

IBA Startup Conference

Lean Documents

Working Group: Sample Clauses

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1. Sample Warranties Clause

[Each of the representations and warranties given under this Section 1 shall be construed as a separate and independent representation and warranty and (except where this Agreement provides otherwise) shall not be limited or restricted by reference to or inference from any other term of this Agreement or any other of the representations and warranties. Any specific disclosure or exception made against a specific representation and warranty, shall apply exclusively to the representation and warranty to which it is expressly referred, and not to any other representation and warranty.]

1.1 Existing Shareholders' Representations and Warranties

- 1.1.1 **Schedule 1.1.1** sets out the representations and warranties made by each Existing Shareholder, severally but not jointly to each Investor (the "**Existing Shareholders' Representations and Warranties**").

Each Existing Shareholder represents and warrants to each Investor that, as of the date of this Agreement, each and every one of the Existing Shareholders' Representations and Warranties is true, accurate and not misleading and does not omit any fact or circumstance that might alter, limit or condition its content and scope. The Existing Shareholders' Representations and Warranties are made on the date of this Agreement, unless if they expressly refer to another date *[and shall be repeated on the Completion Date]*.

- 1.1.2 The liability of the Existing Shareholders under this Section 1.1 will be subject to the following specific rules:

- (a) The Existing Shareholders (in their capacity as shareholders of the Company) shall not be liable for any breach of any representation and warranty, other than the Existing Shareholders' Representations and Warranties. For the avoidance of doubt, this limitation shall not affect the liability of the Company and the Founders under the Founders' and the Company's Representations and Warranties, which shall be governed by the provisions of Section 1.2 and Section 1.3.
- (b) In the event of the falsehood, inaccuracy, misrepresentation or breach of any of the Existing Shareholders' Representations and Warranties, the indemnification obligation for the Losses arising out of such falsehood, inaccuracy or breach shall be paid only by the Existing Shareholder(s) in breach of the Existing Shareholders' Representations and Warranties. In no event shall any person (other than the Investors), have any right to seek indemnification or any other payment from the Existing Shareholders for any breach of the Existing Shareholders' Representations and Warranties. Any indemnification payable by an Existing Shareholder pursuant to this clause will be paid solely in cash¹.
- (c) The Existing Shareholders' Representations and Warranties shall survive for [■] years as of the date of this Agreement.

¹ **Note to Draft:** This clause can be largely negotiated and indemnification can be payable in shares sometimes, but most common option for existing shareholders is payment in cash.

1.2 Founders' and the Company's Representations and Warranties

1.2.1 **Schedule 1.2.1** sets out the representations and warranties made by each Founder and the Company, severally and not jointly, to each Investor (the "**Founders' and the Company's Representations and Warranties**").

1.2.2 The Founders and the Company, respectively, represent and warrant to each Investor that as of the date of this Agreement, each and every Founders' and the Company's Representations and Warranties is true, correct, accurate and not misleading [*in all material respects*] and does not omit any fact or circumstance that might alter, limit or condition their content and scope. The Founders' and the Company's Representations and Warranties are made on the date of this Agreement, unless if they expressly refer to another date [*and on the Completion Date*].

[The Parties agree that the terms "knowledge" or "best knowledge" or "to the knowledge and understanding of" shall refer not only to actual knowledge of the relevant Party, in this case, the Company, but also the knowledge that such Party should have had if it had acted with standard diligence and after due enquiry of Company employees].

1.2.3 The liability of the Founders and the Company under this Section 1.2 will be subject to the following specific rules:

(a) The Founders' and the Company's Representations and Warranties refer to the Company and its respective equity, assets, liabilities and business activities, as all of these are essential to the Investment. The Founders' and the Company's Representations and Warranties are essential to the execution of this Agreement by Investors, because without them, the consensus necessary to accomplish the Investment would not have been reached. Investors' decision to make the Investment pursuant to the terms of this Agreement was based mainly on the existence, truth, accuracy and correctness of the Founders' and the Company's Representations and Warranties.

(b) In the event any of the Founders' and the Company's Representations is not true, correct or accurate or is misleading, the indemnification obligation for the Losses arising out of such breach shall be paid by the Founders and the Company in breach of the Founders' and the Company's Representations and Warranties. In no event shall any person (other than the Investors) have any right to seek indemnification or any other payment from the Founders and the Company for any breach of the Founders' and the Company's Representations and Warranties.

