**DRAFT DATED 25 SEPTEMBER 2023**

**SEED SHAREHOLDERS’ AGREEMENT**  
  
  
**DATED [⚫]  
  
  
between  
  
COMPANY  
  
and  
  
[INVESTOR 1]**

**and**

**[INVESTOR 2]  
  
and  
  
[FOUNDER 1]  
  
and  
  
[FOUNDER 2]**

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**THIS AGREEMENT** is made on [⚫]

**BETWEEN**:

1. **[⚫]** (the **Company**) as the Company;
2. [⚫] (**Founder 1**) as the founder; and
3. [⚫] (**Founder 2**) as the founder;

(Founder 1 and Founder 2 collectively referred to as the **Founders** and each of them individually as a **Founder**);

1. [⚫] (**Investor 1**) as the equity investor; and
2. [⚫] (**Investor 2**) as the equity investor;

(Investor 1 and Investor 2 collectively referred to as the **Investors** and each of them individually as an **Investor**).

**WHEREAS**:

* 1. The Founders are the shareholders of the Company, each owning such shareholding (in Czech *podíl*) as set out opposite its name in section “Pre-investment” of the capitalisation table in Schedule 1.
  2. On or around the signing of this agreement the parties have entered into a series [A] investment agreement (the **Investment** **Agreement**), whereby each Investor will acquire such new Shares (in Czech *podíl*) as set out opposite its name in section “Post-investment” of the capitalisation table in Schedule 1.
  3. The parties wish to agree on the main principles for the operation and management of the Company, transfers of Shares as well as other mutual rights and obligations as Shareholders.

**THE PARTIES AGREE AS FOLLOWS**:

1. Interpretation

In addition to terms defined elsewhere in this agreement[[1]](#footnote-1), capitalised terms used in this agreement have the following meaning:

1. **Additional Consideration** defined in Clause 5.3(d);
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. **Anti-Dilution Adjustment** defined in Clause 6.3;
4. **Articles** means the articles of association of the Company in the form set out in Schedule 3, as amended from time to time;
5. **Bad Leaver** is defined in Clause 10.2;
6. **BCA** means Czech act no. 90/2012 Coll., on commercial companies and cooperatives (business corporations act), as amended;
7. **Business** means the business of the Company being [describe in one or more sentences];
8. **Civil Code** means Czechact No. 89/2012, Coll., the civil code, as amended;
9. **Control, Controlled, Controlling** mean the ability to exercise decisive influence on a corporation within the meaning of clause 74 and following of the BCA;

**Effective Date** means the date on which the Closing (as defined in the Investment Agreement) has occurred;

1. **Encumbrance** means (a) a security interest of any kind, including any pledge, mortgage, financial collateral arrangement, retention of title arrangement or security assignment; (b) any claim or right belonging to a third party, including, without limitation, any right of pre-emption, right of first refusal, option, requirement of consent, lease; or (c) other encumbrance or restriction of any kind;
2. **Excluded Transaction** is a transaction which sole purpose is to (a) create a holding company that will be owned in substantially the same proportions by the persons who held the Company’s securities immediately before such transaction; or (b) obtain funding for the Company in a bona fide financing transaction that is approved by the Investor Majority;
3. **Founder Majority** means Founders holding Shares with the aggregate nominal value representing more than 50% of the total nominal value of all Shares held by the Founders;
4. **Good Leaver** is defined in Clause 10.4;
5. **Group Company** means the Company and any of its subsidiaries;
6. **Intellectual Property** means any works of authorship (including computer software, underlying code, manuals and any preparatory materials), trademarks, service marks, trade names, business names, logos, domain names, patents, utility models, semiconductor topographies, inventions, designs, rights to databases and any other intellectual property as may be recognised in any jurisdiction, whether registered or unregistered (together with applications for and the right to apply for any such rights), including any rights to such intellectual property as may be recognised in any jurisdiction;
7. **Investor Majority** means the Investors who hold the majority of the Shares held by all of the Investors;
8. **Investor Majority Consent** means the prior written consent of the Investor Majority;
9. **Key Employees** means [Alternative 1: All employees of the Company. [Alternative 2 each of the following persons: [insert name]];
10. **Liquidation Preference** defined in Clause 5.3(b)(i);
11. **Liquidity Event** means (in each case subject to the Investor Majority Consent):
    1. any resolution on voluntary dissolution of the Company with liquidation;
    2. any transaction, including transformation within the meaning of the Transformation Act, or series of transactions, resulting in a new Controlling person of the Company;
    3. transfer of the enterprise (in Czech *závod*) of the Company or any material part of it;
    4. any transaction pursuant to which all or substantially all of the assets of the Company are transferred or disposed beyond the ordinary course of business;
    5. listing of shares of the Company directly or indirectly on a regulated market (IPO); and/or
    6. Majority Share Sale.
12. **Majority Share Sale** means the closing of the Transfer of any Shares that will result in the acquirer of those Shares, and persons Controlled, Controlling or under common Control with such acquirer, acquiring Control over the Company, whether effected through a single transaction or series of related transactions, except if such a Transfer is an Excluded Transaction;
13. **Professional Relationship** means an employment relationship, Executive Director service relationship or other service relationship (e.g., consultancy, advisory relationship, relationship from contract for works) between the Founder, on one hand, and any Group Company, on the other hand;
14. **Share** means any (corporate) share (in Czech *podíl*) issued from time to time by the Company, irrespective of its class or rights related to it;
15. **Share Capital** means 100 % of all shareholdings (in Czech *podíly*) in the Company;
16. **Shareholder** means any holder of any Shares;
17. **Supervisory Board** means the supervisory board (in Czech *dozorčí rada*)of the Company;
18. **Transfer** means any assignment, other disposal or transfer, whether conducted under sale, donation, an in-kind contribution or otherwise with the same or similar effects;
19. Founders’ Undertakings
    1. Promotion of Business

The Founders shall promote the best interests of the Company and shall take all actions on their part to ensure that the Business is conducted in accordance with this agreement, the Articles and applicable law, with the aim of (a) increasing the value of the Company for all Shareholders (including its further business development and expansion), (b) maximising proceeds for all Shareholders from the Company and (c) achieving an exit for the Shareholders from their investment within the term set forth in Clause 7.3[[2]](#footnote-2).

* 1. Devotion

The Founders shall devote their entire business time to the Company (no less than 40 hours per standard working week on average) and shall not undertake additional business activities without the consent of the Investor Majority. As an exception, the following Founders are entitled to undertake the following business activities, provided that this does not interfere with the relevant Founder’s ability to perform its duties with respect to the Company:

* + 1. [insert Founders name] is entitled to [insert description of the business activities that the Founder is entitled to undertake];
    2. [insert Founders name] is entitled to [insert description of the business activities that the Founder is entitled to undertake]; and
    3. [insert Founders name] is entitled to [insert description of the business activities that the Founder is entitled to undertake].
  1. New business opportunities

The Founders shall procure that all new opportunities relevant to the Business shall be taken up only through the Company or its wholly owned subsidiary, except as otherwise explicitly approved by the Investor Majority.[[3]](#footnote-3)

1. Management of the Company and Adoption of Resolutions
   1. Articles

The Articles, in the form set out in Schedule 3 (as amended from time to time in accordance with the provisions set forth therein) shall form an integral part of this agreement as if each provision of the Articles were a part of this agreement, irrespective of whether the relevant version of the Articles is filed with the collection of deeds of the commercial register. If any provision of the Articles is non-compliant with applicable laws, the Shareholders shall replace such provision by a valid provision that best reflects the parties’ original intention and achieves, to the maximum extent possible, the same economic result, and the Company shall file such amended Articles with the collection of deeds of the commercial register. If the Articles are amended during the term of this agreement, such amendment also constitutes an amendment of Schedule 3 of this agreement and the parties shall, in all interactions between themselves, apply such amended form of the Articles.

* 1. Governing bodies

The Company shall be governed by the General Meeting and the Executive Directors in accordance with the applicable law and Articles, subject to any provisions of this agreement governing such matters.

* 1. Convocation and voting at the General Meeting
     1. The General Meeting shall be convened at least once every accounting period to be held no later than six months after the last day of the previous accounting period.
     2. The General Meeting shall take place at the time and venue determined by the Executive Director. The General Meeting shall be convened by the Executive Director unless otherwise provided by the applicable law. The Executive Director shall notify all Shareholders of convening the General Meeting in a way that the respective notice would reach the addressee at least [15] days prior to the General Meeting.
     3. The General Meeting shall be competent to adopt any resolution subject to the Investor Majority only if more than half of the votes represented by Total Shares, including the votes represented by the New Shares held by the Investor Majority, are represented at the meeting.
     4. Unless stipulated otherwise by the applicable law, the General Meeting shall be quorate if more than half of the votes represented by the Shares are represented at the meeting.
  2. Investor Majority Matters

The following important matters (the **Investor Majority Matters**) shall require the prior Investor Majority’s consent or if such a matter requires a General Meeting’s decision according to the applicable law and/or Articles [or] the Investor Majority’s vote at a General Meeting of the Company:

