contract, you will become entitled to receive the Phantom Shares and, in case of occurrence of events triggering the pay-out of a Bonus or a portion of it, the corresponding Bonus (as described in Terms). Unless specified herein otherwise, the terms with capital letters in this Offer shall have the meaning ascribed to them in the Terms.

|  |  |
| --- | --- |
| **Parameters of Phantom Shares** | |
| Number of Phantom Shares: | [*amount*] |
| Initial Value: | [*currency*] [*amount*] per Phantom Share |
| Starting Date: | [*date*] |
| Vesting Period: | [4 years] |
| Cliff: | [1 year] |
| Time-based vesting period schedule: | [Monthly] |
| Vesting Schedule: | [25%-25%-25%-25%] |

The Offer expires on[*to be completed*] (the “**Expiration Date**”). To accept it, you must sign and deliver this Offer and the enclosed Terms to us by the Expiration Date, via electronic means selected by the Company. The signed Award Offer Letter is deemed accepted once received by us. Your timely acceptance of the Offer creates a valid Contract between us.

By accepting the Offer, you as the Participant undertake to keep strictly confidential and to not disclose to any third party the Confidential Information, subject to the provisions of the clause on Confidentiality of Information of the Terms.

If you do not accept the Offer by the above deadline or accept it with any reservations, conditions, or changes, the Offer will be considered declined.

This Offer is governed by the laws of the Czech Republic

Annex: GPP Terms & Conditions (Effective date: [*to be completed*])

Company:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: [*to be completed*]

Position: [*to be completed*]