1.3 Indemnity Undertaking

1.3.1 Subject to the limitations and exclusions of liability detailed in this Section 1.3, (i) the Company and each of the Founders (the "**Indemnifying Parties**"), agree to, severally and not jointly fully indemnify, defend and hold the Investors harmless (the "**Indemnified Parties**") against and in respect of any Losses caused to the Investors or the Company due to breach, inaccuracy or untruthfulness [*in any material respect*] of any of the Founders' and the Company's Representations and Warranties.

- 1.3.2 If the Loss is suffered by the Company, the Indemnified Parties shall be entitled to receive indemnification equal to (x) the full amount of the Losses multiplied by (y) the percentage that the Shares subscribed by the Investors in the context of the Investment represent over the total share capital of the Company at the time the Loss is suffered. If the Loss is suffered directly by the Indemnified Parties, the Indemnifying Parties shall indemnify the Indemnified Parties for the full amount of the Loss, subject to the limitations and exclusions of liability under this Section 1.3.
- 1.3.3 "**Loss**" or "**Losses**" means any *[direct]* loss, damage, harm, charge, liability, depreciation, penalty, surcharge, interest or expense of any kind (including the fees or costs related to attorneys, agents in court, notaries, auditors, accountants, experts or other professionals). *["Loss" does not include any (i) punitive damages, (ii) consequential damages or losses such as remote, speculative, indirect or special damages and the like (including loss of profit or loss of reputation).]*
- 1.3.4 For the avoidance of doubt, the following will not be considered a Loss, regardless of its nature or amount²:
- (a) liabilities shown in the Financial Statements, provided it is adequately supported for accounting purposes and identified as a specific and individual item, and only up to the amount that has been accounted or recorded as an accounting provision, as the case may be;
 - (b) *[liabilities of the Company subject to administrative or judicial appeal, in which case the liability shall not exist until the matter is finally resolved (but this shall not invalidate any claim notified by the relevant Investor prior to the expiration of the time limits set out in this Agreement).]*
 - (c) liabilities reduced by any insurance proceeds actually received by the relevant Investor or the Company (less the costs of such recovery and less any increased cost of insurance that may appear as a result of the claim against the insurance company);
 - (d) *[liabilities arising from the passing of, or a change in, a law, applicable rule or regulation or new authorization or license requirements occurring after the date of this Agreement.];*
 - (e) *[liabilities arising from an increase in the taxation rates or an imposition of taxation in each case not actually in force as of the date of this Agreement.];*
 - (f) *[liabilities arising from the change by statute, by any regulatory or other body of any accounting policy or a change in the application of any accounting policy or estimation technique in the preparation of Financial Statements, save if such change is necessary because the policy, methods or criteria applied by the Company up to date are not in accordance with accounting rules or generally accepted accounting principles; or]*

² **Note to Draft:** Sometimes a provision stating that the due diligence carried out by the Investors does not limit Losses due to events or circumstances known by the Investors. However, this is quite investor friendly and when this provision is included, it comes with a list of disclosures that qualifies the warranties to reduce the scope of this provision.

(g) *[liabilities coming from events or circumstances known by the Investors [or fairly disclosed] during financial, accounting, legal and tax audits and reviews of the Company carried out by the Investors (or their advisors) prior to Completion Date]*

[Any amounts to be paid by the Founders or the Company as an indemnity for Loss will be grossed-up with the amount corresponding to any direct or indirect taxes that might be payable by the Investor or the Company as a result of receiving payment of such Loss.]

1.3.5 *[The Investors will not be entitled to claim the Founders or the Company for Losses where the amount of the Loss, considered individually, is less than EUR [■](the "**De Minimis Exclusion**"). All individual Losses arising from the same breach of Representation and Warranties shall be deemed on an accumulated basis as one individual Loss.]*

The Founders or the Company, as the case may be, will not be obliged to indemnify for Losses until the total aggregate amount of all accumulated Losses exceeds EUR [■] (the "**Basket Amount**"). *[Once the Basket Amount is exceeded, the Founders or the Company, as the case may be, will indemnify the Investors for the full amount of all the accumulated Losses and not merely for the excess over the Basket Amount.]*

1.3.6 The aggregate liability for Losses shall not exceed the total amount of the Investment. However, no limit shall exist for Losses suffered by the Investors related to fraud or willful misconduct³.

1.3.7 The liability of the Indemnifying Party in relation to the Founders' and the Company's Representations and Warranties and the Existing Shareholders' Representations and Warranties (both, jointly, the "**Representations and Warranties**") shall terminate:

(a) 60 days after the end of the applicable statutory limitation period in relation to any claim for falsehood, inaccuracy or breach of the Representation and Warranty under sections [●]⁴; and

(b) in respect of any other claim for falsehood, inaccuracy or breach of any other Representation and Warranty, on the [second] anniversary of the Completion Date.