* + 1. [adopting, or making material changes in, the business plan];
    2. [adopting, or making material changes in, the annual budget];
    3. [establishing, acquiring, transferring or encumbering any shareholding in any entity, including a subsidiary];
    4. [entering into, and changing any material terms of, any transaction for borrowing or taking other debt in excess of budgeted amounts];
    5. [entering into, and changing any material terms of, any other transaction resulting in costs or liabilities in excess of budgeted amounts];
    6. [entering into, and changing any material terms of, any transaction for granting a loan or providing a guarantee or any other security];
    7. [entering into, and changing any material terms of, any transaction pursuant to which all or substantially all of the assets of the Company are transferred or disposed beyond the ordinary course of business];
    8. [commencing, conducting or settling material court, arbitration or similar proceedings];
    9. [entering into, changing any material terms of, and terminating any transaction with any key employee or key service provider];
    10. [entering into, and changing any material terms of, (i) a transaction that cannot be unilaterally terminated by the Company by at most [insert number] months’ notice (ii) a transaction that includes exclusivity rights or obligations or (iii) a transaction which includes non-competition or non-solicitation obligations of the Company];
    11. [entering into, and changing any material terms of, any transaction involving or leading to costs or liabilities exceeding (individually or in any period of 12 months) the amount of CZK [insert] (or equivalent in any other currency) (whether or not the relevant costs and liabilities are in excess of budgeted amounts)];
    12. [taking any of the actions specified in the above paragraphs [above paragraphs (a)-(k)] with respect to any subsidiary];
    13. deciding on modifications of the Share Capital or on allowing an in-kind non-monetary contribution or on the possibility to set off a monetary receivable from the Company against a receivable for payment of an investment contribution;
    14. giving instructions to the Executive Directors and approving the description of business activity of the Company; prohibiting certain legal actions by the Executive Directors, if in the interests of the Company;
    15. deciding on the Liquidity Event;
    16. approval of any transfer, pledge or usufructuary lease (in Czech: *pacht*) of the Company’s enterprise (in Czech: *závod*) or any part thereof or such a part of the Company’s assets that would constitute a material change in the actual Business or activity of the Company;
    17. approval of a silent partnership agreement and other agreements establishing the right to receive a share of the Company's profits or other own resources;
    18. deciding on disposal of the contribution premium (in Czech: *vkladové ážio*);
    19. approval of any Encumbrance of the Company’s Shares;
    20. approval of an agreement on performance of office of any member of a Company´s body and any other consideration offered to him/her; and
    21. [insert relevant matters].
  1. Voting at the General Meeting
     1. Subject to Clause 3.3(c) or whenever a higher majority requirement is set forth in the applicable law: (a) a resolution of the meeting of Shareholders is adopted if more than half of the votes represented at the General Meeting are cast in favour and (b) a resolution of the General Meeting proposed for adoption without convening a meeting is adopted if more than half of the votes represented by all Shares are cast in favour.
     2. [A resolution of the General Meeting in a manner which would interfere with the rights or duties attached to the New Shares is adopted only if such resolution is supported by at least the minimum majority of votes required by the applicable law and other provisions of the Articles for the adoption of the relevant resolution including, in any event, all votes represented by the New Shares.]
  2. Executive Directors
     1. The Company shall have [insert number] Executive Directors. Each Executive Director shall be a statutory body of the Company. The Executive Directors shall be elected and recalled in accordance with this agreement and the Articles by the General Meeting.
     2. [The Executive Directors shall be elected as follows:
        1. [...]]
     3. [Each Shareholder shall vote in such manner as is necessary to ensure that:
        1. the election of Executive Directors shall be in line with the principles set forth in this agreement;
        2. no Executive Director elected pursuant to such principles may be removed from office unless such removal is directed or approved by the affirmative vote of the person or persons entitled under such principles to nominate that Executive Director;
        3. any vacancies in the office of Executive Director created by the resignation, recall or death or otherwise shall be filled pursuant to such principles; and
        4. upon the request of any person(s) entitled to nominate an Executive Director pursuant to such principles to recall such Executive Director, such Executive Director shall be recalled.]
     4. The Executive Directors shall each represent the Company [individually / individually except for legal acts the value of which exceeds [...]].[[4]](#footnote-4)
  3. [Observer Rights][[5]](#footnote-5)

[[Insert name]has the right to appoint and revoke the appointment of a non-voting observer to the Executive Directors of the Company who will have full rights to access all the information of the Company and its business and who may participate at meetings of the Executive Directors. The observer shall be given copies of all notices, minutes, consents and other materials at the disposal of Executive Directors at the same time and in the same manner as provided to the Executive Directors, provided that such observer is bound by the obligation to hold any non-public information submitted to him/her in confidence.]

* 1. Matters requiring approval

The parties shall procure that none of the actions which require the approval of the General Meeting or the Shareholders or the Investor Majority under this agreement and/or the Articles will be taken without such approval.

* 1. Application to other Group Companies

The principles of corporate governance set forth in this agreement and the Articles shall be applied *mutatis mutandis* to all other Group Companies (as relevant).

* 1. Transactions between Affiliates

All transactions between the Company and/or any other Group Company on the one hand, and any of the Shareholders or Affiliates of the Shareholders and/or the Company on the other hand, shall reflect market conditions and shall be made in writing or in a form reproducible in writing.

* 1. Compliance

The Company shall manage its operations based on the industry best practice in an appropriate, prudent and business-like manner and in compliance with applicable laws, this agreement and the Articles.

* 1. Protection of Intellectual Property

The Company shall use all reasonable efforts to ensure that its operations do not violate any Intellectual Property of any third person and that all its own Intellectual Property shall be adequately maintained and protected. The Company shall procure (to the maximum reasonable extent) that all its agreements involving the creation of Intellectual Property for the Company shall include such customary provisions related to the transferring and/or licensing of the relevant Intellectual Property to the Company that would enable the Company to lawfully hold and use such Intellectual Property for its business purposes.

1. Information Rights
   1. Provision of information

Subject to Clause 4.3, the Company shall provide the following information to all Investors:

* + 1. A monthly report about financials, KPIs and other metrics in the format approved by the Investor Majority – within [insert number] days of the end of each month;
    2. annual financial statements – within [insert number] months of the end of each financial year;
    3. a proposed annual budget for the next financial year in the format approved by the Investor Majority – by 1 [insert month] of the preceding financial year;
    4. information on events and circumstances that may have a material adverse effect on the Business, specifying actions taken or proposed by the Company – as soon as possible; and
    5. [insert other relevant matters].
  1. Investors’ right of examination and access to management

Subject to Clause 4.3, each Investor may examine all books and records of the Company, inspect its facilities and request information at reasonable times and intervals concerning the status of the Company’s financial condition and operations in accordance with the applicable law, Articles and this agreement.

* 1. Restrictions on reporting

An Investor’s rights under Clause 4.1 and/or 4.2 may be limited by the Company only if the respective information concerns confidential information pursuant to the applicable law or if the respective information is publicly available.

1. Share Capital and Shares
   1. Shares

The Shares shall grant their holders the rights set forth in this agreement and in the Articles and, to the extent not set forth in this agreement or in the Articles, the rights set forth in the applicable law.

* 1. Voting Rights
     1. Each Shareholder shall have equal right to participate in the adoption of resolutions on matters that fall within the remit of the Company’s General Meeting.
     2. Each [one Czech Crown] of the contribution to the Share Capital shall grant its holder one vote. The holders of all Shares shall vote together as a single class on all matters that fall within the remit of the Company’s General Meeting, unless otherwise set forth in the Articles.
  2. Liquidation Preference[[6]](#footnote-6)
     1. Upon the occurrence of a Liquidity Event, the Investors shall have preferential rights in respect of the distribution of assets and/or proceeds as set out in this Clause 5.3 of this agreement.
     2. Upon the Liquidity Event, the assets of the Company available for distribution to the Shareholders shall be divided as follows:
        1. first, in paying to each Investor, in priority to Founders, an amount per each Czech Crown of the contribution to the Share Capital corresponding to the Share held by the Investor equal to the greater of (i) [multiple to be specified]timesthe amount paid by the Investor for the subscription of its Share (per each Czech Crown of the contribution to the Share Capital corresponding to the Share) or (ii) such amount as would have been payable had the assets of the Company available for distribution to the Shareholders been distributed between all Shareholders on a pro rata basis to their Shares (the **Liquidation Preference**), provided that if the assets of the Company are insufficient to pay the Investors the entire Liquidation Preference, the Investors shall share pro-rata in any distribution of such assets in proportion to the respective amounts which would otherwise be payable in respect of the Shares held by them upon such distribution if the aggregate Liquidation Preference were paid in full; and
        2. second, the balance of the assets available for distribution to the Shareholders (if any) shall be distributed among Founders on a pro ratabasis to their Shares.
     3. Upon a Liquidity Event the proceeds of such sale shall be distributed (in respect of the Shares Transferred in connection with that Liquidity Event) in the order of priority set out in this Clause 5.3 and the Company and the Shareholders shall take all actions required to ensure that such proceeds of sale are so distributed.
     4. If any portion of the consideration payable to the Shareholders in connection with the liquidation of the Company or a Liquidity Event is payable only upon the satisfaction of certain contingencies (the **Additional Consideration**) then (a) the portion of the total consideration exceeding the Additional Consideration (such portion, the **Initial** **Consideration**) shall be allocated among the Shareholders in accordance with this Clause 5.3 as if the Initial Consideration were the only consideration payable in connection with such Liquidity Event and (b) any Additional Consideration that becomes payable to the Shareholders upon the satisfaction of such contingencies shall be allocated among the Shareholders in accordance with this Clause 5.3 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Clause 5.3(d), consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Liquidity Event shall be deemed to be Additional Consideration.
     5. None of the Shareholders, nor the Company, shall enter into any transaction that constitutes or results in a Liquidity Event unless the relevant transaction provides that the consideration payable to the Shareholders shall be allocated in accordance with the provisions of this Clause 5.3.

1. Share Issues and Transfers
   1. Restriction on the Founder

A Founder may not Transfer its Shares to any person during the Vesting Period, unless:

* + 1. the Transfer has been approved by a resolution in a form reproducible in writing in advance by [*Alternative 1: all Investors. / Alternative 2: the Investor Majority*]; or
    2. the Founder Transfers the Shares to a Proposed Purchaser to perform the obligations of a Called Shareholder arising from Clause 8.
  1. General undertaking

Each Shareholder undertakes to the other Shareholders to Transfer any Shares or encumber any Shares with any Encumbrance only in full accordance with the terms and conditions of this agreement and the Articles.

* 1. Anti-dilution protection[[7]](#footnote-7)

Subject to Clause 6.5, if new Shares are issued at a price per Share which is less than the amount paid by an Investor per Share (the **Dilutive Issue**), the number of the Shares of each such Investor shall be increased by an amount which shall be calculated by applying the following formula (the **Anti-Dilution Adjustment**):

**[Broad-based weighted-average ratchet]**

Where:

N = the amount by which the number of Shares of the Investor shall be increased;

IP1 = the amount paid by the Investor per each Share;

A = the aggregate number of Shares outstanding immediately before the Dilutive Issue plus the aggregate number of Shares [including virtual/phantom shares] in respect of which options to subscribe have been granted, or which are subject to convertible securities, in each case immediately prior to the Dilutive Issue;

IP2 = the issue price (which shall be the fair market value if the new Shares are issued for consideration other than cash) per each new Share issued pursuant to the Dilutive Issue;

B = the aggregate number of Shares issued pursuant to the Dilutive Issue; and

C = the number of Shares held by the Investor prior to the Dilutive Issue.

OR

[Full ratchet]

Where:

N = the amount by which the number of Shares of the Investor shall be increased;

W = the total amount subscribed by the Investor for Investor’s Shares prior to the Dilutive Issue;

WA = the issue price (which shall be the fair market value if the new Shares are issued for consideration other than cash) per each new Share issued pursuant to the Dilutive Issue; and

C = the number of Shares held by the Investor prior to the Dilutive Issue.

OR

[Narrow-based weighted average ratchet]

Where:

N = the amount by which the number of Shares of the Investor shall be increased;

W = the total amount subscribed by the Investor for Investor’s Shares prior to the Dilutive Issue;

Y = the weighted average price per Share held by the Investors as calculated by the following formula:

O = the total amount subscribed (whether in cash or by way of conversion of loan) by all Investors for Investors' Shares;

P = the aggregate of amounts to be paid in respect of the new Shares to be issued pursuant to the Dilutive Issue and the aggregate of amounts paid in respect of all previous Dilutive Issues (if any);

Q = the aggregate number of Shares held by all Investors prior to the Dilutive Issue;

R = the aggregate number of new Shares to be issued pursuant to the Dilutive Issue and the aggregate number of Shares issued in respect of all previous Dilutive Issues (if any); and

C = the number of Shares held by the Investor prior to the Dilutive Issue.

* 1. Effectuating the Anti-Dilution Adjustment
     1. The Anti-Dilution Adjustment shall be effectuated by increasing the Share Capital and the number of the Shares held by the relevant Investors. The issue price of the additional new Shares shall be equal to the contribution to the Share Capital corresponding to the additional new Shares and shall be payable by the Investors by the due date set forth in the resolution for increasing the Share Capital adopted by the relevant governing body of the Company.
     2. All the other Shareholders hereby undertake to waive their priority subscription rights with respect to the Shares to be issued by the Company pursuant to the Dilutive Issue.
     3. If the amount by which the number of new Shares of an Investor shall be increased is not a round number, general rounding principles to the nearest round number shall apply.
  2. Transactions excluded from Anti-Dilution Adjustment

The Anti-Dilution Adjustment shall not be applied to:

* + 1. an issuance of [virtual/phantom shares] from the option pool in accordance with Clause 7.2;
    2. an issuance of Shares upon the conversion of convertible loans or notes or other convertible instruments which the Company has previously issued, including those before the Effective Date and those in accordance with the terms of this agreement and the Articles;
    3. an issuance of Shares in consideration of the acquisition by the Company of any company or business which has been approved in writing by an Investor Majority; and
    4. an issuance of Shares where all Investors have waived the application of the Anti-Dilution Adjustment.
  1. Pre-emptive (priority) rights upon increase of the Share Capital[[8]](#footnote-8) or issue of new equity securities

Shareholders shall have a priority pro-rata right (but not an obligation) to participate in any subsequent funding rounds of the Company, i.e. to subscribe, at their sole discretion, for new shares issued in a subsequent funding round under the same conditions as those offered by the new investors to the extent allowing the Shareholders to maintain the size of the shareholding interest in the registered capital of the Company corresponding to their shareholding interest in the registered capital prior to such subsequent funding round.

* 1. Further financing

Nothing in this agreement shall be deemed to give rise to any obligation of a Shareholder to provide any financing to the Company in whatever form or manner. To the extent that the Company’s operations cannot be financed from its revenues, the Founders shall use reasonable efforts to raise additional equity or debt financing for the Company in one or several additional financing rounds.

1. Right of First Refusal
   1. A Transfer of a Share or part thereof (the Sale Share) by a Shareholder to a third party shall be subject to the right of first refusal set forth in this Clause 7 (the Right of First Refusal).
      1. A Shareholder who wishes to Transfer a Sale Share (the **Seller**) to a third party or to another Shareholder shall, before agreeing to Transfer the Sale Share, offer such Sale Share to each of the other Shareholders of the Company (the **ROFR Shareholders**) for acquisition on the same terms and at the same price (per each CZK of the nominal value of the Share) as such Sale Share is being offered to a third party by giving a notice in a form reproducible in writing (the **Transfer Notice**) to the Company and ROFR Shareholders. The Transfer Notice must state:
         1. the nominal value of the Sale Share;
         2. the price at which the Sale Share is proposed to be Transferred (the **Transfer Price**);
         3. the name of the transferee (the **Original** **Buyer**); and
         4. the Seller’s address (or e-mail address) where applications for exercising Right of First Refusal should be sent.
      2. Upon receiving the Transfer Notice, the ROFR Shareholders shall have 30 (thirty) business days thereafter to give a notice in writing to the Seller to:
         1. confirm their decision not to exercise their ROFR under this Clause 7; or
         2. confirm their decision to exercise their ROFR under this Clause 7 and propose the same terms as proposed by the Original Buyer to acquire all (but not only some) of the Sale Share.
      3. Should the ROFR Shareholders confirm their decision not to exercise their Right of First Refusal or fail to give notice to the Seller of their decision, the Seller shall be entitled to transfer the Sale Share to the Original Buyer on the terms as proposed by the Original Buyer within the next 3 (three) months from the receipt of the notice of ROFR Shareholders, or lapse of the 30 (thirty) business days period under Clause 7.1(c) hereof. After the lapse of this period or in a moment of material deviation of the terms of transfer of the Sale Share from those proposed by the Original Buyer the Right of First Refusal of the ROFR Shareholders shall renew.
      4. Should the ROFR Shareholders elect to propose at least the same terms as proposed by the Original Buyer to the Seller under Clause (d) above, the Seller shall be obliged to transfer the Sale Share to the ROFR Shareholders in accordance with the terms of such offer within the next 30 (thirty) business days. If more Shareholders elect to exercise their Right of First Refusal, the Sale Share will be transferred *pro rata* to their shareholding in the Company as of the date of the Transfer Notice.
      5. For the avoidance of any doubts, should the ROFR Shareholders elect to exercise their Right of First Refusal, the Transferor shall not be entitled to sell the Sale Share to the Original Buyer. If the Seller (i) fails to transfer the Sale Share within 30 (thirty) business days to the ROFR Shareholders or (ii) if the terms of transfer of the Sale Share to the ROFR Shareholders deviate from those proposed by the Original Buyer, the Seller is in breach of this Agreement and the Sale Share shall again become subject to the provisions of this Clause 7.
   2. Option pool

The Company may grant options over virtual/phantom shares to employees, members of governing bodies, advisers and service providers subject to a maximum option pool (in nominal value) set out in the respective rows regarding option pool in section “Post-investment” of the capitalisation table in Schedule 1. The Company may also grant options over virtual/phantom shares to the Founders; however, such grant shall require a prior Investor Majority Consent. Unless otherwise approved by the Investor Majority, options shall vest over [four] years: [25%] after one year and the remaining [75%] in equal monthly instalments over the following [three] years. The Shareholders shall take all actions necessary for the issuance of virtual/phantom shares to the holders of options granted in accordance with this agreement, including increasing the Share Capital and waiving any pre-emptive rights to acquire the Shares in question.

* 1. Exit

If a Liquidity Event has not occurred within [five] years after the Effective Date, the Company shall, if required by the Investor Majority, at the Company's expense appoint a professional adviser (to be agreed with the Investor Majority) to report on exit opportunities and strategy and copies of such reports shall be made available to the Shareholders on a confidential basis (at the Company's cost). However, the aforesaid will not oblige any Shareholder to commit to any such exit strategy.