1.3.8 The time limits mentioned above shall not operate in respect of any claim of which notice in writing in the terms of this Agreement is given by any of the Investors before the relevant expiration date.

[Regardless of the provisions of Section 1.3.7 above, any delay by the Company or any Existing Shareholder in giving notice of any Loss to Investors shall automatically extend the liability term by six months from the date the notice of Loss is served.]

³ **Note to Draft:** Total investment amount to be included. However, maximum liability threshold is heavily negotiated. Additionally, it is common that de minimis and thresholds do not apply in case of "fundamental warranties" or specific indemnities (if any) and, in case of founders, it is common to see a cap referred to multiple of annual salary (between x1 and x2).

⁴ **Note to Draft:** The statute of limitation usually applies to tax and labor; then, for the so-called "fundamental warranties" such as capacity, capital, no bankruptcy, compliance with law etc., usually a 5-years period is required; depending on the business, some other matters like data protection or environmental can fall under the 5-years period (or statute of limitation, as the case may be).

1.3.9 *[For the purposes of ensuring Investors' indemnity for Losses as provided for in this Section 1.3, the Founders agree that, in the event that any of them fails to pay indemnity for Losses to any Investor when they are required to do so, such Founder shall, at Investors' request, deliver, in payment of such indemnity, a number of Shares it owns, whose reasonable value at the time the Investment is executed is sufficient to cover the amount of the indemnity. In the event that the indemnification to be paid by the Indemnifying Party is subject to tax on receipt by each Investor or otherwise has a tax cost for the Investor (whether imposed by way of withholding, deduction or otherwise), the amount of the indemnification to be paid shall be increased as necessary to leave the Investor with the amount it would have received in the absence of such tax, whether the payment is in cash or in Company's Shares.]*

1.3.10 *[If a claim for indemnification is made by an Indemnified Party that results from Losses sustained by such Indemnified Party due to a third party claim, the indemnifying Party(ies) shall have the right to assume, conduct and control the defense, compromise or settlement of any such third party claim, by written notice to the Indemnified Party, at the expense of such indemnifying party(ies), and thereupon to prosecute in the name and on behalf of the Investor any available cross-claims, counterclaims or third-party claims arising with respect to such claim, provided that no settlement or compromise will be agreed to by the indemnifying Party(ies) without the Indemnified Party's prior consent to the extent the same will result in any liability of any the Indemnified Party, and provided, further, that in the event of conflict of interest between the indemnifying Party(ies) and the Indemnified Party, the Indemnified Party shall be entitled to assume, conduct and control its defense, compromise or settlement of any such third party claim, and thereupon to prosecute in any available cross-claims, counterclaims or third-party claims arising with respect to such claim.]*

1.3.11 *[No Indemnified Party shall be indemnified more than once for the same Losses suffered, regardless of whether such Losses may be attributed to more than one indemnity, breach of several paragraphs of the Representations and Warranties.]*

1.4 **[Non-Exclusive Remedy; Autonomous and Independent Contractual Guarantee]**

The rights and remedies of [Investor] provided in this Section 1 shall be in addition to any other rights and remedies of [Investor] provided by the applicable law.]

2. **Sample Board Composition & Reserved Matter Clause; Description of Board and Shareholder Rights**

2.1 **The Board⁵ and the Investor Directors**

2.1.1 The members of the Board⁶ immediately following Completion shall be *[the Founders]* and the Investor Directors (if appointed). The Board shall comprise a maximum of Directors. At least Board meetings shall be held in each calendar year.

⁵ **General comment and Note to Draft:** Not all jurisdictions may accommodate a one-tier board. In case of a two tier board where one board supervises a management team that runs the day to day business of the Company, we suggest to include information rights for the individual Board members and access to the day-to-day information regarding the Company, unless provided for under applicable law.

⁶ **Note to Draft:** Consider whether any specific right to empower directors is required to be included here (e.g., as to directors are able to bind the company on a single or a joint basis).

2.1.2 For so long as the *[relevant Investor]* hold not less than *[■]*% of the Equity Shares in issue he/she/they shall have the right:

(a) to appoint and maintain in office such natural person as *[relevant Investor]* may from time to time nominate as a Director (and as a member of each and any committee of the Board) and to remove any Director so appointed and, upon his/her removal whether by the Investor or otherwise, to appoint another Director in his/her place; and

(b) to *[■]*.