* 1. Adherence to this agreement

None of the Shareholders shall Transfer any Shares or encumber any Shares with an Encumbrance, nor shall the Company issue any Shares to or for the benefit of any person until such person executes an adherence agreement substantially in the form set out in Schedule 2. Upon the increase of Share Capital, such agreement shall be signed by the Company and the new proposed shareholder, and, upon the Transfer or Encumbrance of Shares, such agreement shall be signed by the Company, the Transferring or Encumbering Shareholder and the new proposed shareholder. If an adherence agreement is signed in the way set forth in the previous sentence, it does not need the acceptance or signature of any other party.

* 1. Contractual penalty

If a Shareholder breaches any of its obligations specified in Clause 7 or in the Articles with respect to the issue and/or Transfer of Shares, each non-breaching Shareholder shall, have the right to claim from the breaching Shareholder a penalty for each breach in the aggregate amount that is the greater of (a) [EUR/CZK] [insert amount] or (b) the price or value of the transaction made in violation of this agreement or the Articles. Such contractual penalty shall be divided between the non-breaching Shareholders on a pro rata basis to their Shares.

1. Drag-Along
   * 1. If the Investor Majority and the Founder Majority (the **Drag Along Majority**) wish to Transfer all their Shares (the **Majority Shares**) to a purchaser who wishes to acquire all (100%) Shares of the Company (the **Proposed Purchaser**, and the relevant transaction the **Proposed Transaction**), the Drag Along Majority shall have the right to require that all other Shareholders (the **Called Shareholders**) Transfer all of their Shares (the **Called Shares**) to the Proposed Purchaser in accordance with this Clause 8(a).
     2. The Drag Along Majority may exercise the above right by giving to the Company, at any time before the Transfer of the Majority Shares to the Proposed Purchaser, a notice in a form reproducible in writing (the **Drag Along Notice**) which the Company shall forthwith copy to the Called Shareholders. The Drag Along Notice must specify: (i) the name of and information about the Proposed Purchaser; (ii) the consideration for which the Called Shares are to be Transferred calculated in accordance with Clause 8(d); and (iii) the date of Transfer of Shares that may not be earlier than 14 days of the date of receipt or deemed receipt of the Drag Along Notice.
     3. The Drag Along Notice shall be irrevocable but will lapse if for any reason there is not a Transfer of the Majority Shares by the Drag Along Majority to the Proposed Purchaser within [three] months of the date of the Drag Along Notice. The Drag Along Majority shall be entitled to serve further Drag Along Notices following the lapse of any particular Drag Along Notice.
     4. The purchase price for which the Called Shareholders shall be obliged to Transfer their Called Shares shall be that to which they would be entitled if the total purchase price proposed to be paid by the Proposed Purchaser for the Majority Shares and the Called Shares were distributed to the holders of the Majority Shares and the Called Shares in accordance with the provisions of Clause 5.3.
     5. The Drag Along Notice may require that Called Shareholders accept the following terms in connection with the Proposed Transaction (but may not require the acceptance of any other terms):
        1. each Called Shareholder shall give representations and warranties that the Proposed Purchaser or the Drag Along Majority may reasonably request, reflecting such Called Shareholder’s shareholding in and position with respect to the Company (i.e. founder, senior manager, employee, passive investor, etc.) provided that representations and warranties to be made by any Called Shareholder who is an Investor shall be limited to authority, ownership and the ability to convey title to the Shares held by such Called Shareholder;
        2. the Called Shareholder shall not be liable for the inaccuracy of any representation or warranty made by any other person (except to the extent that funds may be paid out of an escrow established to cover a breach of representations, warranties and covenants of the Company as well as a breach by any Shareholder of any identical representations, warranties and covenants provided by all Shareholders);
        3. the liability of any Called Shareholder who is an Investor for the inaccuracy of any representations and warranties made by the Company or its Shareholders is several and not joint with any other person, and is proportional to, and does not exceed, the amount of consideration paid to such Called Shareholder in the Proposed Transaction;
        4. the liability of each Called Shareholder for representations and warranties shall, to the extent legally permissible: (i) be limited to such Called Shareholder’s proportionate share of the aggregate liability of all Shareholders; (ii) be limited to the amount of consideration payable to such Called Shareholder in the Proposed Transaction; and (iii) be subject to the same time limitations as the liability of the Drag Along Majority;
        5. each Called Shareholder shall, upon the request of the Drag Along Majority, be obliged to pay a portion of its share of the purchase price into an escrow account in favour of the Proposed Purchaser, provided that amounts payable by him are proportional to the amounts payable by the Drag Along Majority and provided that the amounts payable by him are not held in escrow longer than the amounts payable by the Drag Along Majority.
     6. On the Shares’ Transfer date indicated in the Drag Along Notice, the Called Shareholders shall take all actions necessary to Transfer their Shares to the Proposed Purchaser in accordance with the Proposed Purchaser’s instructions, provided that the Proposed Purchaser has provided the Called Shareholders with evidence that it has or will pay them for the Shares the amounts due pursuant to Clause 8(d), e.g. by executing the Transfer of Shares and payment of funds via a delivery versus payment transaction.
     7. [If any person, following the issue of a Drag Along Notice, becomes a Shareholder pursuant to the exercise of a pre-existing option to acquire Shares or pursuant to the conversion of any convertible instrument of the Company (the **New Shareholder**), the Company shall ensure that the terms of any such pre-existing option to acquire Shares or any such convertible instrument shall provide that (i) a Drag Along Notice shall be deemed to have been served on the New Shareholder on the same terms as the previous Drag Along Notice, (ii) such New Shareholder shall then be bound to Transfer all Shares so acquired to the Proposed Purchaser in accordance with the Proposed Purchaser’s instructions and (iii) the provisions of this Clause 8 shall apply to the New Shareholder *mutatis mutandis*, except that the completion of the Transfer of the Shares shall take place immediately after the Drag Along Notice has been delivered to the New Shareholder].
     8. If a Liquidity Event is approved by the Drag Along Majority, the Drag Along Majority shall have the right, by a notice in a form reproducible in writing to all other Shareholders, to require that all other Shareholders take all such actions to give effect to or otherwise implement such Liquidity Event, subject to the proceeds from such Liquidity Event being distributed to the Shareholders in accordance with Clause 5.3.
2. Tag-Along Right
   * 1. If a Founder wishes to Transfer its Share or a part thereof, including if such Transfer has been subject to ROFR, such Founder shall give a notice in writing (the **Tag Notice**) to all other shareholders at least 30 days before the proposed completion of the Transfer transaction. The other Shareholders shall have the tag along right pursuant to this Clause 9. The Tag Notice must state the name of the Buyer, the nominal value of the Sale Share, the Transfer Price and the transferring Founder’s address (or e-mail address) where applications for exercising the tag-along right should be sent.
     2. Within 15 days from the day of receipt of the Tag Notice, the other Shareholders shall have the right to require the transferring Founder to procure that the other Shareholders are entitled to sell a pro rata (in relation to the Share or a part thereof to be transferred by the transferring Founder) portion of their Shares to the Buyer simultaneously with the transferred Share or a part thereof of the transferring Founder at the same terms and conditions of such transfer (including price and the form of consideration) (the **Tag-along Transaction**).
     3. If any Shareholder exercises its tag-along right in accordance with the above, the transferring Founder is entitled to Transfer the Sale Share to the Buyer only on the condition that the Buyer at the same time purchases from each Investor that has exercised its tag-along right the Share with such nominal value that such Investor has indicated in its application and such purchase is made on terms no less favourable than those applicable to the transferring Founder.
     4. Each Shareholder exercising the tag-along right shall give representations and warranties which are equivalent to those given by the transferring Founder.
3. Reverse Vesting, Good Leaver and Bad Leaver[[9]](#footnote-9)
   1. Vesting Period

The “Vesting Period” for Founders’ Shares shall be [TO BE COMPLETED][[10]](#footnote-10) years from the Effective Date. [25%] of Founders’ Shares shall vest on the first anniversary of the Effective Date. The remaining [75%] shall vest monthly in equal instalments over the following [THE REMAINING PERIOD TO BE COMPLETED] years.

* 1. Definition of a Bad Leaver

A Founder becomes a “Bad Leaver” if the Founder voluntarily resigns or the Founder’s Professional Relationship is terminated for cause, in each case during the Vesting Period, unless the Company, with the Investor Majority’s Consent, determines that, irrespective of the above, the Founder is not a Bad Leaver. For the above purpose:

* + 1. **voluntary resignation** means the unilateral termination of the Professional Relationship by the Founder which is not caused by (i) the Company’s material breach[[11]](#footnote-11) of the Professional Relationship, provided that such breach is not caused by the respective Founder acting in the capacity of the Company’s Executive Director or (ii) the Founder’s death or inability to perform duties due to health reasons or similar serious reasons occurring independent of the Founder’s will preventing him/her from fully performing the Professional Relationship for a period of at least six months. An independent and reputable expert must verify the existence of such reason under paragraph (b) hereof. The expert will be chosen by the Investor and in case of health reasons, the expert must be a member of the Czech Medical Association (in Czech: *Česká lékařská komora*); and
    2. **termination for cause** means the termination of the Professional Relationship in circumstances where (i) the Founder has committed a material breach[[12]](#footnote-12) of the Professional Relationship and failed to remedy such breach within [30 days] as of making a relevant request by the Company or any of the other Shareholders or (ii) the Founder has been convicted in any court or administrative proceedings for any serious misconduct or criminal offence with respect to the Company or in connection with its Business, or (iii) the Founder has caused material damage to the Company exceeding [Alternative 1: [CZK/EUR] [insert amount] / Alternative 2: [insert number]% of its yearly turnover][[13]](#footnote-13) and failed to compensate the Company for such damage within [30 days] as of making a relevant request by the Company or any of the other Shareholders or (iv) the Founder has lost his/her legal capacity to perform the Professional Relationship pursuant to the conditions stipulated in the Business Corporations Act or the Civil Code, including recall from the office by a competent court or (v) a competent court resolves on the insolvency (in Czech: *úpadek*) of the Founder.
  1. Bad Leaver’s obligation to Transfer the Shares

If a Founder becomes a Bad Leaver, the [Alternative 1: Investors on a pro rata basis to their Shares or in any other proportion as may be agreed between the Investors / Alternative 2: all the other Shareholders on a pro rata basis to their Shares or in any other proportion as may be agreed between such Shareholders] (the **Entitled Acquirer**) shall have the right to acquire all Shares from such Founder either for [CZK/EUR] [1] or for the purchase price determined by the Entitled Acquirer (which may not exceed the aggregate nominal value of such Shares), as elected by the Entitled Acquirer. If there are more parties acting as the Entitled Acquirer, they will decide on procedural steps and price(s) under this Clause 10 with the Investor Majority and will appoint a representative among them who will act on their behalf in procedural steps (e.g. sending notices) under this Clause 10.

* 1. Definition of a Good Leaver

A Founder becomes a “Good Leaver” if the Founder’s Professional Relationship is terminated during the Vesting Period in circumstances where the Founder is not a Bad Leaver.

* 1. Good Leaver’s obligation to Transfer the Shares

If a Founder becomes a Good Leaver, the Entitled Acquirer shall have the right to acquire from such Founder (a) all of the Founder’s Unvested Shares for [CZK/EUR] [1] or for the purchase price determined by the Entitled Acquirer (which may not exceed the aggregate nominal value of such Shares), as elected by the Entitled Acquirer, and (b) all of the Founder’s vested Shares against the payment of a purchase price equal to the Fair Value for such Shares.

* 1. Professional Relationship

A Professional Relationship of a Founder shall not be treated as terminated if such Professional Relationship is transferred from one Group Company to another or if the status of the Founder changes from an employee to Management Board member or service provider or vice versa (even if the above involves a temporary cessation of the Professional Relationship with any Group Company).

A Professional Relationship of a Founder shall also be considered terminated if the subsidiary, with whom the Professional Relationship exists, ceases to be the Company’s subsidiary or if the business of the Group Company, with whom the Professional Relationship exists, is transferred to an entity that is not a Group Company.

* 1. Determination of Unvested Shares

For the purposes of this Clause 10.6, **Unvested Shares** shall be 100% of the Founder’s Shares if the Founder becomes a Good Leaver before the first anniversary of the Effective Date, and a percentage of the Founder’s Shares if the Founder becomes a Good Leaver after the first anniversary of the Effective Date, calculated as follows:

where the **Vesting Period** is the number of calendar months in the entire vesting period and the **Vested Period** is the number of calendar months from the Effective Date until the date on which the Founder becomes a Good Leaver.

* 1. Exercise of rights requiring the Founder to Transfer the Shares
     1. For the purposes of this Clause 10.8, the date on which the Founder becomes a Bad Leaver or a Good Leaver shall be the **Trigger Date** and the Shares that the Founder is required to Transfer under this Clause 10.8 shall be the **Returned Shares**. The Entitled Acquirer may exercise its rights under Clause 10.3 and 10.5 (each a **Call Option**) by sending a notice to the Founder (with a copy to all other Shareholders) (the **Option Notice**) within [90 calendar days] of the Trigger Date. If the Entitled Acquirer does not exercise its Call Option within such period, its right will expire thereupon.
     2. If the Entitled Acquirer exercises its Call Option, it undertakes to acquire all the Founder’s Shares.
  2. Investor Majority’s rights relating to the Call Option
     1. The Entitled Acquirer may exercise the Call Option under this Clause 10 only with the Investor Majority’s Consent. Upon the request of the Investor Majority, the Entitled Acquirer is obliged to exercise such Call Option.
     2. The Transfer of the Shares under this Clause 10 is not subject to the General Meeting’s approval.
  3. Deadlines for the Founder to Transfer the Returned Shares

If the Entitled Acquirer exercises the Call Option, the Founder shall take all actions requested by the Entitled Acquirer, applicable laws and the Articles to Transfer the Returned Shares to the Entitled Acquirer (or as directed by the Entitled Acquirer) within a period that shall be (a) [14] days after the receipt of the Option Notice if the Transfer is for [CZK/EUR [1] or (b) [14] days after the determination of Fair Value under Clause 10.11 if the Transfer is at the fair value of Shares (the **Fair Value**) or (c) [14] days after the determination of the price under Clause 10.5, if applicable. If parts of the Returned Shares are subject to Transfer under different price determination, the period for Transfer under the preceding sentence shall commence at once as of the latest event occurring under the preceding sentence. The Transfer of the Returned Shares to the Entitled Acquirer may be executed in several consecutive transactions at an interval of up to one year, if the Entitled Acquirer so determines.

* 1. Determination of Fair Value
     1. The Fair Value shall be determined in good faith by the Entitled Acquirer. If the Founder does not agree with the Fair Value determined by the Entitled Acquirer, the Founder must send a notice, including his/her counter-proposal of the Fair Value (the **Disagreement Notice**) to the Entitled Acquirer within [seven] days after the receipt of the Entitled Acquirer’s calculation of the Fair Value. In such a case, the Fair Value shall be determined by an independent expert appointed jointly by the Founder and the Entitled Acquirer. If the Founder and the Entitled Acquirer fail to appoint such an expert within [14] days of the sending of the Disagreement Notice, the expert will be chosen at random by lot in the presence of the Founder and the Entitled Acquirer (or their authorised representatives) from the following firms: [Deloitte, EY, KPMG, PwC, Mazars, BDO, Grant Thornton].
     2. The independent expert appointed under Clause 10.11(a) (the **Expert**) shall act on the following principles:
        1. The Expert shall act as an expert and not as an arbitrator.
        2. It shall be within the Expert’s discretion to determine the amount which, in its opinion, constitutes the Fair Value or the disputed part thereof.
        3. Each of the parties shall provide the Expert with all information which they consider relevant, and the Expert shall be entitled (to the extent it considers appropriate) to base its opinion on such information and on the accounting and other records of the Company.
        4. Each of the parties shall provide the Expert with all information requested by the Expert and shall do so no later than [five] days after receipt of the request.
        5. The Expert shall provide its determination of the Fair Value within [30] days after appointment, unless otherwise agreed by the Founder and the Entitled Acquirer.
        6. The Expert shall send the price notice including the Fair Value to the Founder and the Entitled Acquirer within [five] days after completing the valuation.
        7. The determination of the Fair Value in the Expert’s price notice shall be final on the Expert’s side (except for a manifest error).
        8. The costs of the Expert shall be borne by (i) the Founder if the amount of the Fair Value determined by the Expert is equal to or less than the amount of the Fair Value set out in the Option Notice, or (ii) the Entitled Acquirer if the amount of the Fair Value determined by the Expert is greater than the amount of the Fair Value set out in the Option Notice.
     3. If for any reason the procedure under Clause 10.11(b) does not result in a determination of the Fair Value, the Founder and the Entitled Acquirer shall repeat the procedure with another person/firm acting as an independent expert.
     4. The Fair Value as determined by the Expert shall be final and binding on the parties.
  2. [OPTIONAL: Acceleration of vesting]

[Alternative 1: Upon the occurrence of a Liquidity Event, the Shares held by each Founder shall be deemed to have vested in their entirety and the reverse vesting provisions stipulated in this Clause 10 shall be deemed to have terminated. / Alternative 2 (Double Trigger Acceleration): If a Liquidity Event occurs and the Entitled Acquirer has determined that the reverse vesting of Founder’s Shares survives the Liquidity Event or will be substituted and the Founder becomes a Good Leaver within [30] days before the conclusion of definitive agreements for the Liquidity Event or within [12] months following the consummation of a Liquidity Event, then the vesting of the Founders’ Shares shall accelerate such that 100% of the Shares then unvested shall become vested. Such acceleration shall occur immediately before the relevant Founder becomes a Good Leaver. / Alternative 3 (Single Trigger Acceleration): Upon the occurrence of a Liquidity Event, the vesting of the Founders’ Shares shall accelerate such that 50% of the Shares then unvested shall become vested. / Alternative 4 (to be used in case of no acceleration or with Alternative 3): Upon the occurrence of a Liquidity Event, the Entitled Acquirer may, at its sole discretion, decide that the vesting of the Founders’ Shares shall occur also with respect to all or part of the unvested Shares.]

* 1. Cooperation of the parties

The parties are obliged to cooperate with each other and to take all the steps and to proceed so that the Transfer of the Returned Shares is effected without undue delay, subject to the conditions set out in this Clause 10.

* 1. Contractual penalty payable upon the breach of a Founder’s obligations

If a Founder delays the performance of its obligations under Clause 10, the Founder shall pay to the Entitled Acquirer, at its request, a penalty of [CZK/EUR] [insert] for each day of delay. The amount of the contractual penalty is reasonable with respect to the value of the performance provided under this agreement and the circumstances under which this agreement was entered into. The contractual penalty shall be payable within [seven] days of the receipt of a notice from the Entitled Acquirer. The contractual penalty shall be divided between the non-breaching Entitled Acquirers on a pro rata basis to their Shares. Clause 17.6 shall apply accordingly.

1. Confidentiality
   1. Definition of Confidential Information

For the purposes of this agreement **Confidential Information** includes the following information, whether or not marked as confidential:

* + 1. the terms of this agreement;
    2. any information relating to a party or a Group Company that a party receives as a result of entering into this agreement and (i) that is marked, or at the time of disclosure is otherwise designated, as being confidential or (ii) that would be regarded as confidential or commercially sensitive by a reasonable business person;
    3. without prejudice to the above, in the case of any Group Company:
       1. its financial data, including budgets, regular financial reports, balance sheets, income statements, cash-flow statements, KPIs and other business and financial metrics and targets, performance against targets, progress;
       2. its business strategies and plans, marketing and sales strategies and plans, expansion strategies and plans, market research and surveys, customer feedback, market and business opportunities, research and development, other sales and marketing information;
       3. its existing and planned products and services, including product and service roadmaps, concepts and models, pricing models and structures, price lists (including discounts, special prices or special terms offered to or agreed with customers);
       4. the names, addresses, contact details and other information of its customers or potential customers as well as its suppliers or potential suppliers, licensors, licensees, agents, distributors and other contractors;
       5. its agreements, including the fact that any such agreements have been signed as well as their terms, conditions and other content;
       6. its prospective agreements and transactions, including information relating to any offers made to or received from any party, ongoing negotiations with any party, the terms, conditions and other content of any drafts of agreements;
       7. its current and prospective Intellectual Property as well as its technology relating to products and services as well as techniques, methods and processes used for development of concepts, products and services, any other know-how, methods, processes, techniques and technical data;
       8. its IT systems (including websites) as well as software and technical information (including passwords) necessary for the operation, maintenance and/or development of IT systems;
       9. the members of its Management Board, supervisory board and advisory board and any similar governing body, its employees, consultants and advisers, including (in respect of each aforementioned person) their remuneration and salaries, bonuses and bonus systems, option and other incentive and motivation schemes and other terms on which such persons are employed or engaged;
       10. its investors and shareholders;
       11. the meetings of the Management Board, supervisory board, advisory board, shareholders and any other similar governing body as well as any matters discussed at any such meetings and any resolutions adopted by any such body (whether at a meeting or otherwise); and
       12. the information concerning or provided to third parties in respect of which a Group Company owes a duty of confidence; and
    4. any other information (in whatever form) which any Group Company has an apparent or reasonably identifiable interest in keeping secret from third parties.
  1. Exclusions from Confidential Information

Confidential Information shall not, however, include any information that:

* + 1. is, or becomes (other than through a breach of this agreement), available to the public generally without requiring a significant expenditure of labour, skill or money;
    2. is, at the time of disclosure, already known to the receiving party without restriction on disclosure;
    3. is in, or subsequently comes into, the possession of the receiving party without a violation of any obligation of confidentiality;
    4. is explicitly approved for release by the Company at least in a form reproducible in writing; or
    5. a party is required to disclose by law, by any securities exchange on which such party’s securities are listed or traded, by any regulatory or governmental or other authority with relevant powers to which such party is subject or submits, or by any court order.
  1. Confidentiality obligation

Each party shall treat Confidential Information as confidential, i.e., it shall not use or divulge to any third party or enable any third party to become aware of (except for the purposes of the Company’s Business) any Confidential Information. For the avoidance of doubt, (a) the Company is entitled to disclose Confidential Information to any third party for the purposes of the Company’s Business and (b) a party, being a member of the Management Board, is entitled to disclose Confidential Information for the purposes of the Company’s Business in the course of fulfilling its duties as a member of the Management Board.

* 1. Exceptions to confidentiality obligation
     1. Notwithstanding the foregoing, a party may disclose Confidential Information to its attorneys, accountants, consultants, and other professional advisers to the extent necessary to obtain their services, provided that any persons to whom the party discloses any such information shall be subject to the same confidentiality obligations as the relevant party.
     2. The confidentiality undertakings provided in this Clause 11 or otherwise in this agreement do not prevent any Shareholder that is an investment fund from disclosing any Confidential Information to any of its Affiliates, partners and members to the extent that it is necessary to make decisions in respect of matters relating to any Group Company and to the extent that it is necessary to comply with any relevant reporting obligations, provided that the relevant Affiliates, partners and members are bound by confidentiality obligations to maintain the confidentiality of the Confidential Information.
  2. Term of confidentiality obligation

The obligations set forth in this Clause 11 shall survive the termination of this agreement as long as the information in-subject meets the definition of Confidential Information according to Clause 11.1.

* 1. Breach of Confidentiality

In the event that either party breaches the obligation of confidentiality set forth in this Clause 11, the other party shall be entitled to the following:

* + 1. payment of a penalty of [CZK/EUR] [insert] for each case of breach; and/or
    2. compensation of any damage caused by such breach regardless to the amount of paid penalty.

1. Non-Competition and Non-Solicitation
   1. Non-Compete Obligation

For the protection of the Investors’ investment under the Investment Agreement, each Founder undertakes, during the period while the relevant Founder is a Shareholder [and for a period of [insert][[14]](#footnote-14) months after the Founder ceases to be a Shareholder] (the **Non-Compete Period**) and in the territory of [Czech Republic, [⚫] and [⚫] [and any other territory in which the Company generates more than [insert]% of its turnover during the period while the relevant Founder is a Shareholder]], not to carry on or engage in any business competing with any Group Company, including the Business, as a shareholder, member of governing body, employee, consultant, adviser, agent or other service provider, unless the Founder has the prior written consent of the Investor Majority (the **Non-Compete Obligation**). The Non-Compete Obligation applies also to other fields of activity in which any Group Company is engaged in during the validity of the Non-Compete Period, but only to the extent that such new field of activity or product and/or service related thereto is included in the business plan or any other plan of any Group Company and is already in the advanced preparation phase, in each case during the period while the relevant Founder is a Shareholder.

* 1. Exclusions

The Non-Compete Obligation does not apply to holding shares in publicly listed companies up to 5% of the share capital of the relevant company.

* 1. Non-Solicitation Obligation

For the protection of the Investors’ investment under the Investment Agreement, each Founder undertakes not to solicit the Key Employees, key service providers or supervisory board and Management Board members of the Group Companies during the period while the relevant Founder is a Shareholder [and for a period of [insert][[15]](#footnote-15) months after the Founder ceases to be a Shareholder] (the **Non-Solicitation Period**) (the **Non-Solicitation Obligation**). The Non-Solicitation Obligation also includes the obligation of each Founder not to, directly or indirectly, and during the Non-Solicitation Period, employ, engage or induce, or seek to induce any person who is or was a Key Person, to leave the service of any Group Company.

* 1. Breach of Non-Competition and Non-Solicitation Obligations

If the Founder breaches any obligations set forth in Clause 12.1 or 12.3, the Company shall have the right to request such Founder, and upon the request of the Investor Majority the Company shall request such Founder, to:

* + 1. immediately terminate such breach;
    2. surrender to the Company or any Group Company any revenue received in connection with such breach;
    3. pay to the Company a contractual penalty in the amount of [CZK/EUR] [insert] for each breach; and/or
    4. compensate the Company or any Group Company for damages caused to any Group Company by such breach (to the extent that they exceed the above penalty and surrendered revenues).

For this purpose, any continuing breach of such obligations of one month shall be deemed to be a new breach with a new contractual penalty as a consequence.

1. Representations and Warranties and General Undertaking
   1. Representations and warranties

Each party hereby represents and warrants to each other party that:

* + 1. the representative of the party (if applicable) has all rights, including necessary internal corporate and governmental approvals (if applicable), necessary to enter into this agreement;
    2. the party has full authority to enter into and perform this agreement, including, if applicable, the consent of such party’s spouse[[16]](#footnote-16);
    3. the obligations of the party set forth in this agreement are valid, binding on and enforceable against the party; neither the signing nor the performance of this agreement conflicts with or results in a violation of any provisions of: (i) the articles of association of the party or any other similar instruments governing the party (if applicable); (ii) any legal acts to which the party is subject; (iii) any agreement or obligation binding on the party (if applicable); (iv) any judgment, order, injunction, decree or ruling of any court or governmental or local authority to which the party is subject; (v) the terms and conditions of any licence or permit granted to the party, and (vi) applicable laws and regulations; and
    4. the party is not insolvent or in danger of insolvency; no insolvency or moratorium petition, corporate restructuring application, liquidation application, execution (enforcement) application, or any other similar action under any applicable jurisdiction has been filed against the party; the party is not subject to any other insolvency, corporate restructuring or similar proceedings; and the party has not received any notice regarding any intention to initiate any such proceedings.
  1. General undertaking

Each Shareholder hereby undertakes to the other Shareholders and the Company to:

* + 1. comply with each of the provisions of this agreement and the Articles and perform any and all acts necessary or desirable to ensure that the provisions of this agreement and the Articles are given due effect and are duly followed;
    2. exercise its voting rights and/or other powers and authorities as a Shareholder and/or member of any governing body, director or manager of a Group Company in order (insofar as it is able to do so through the exercise of such rights, powers and authorities) to give full effect to the terms of this agreement and the Articles;
    3. to the extent permitted under applicable law (especially regulations on corporate governance and business management), cause all representatives elected to any governing body among its nominees to exercise their voting rights and/or other powers and authorities in order (insofar as they are able to do so through the exercise of such rights, powers and authorities) to give full effect to the terms of this agreement and the Articles; and
    4. pay to the other non-breaching parties, at the request of any of the non-breaching parties, a contractual penalty of [CZK/EUR] [insert] for each individual case of breach of representations and warranties and general undertakings hereunder. The amount of the contractual penalty is reasonable with respect to the value of the performance provided under this agreement and the circumstances under which this agreement was entered into. The contractual penalty shall be payable within [seven] days of the receipt of a notice from the non-breaching party. The contractual penalty shall be divided between the non-breaching parties on apro ratabasis to their Shares. Clause 17.6 shall apply accordingly.

1. Term and Termination
   1. Entry into force

Provided this agreement has been signed by all parties, the agreement enters into force on the date on which the increase of the Share Capital is effective.

* 1. Term and termination
     1. This agreement shall be valid and effective until it is terminated as set forth below:
        1. if so agreed in writing by all parties; and
        2. with respect to a Shareholder who ceases to hold any Shares and has fulfilled all obligations relating to the Transfer of Shares, provided that such termination shall be without prejudice to the obligations of the relevant party existing at the time of such termination and, for the avoidance of doubt, any obligations set forth in Clauses 11 and 12 shall continue to apply as provided therein.
     2. This agreement shall expire if:
        1. the Company is liquidated; or
        2. all Shares are acquired and held by one person (not taking into account the Shares as may be held by the Company itself under the applicable law).
     3. The parties hereby irrevocably waive their right to cancel the agreement or withdraw from the agreement on grounds provided in the applicable law (including the Civil Code).

1. Payments
   1. Unless otherwise agreed, any payments to be made under this agreement shall be made in [CZK/EUR] by transfer of the relevant amount to the relevant account on or before the date the payment is due.
   2. Save as otherwise specifically set out in this agreement, if a party defaults in making any payment when due of any sum payable under this agreement, it shall pay compensation on that sum from the day following the date on which payment is due until (and including) the date of actual payment (after as well as before judgement) at the [⚫]% per annum.
2. Notices
   1. Any notice or other communication under this agreement must be made in English in writing and sent to the address, e-mail address or data box specified in relation to each party below:
      1. to the Company at: [address, marked for the attention of ], [e-mail address] and [data box];
      2. to Founder 1 at: [address, marked for the attention of ], [e-mail address] and [data box];
      3. to Founder 2 at: [address, marked for the attention of ], [e-mail address] and [data box]; and
      4. to the Investor at: [address, marked for the attention of ], [e-mail address] and [data box].
3. General
   1. No amendment to this agreement is valid unless made in the same form as the original agreement and signed by all parties.
   2. No party may assign or otherwise transfer its rights and/or obligations arising under this agreement without the prior written consent of the other parties. As an exception to this rule, the Investor is entitled to transfer all of its rights and obligations arising from this agreement at any time and without consent of the other parties to an Affiliate, or a fund, partnership or other investment vehicle that is part of the same group of funds, or is Controlled by any of the Investor's general partners, limited partners, members or shareholders.
   3. If any provision of this agreement is apparent (in Czech *zdánlivé*), invalid or unenforceable, the parties shall make their best efforts to replace such provision to achieve the effect closest to the original provision.
   4. Any provision of this agreement that sets out an obligation of a party to procure that another person will or will not act in a certain manner, sets out such party's obligation to ensure that the third person actually performs what has been agreed pursuant to Section 1769, second sentence, of the Civil Code.
   5. [Each of the Investors, Founder[s] and the Company shall bear its own costs incurred in respect of the conclusion of this term sheet and the Equity Investment Agreement and Shareholders’ Agreement.] OR [The Company and the Founder[s] shall bear its own costs incurred in respect of the conclusion of this term sheet and the Equity Investment Agreement and Shareholders’ Agreement and the Company shall reimburse the Investor(s) after the provision of the Investment(s) reasonable legal fees and costs incurred by each Investor in respect of the conclusion of this term sheet and the Equity Investment Agreement and Shareholders’ Agreement up to a maximum aggregate amount of [EUR/CZK l]].
   6. [Each contractual penalty shall be deemed to operate as a measure for achieving the performance of this agreement and not as a substitute for performance. The payment of any contractual penalty shall not release the breaching party from the obligation to perform the relevant obligations. Before a party becomes entitled to claim a contractual penalty under this agreement, such party must give the breaching party a reasonable term (being no longer than 30 days) to cure the breach in question and its negative consequences. A party entitled to claim a contractual penalty under this agreement loses such right if it fails to notify the party in breach of its intention to claim the penalty within six months after the entitled party becomes aware of the breach in question. The right to claim a contractual penalty under this agreement shall not prejudice the non-breaching party from claiming any damage resulting from the relevant breach in excess of the amount of the contractual penalty.]
   7. The parties have agreed that the following shall apply in relation to the provisions of the Civil Code and this agreement:
      1. the parties accept the risk of change of circumstances (hardship) in accordance with Section 1765 of the Civil Code;
      2. no obligation under this agreement is an agreement on fixed payment term within the meaning of Section 1980 of the Civil Code;
      3. no party is deemed to have been the first to use any expression in the negotiation of this agreement and other documents contemplated hereunder (to the exclusion of the interpretation rule in Section 557 of the Czech Civil Code);
      4. the applicability of Section 1805(2), which limits the creditor's right to claim interest exceeding the principal amount, shall be excluded;
      5. all non-mandatory statutory provisions that may otherwise give any of the parties the right to terminate this agreement, including, in particular, Sections 1977, 1978, 2002 and 2003 of the Civil Code shall not apply; and
      6. any provision of this agreement that sets out an obligation of a party to procure that another person will or will not act in a certain manner, sets out such party's obligation to ensure that the third person actually performs what has been agreed pursuant to Section 1769, second sentence, of the Civil Code.
   8. This agreement and any contractual or non-contractual obligations arising out of or in connection with it shall be governed by and shall be construed in accordance with Czech law.
   9. All disputes or claims arising out of or in connection with this agreement, including disputes relating to any non-contractual obligations, validity, breach, termination or nullity of this agreement, shall be exclusively decided by the Czech courts.
   10. This agreement and the respective schedules hereto constitute the entire agreement between the parties relating to the subject matter hereof and supersede any and all previous agreements between the parties relating to the subject matter hereof.
4. 1. Cap Table
5. 1. Forms of Adherence Agreement

**Part 1 - Adherence Agreement upon increasing the Share Capital**

This adherence agreement (the **Agreement**) is dated [insert date] and is between the following parties (each a **party** and together the **parties**):

1. [[insert name], a company incorporated under the laws of [insert], with its registered office at [insert the registered office], corporate identification number (IČO): [insert the identification number], registered in the commercial register maintained by [insert the respective register court], section [insert], e-mail address [insert] / [[insert name], personal identification code [insert], address [insert], e-mail address [insert]] (the **Subscriber**), and
2. [insert name], a company incorporated under Czech law, with its registered office at [insert Company’s registered office], corporate identification number (IČO): [insert Company’s identification number], registered in the commercial register maintained by [insert the respective register court], section [insert], insert [insert], e-mail address [insert] (the **Company**).

**WHEREAS**:

* 1. The Subscriber wishes to acquire upon increasing the Share Capital of the Company pursuant to the resolution of the Shareholders of the Company (the **Resolution**) [Common/Seed Preferred] Shares of the Company;
  2. the Company and its Shareholders have entered into the shareholders’ agreement dated [insert date] (the **Shareholders’ Agreement**);
  3. the Subscriber confirms that it has read a copy of the Shareholders’ Agreement; and
  4. according to the Shareholders’ Agreement [and the Articles of Association of the Company], the Company shall not issue any Shares to or for the benefit of any person until such person executes an adherence agreement substantially in the form set out herein.

**THE PARTIES AGREE AS FOLLOWS**:

* + 1. The Subscriber hereby agrees to be bound by the Shareholders’ Agreement in all respects as a party to the Shareholders’ Agreement in the capacity of [an Investor/ a Shareholder].
    2. This Agreement is executed for the benefit of the parties to the Shareholders’ Agreement and any other person who may at any time assume any rights or obligations under the Shareholders’ Agreement for so long as they remain bound by the Shareholders’ Agreement.
    3. This Agreement enters into force as of the moment the Subscriber becomes a shareholder of the Company pursuant to the Resolution.
    4. The Clauses 17.8 (Applicable Law) and 17.9 (Jurisdiction) of the Shareholders’ Agreement shall apply also to this Agreement (and such Clauses are deemed to be incorporated in this Agreement by reference).
    5. The capitalised terms used but not otherwise defined in this Agreement shall have the same meaning as in the Shareholders’ Agreement.

**Part 2 - Adherence Agreement upon Transfer of the Share**

This adherence agreement (the **Agreement**) is dated [insert date] and is between the following parties (each a **party** and together the **parties**):

1. [[insert name], a company incorporated under the laws of [insert], with its registered office at [insert the registered office], corporate identification number (IČO): [insert the identification number], registered in the commercial register maintained by [insert the respective register court], section, [insert], insert [insert], e-mail address [insert] / [[insert name], date of birth [insert], address [insert], e-mail address [insert]] (the **Transferor**);
2. [[insert name], a company incorporated under the laws of [insert], with its registered office at [insert the registered office], corporate identification number (IČO): [insert the identification number], registered in the commercial register maintained by [insert the respective register court], section [insert], insert [insert], e-mail address [insert]] / [[insert name], date of birth [insert], address [insert], e-mail address [insert]] (the **Transferee**); and
3. [insert name], a company incorporated under Czech law, with its registered office at [insert the registered office], corporate identification number (IČO): [insert the identification number], registered in the commercial register maintained by [insert the respective register court], section [insert], insert [insert], e-mail address [insert] / [[insert name], date of birth [insert], address [insert], e-mail address [insert]] (the **Company**).

**WHEREAS**:

* 1. The Transferor wishes to Transfer [Common/Seed Preferred] Shares owned by the Transferor in the Company (the **Sale Shares**) to the Transferee and the Transferee wishes to acquire the Sale Shares from the Transferor;
  2. the Transferor, other Shareholders of the Company and the Company have entered into the shareholders’ agreement dated [insert date] (the **Shareholders’ Agreement**);
  3. The Transferee confirms that it has read a copy of the Shareholders’ Agreement; and
  4. according to the Shareholders’ Agreement and the Articles of Association of the Company, none of the Shareholders shall Transfer or Encumber any Shares to or for the benefit of any person until such person executes an adherence agreement substantially in the form set out herein.

**THE PARTIES AGREE AS FOLLOWS**:

* + 1. The Transferee agrees to be bound by the Shareholders’ Agreement in all respects as a party to the Shareholders’ Agreement in the capacity of [an Investor/ a Shareholder].
    2. This Agreement is executed for the benefit of the parties to the Shareholders’ Agreement and any other person who may at any time assume any rights or obligations under the Shareholders’ Agreement for so long as they remain bound by the Shareholders’ Agreement.
    3. This Agreement enters into force as of the moment the Transferee becomes a shareholder of the Company.
    4. The Clauses 17.8 (Applicable Law) and 17.9 (Jurisdiction) of the Shareholders’ Agreement shall apply also to this Agreement (and such Clause are deemed to be incorporated in this Agreement by reference).
    5. The capitalised terms used but not otherwise defined in this Agreement shall have the same meaning as in the Shareholders’ Agreement.

1. 1. New Articles

[final version to be inserted]

Signatories

**THE PARTIES HAVE SIGNED THIS AGREEMENT AS FOLLOWS:**

**THE COMPANY:**

|  |  |
| --- | --- |
| Name: | **[Name]**,registered office: [insert address], [country], corporate identification number: [insert] |
| Signature: |  |
|  |  |
| Represented by: | **[Name]** |
| Title: | [title] |
| Address: | [address] |
| E-mail: | [e-mail address] |
|  |  |

**THE FOUNDERS:**

|  |  |
| --- | --- |
| Name: | **[Name]**,residing at: [insert address], [country], date of birth: [insert] |
| Signature: |  |
|  |  |
| Address: | [address] |
| E-mail: | [e-mail address] |

|  |  |
| --- | --- |
| Name: | **[Name]**,residing at: [insert address], [country], date of birth: [insert] |
| Signature: |  |
|  |  |
| Address: | [address] |
| E-mail: | [e-mail address] |

|  |  |
| --- | --- |
| Name: | **[Name]**,residing at: [insert address], [country], date of birth: [insert] |
| Signature: |  |
|  |  |
| Address: | [address] |
| E-mail: | [e-mail address] |

**THE INVESTORS:**

**[THE LEAD INVESTOR:]**

|  |  |
| --- | --- |
| Name: | **[Name]**,registered office: [insert address],  identification number: [insert] |
| Signature: |  |
|  |  |
| Represented by: | [**Name**] |
| Title: | [title] |
| Address: | [address] |
| E-mail: | [e-mail address] |

[**OTHER INVESTORS:**][[17]](#footnote-17)

|  |  |
| --- | --- |
| Name: | **[Name]**,registered office: [insert address],  [country], corporate identification number: [insert] |
| Signature: |  |
|  |  |
| Represented by: | [**Name**] |
| Title: | [title] |
| Address: | [address] |
| E-mail: | [e-mail address] |

|  |  |
| --- | --- |
| Name: | **[Name]**,registered office: [insert address],  [country], corporate identification number: [insert] |
| Signature: |  |
|  |  |
| Represented by: | [**Name**] |
| Title: | [title] |
| Address: | [address] |
| E-mail: | [e-mail address] |

1. NOTE TO DRAFT: Only terms used in several places are defined below. If a term’s use is limited to a single clause/subclause, it is typically defined only in such clause. [↑](#footnote-ref-1)
2. NOTE TO DRAFT: This SHA does not set forth the Founders’ roles and responsibilities as it is assumed that they are described in separate agreements with Founders that regulate their active contribution to the Company, for example, executive service agreements, employment agreements or other similar agreements. [↑](#footnote-ref-2)
3. NOTE TO DRAFT: The purpose of this provision is to avoid a conflict of interest, regardless of whether such new business opportunities compete with the Business (for example, a new cooperation agreement with a supplier, client or cooperation partner of the Company). [↑](#footnote-ref-3)
4. NOTE TO DRAFT: Joint representation may be considered in particular in cases where the Investor has the right to appoint its nominee to act as the Company´s Executive Director. [↑](#footnote-ref-4)
5. NOTE TO DRAFT: Delete if the granting of observer rights has not been agreed with the Investors. [↑](#footnote-ref-5)
6. NOTE TO DRAFT: Clause 5.3 sets out the most commonly used Liquidation Preference alternative - **[multiple to be specified*]*x non-participating liquidation preference**. [↑](#footnote-ref-6)
7. NOTE TO DRAFT: An Investor who takes a position as a minority shareholder may want to seek anti-dilution protection to prevent dilution in its equity ownership percentage in case of a down round. Anti-dilution rights entitle an Investor to subscribe/acquire additional Shares in the Company subject to either a full ratchet or a weighted average mechanism, as may be agreed. Clause 6.3 sets forth a **broad-based weighted-average anti-dilution mechanism**. This is the most commonly used price-based anti-dilution adjustment mechanism, where, in the event of a down round, the nominal value of the Shares is increased so as to make the average issue price ultimately paid by each holder of Shares equal to the weighted average issue price of the shares issued in the seed round and shares issued in the down round. Alternative but less commonly used price-based anti-dilution adjustment formulas include a **narrow-based weighted-average anti-dilution mechanism**,where “A” would be limited so as to exclude reserved but unissued Shares, and a **full ratchet mechanism**, which, in the event of a down round, would lower the price paid for the investor shares to the actual price paid in the down round. [↑](#footnote-ref-7)
8. NOTE TO DRAFT: This pre-emptive (preferential) right entitles a Shareholder to maintain its shareholding in the Company in case of increase of the Share Capital in line with the default rules under the BCA. The Articles may exclude or limit the Shareholders' preferential right or determine the proportion in which the Shareholders are entitled to assume the contribution obligation. [↑](#footnote-ref-8)
9. NOTE TO DRAFT: Reverse vesting is a form of protection for the Investors, the Shareholders and the Company’s business in general. It is usually required by the Investors to make sure a Founder is incentivised not to depart the Company during a certain period of time and take a substantial number of Shares together with him/her which may seriously hurt the Company´s chances of raising funds in the future. [↑](#footnote-ref-9)
10. NOTE TO DRAFT: The Vesting Period is usually between two and five years and will depend on the agreement of the parties. [↑](#footnote-ref-10)
11. NOTE TO DRAFT: Circumstances constituting “material breach” should be defined in the agreement governing the Professional Relationship. [↑](#footnote-ref-11)
12. NOTE TO DRAFT: Please see the previous note. [↑](#footnote-ref-12)
13. NOTE TO DRAFT: The materiality threshold will be determined according to e.g. the size of the Company / other circumstances and will depend on the agreement of the parties. [↑](#footnote-ref-13)
14. NOTE TO DRAFT: The period should normally not exceed 12 months. The duration of post-term Non-Compete and Non-Solicitation Obligations shall depend on whether there is a need to continue with the restrictions, which is determined on a case-by-case basis considering the previous involvement of the Founder in the activities of the Company and the minimum amount of time required to take over the Founder’s role in the Company. Always check currently applicable competition rules to non-compete and non-solicitation obligations. [↑](#footnote-ref-14)
15. NOTE TO DRAFT: Please see previous note. [↑](#footnote-ref-15)
16. NOTE TO DRAFT: If a party is a natural person, who holds Shares in the Company, and his/her Shares in the Company are subject to the joint property of spouses (either by virtue of marriage, a marital agreement or otherwise), such party needs his/her husband’s or wife’s consent to enter into this Agreement. If the party enters into this Agreement without the consent of his/her spouse and the spouse does not later approve this Agreement, the entry into this Agreement by that party may be deemed void. In general, Shares are not subject to the joint property of spouses if they were acquired before marriage, provided that any marital agreement or any other agreement between the spouses does not stipulate otherwise. In order to ensure the validity of this Agreement, the need for spousal consent should be checked for all married natural persons who are parties to this Agreement and hold Shares. One general spousal consent covering the Investment Agreement and all related transaction documentation (for one transaction) may be issued to facilitate the process. A model spousal consent may be used if available on the website together with this model Agreement/Investment Agreement. [↑](#footnote-ref-16)
17. NOTE TO DRAFT: The convertible loan investors whose loans are converted in the course of the current seed round should also be listed here. [↑](#footnote-ref-17)