[Insert name(s)] shall be deemed to be the first Director(s) appointed pursuant to this Section 2.1.2.

2.1.3 Appointment and removal⁷ of an Investor Director⁸ in accordance with Section 2.1.2 shall be by written notice from the appointing Investor to the Company which shall take effect on delivery at the Company's registered office or at any meeting of the Board or committee thereof. When required by the *[relevant Investor]*, the other Investors shall vote in favor of any appointment or substitution of the relevant Director appointed by the *[relevant Investor]* pursuant to Section 2.1.2. To the extent required, the Shareholders and the Company, respectively, shall take any necessary additional (corporate) actions to effect the election or removal, as applicable, of the respective Director to be appointed or removed in accordance with Section 2.1.2 and/or Section 2.1.3.

2.1.4 The initial chairman of the Board shall be *[name]*. Thereafter, the chairman shall be appointed by *[Investors / Shareholders / Founders]* for any subsequent terms. The chairman shall be elected by the Board⁹. In case of a tie, the chairman shall *[have / not have]* the casting vote.

2.1.5 The *[Chairman]* shall send to the Directors (in electronic form if so required):

(a) reasonable advance notice of each meeting of the Board (being not fewer than *[■]* Business Days) and each committee of the Board, such notice to be accompanied by a written agenda specifying the items to be discussed at such meeting together with all relevant papers; and

(b) as soon as practicable after each meeting of the Board (or committee of the Board) a copy of the minutes.

Sections 2.1.5(a) and 2.1.5(b) shall apply *mutatis mutandis* in case of circular resolutions of the Board.

2.1.6 Save with Investor Director Consent no resolution shall be voted on at any meeting of the Board (or committee of the Board) save for that relating to topics specified in the agenda referred to in Section 2.1.5(a).

⁷ **Note to Draft:** Attention, depending on concerned country specific conditions may be required or not for removal of directors. In some other countries, the right of removal is a public order rule belonging to the general meeting of shareholders which cannot be limited by any contractual clause.

⁸ **Note to Draft:** The manner in which an Investor Director is required to be appointed should be included here (e.g., as to whether a shareholders' resolution is required and whether any notarized signatures are required).

⁹ **Note to Draft:** Depending on applicable law, the chairman must be elected by the shareholders' meeting.

- 2.1.7 The Company will reimburse the Investor Directors the reasonable costs and out of pocket expenses incurred by them in respect of attending meetings of the Company or carrying out authorized business on behalf of the Company. Any costs/expenses exceeding [currency] [■] per item shall require the prior approval by the Board.
- 2.1.8 An Investor who has appointed an Investor Director pursuant to Section 2.1.2 shall procure that such Investor Director shall comply with Section [■] (Confidentiality) save that such Investor Director shall be at liberty from time to time to make full disclosure to its appointing Investor of any information relating to the Company, subject to any contractual or statutory confidentiality obligation limiting or excluding any such disclosure.
- 2.1.9 Subject to Section 2.2, items arising at any meeting of the Board and to be decided at such meeting shall be decided by a majority of votes.

2.2 Matters requiring consent of the Investors or the Investor Directors¹⁰

- 2.2.1 Each of the Shareholders and Directors shall exercise all voting rights and powers of control available to such Shareholder or Director, as applicable, to procure that:
- (a) resolutions on any of the matters referred to in Part 1 of **Schedule 2.2.1(a)** shall be adopted only with Investor Majority Consent, and
 - (b) resolutions on any of the matters referred to in Part 2 of Schedule 2.2.1(a) shall be adopted only with Investor Director Consent.

2.3 Organization of the Board / Delegation to Management

To the fullest extent permitted by law and subject to Section 2.2, the Constitutional Documents shall provide that the Board delegate the day-to-day management of the Company to the [Management] of the Company.

3. Sample Lock-Up Provisions & Pre-Emptive Rights

3.1 Transfer Restrictions, Lock-Up

3.1.1 General Transfer Restrictions

Subject to Section 3.1.2 below, any transfer of Shares requires the prior written consent of [Shareholders representing more than [50]% of the total share capital of the Company, including the Investors' Majority [the Investors]] / [the Board] [which shall not be unreasonably withheld, delayed or conditioned], unless the transfer of Shares is required pursuant to the terms of this Agreement.

For purposes of this Agreement, any references to a "transfer of Shares", or to equivalent expressions shall include (i) any direct or indirect transfer, sale, lease, exchange, assignment, or other disposal of legal and/or beneficial ownership in Shares; (ii) creating or permitting to

¹⁰ **Note to Draft:** It may be necessary to specify to what extent the matters set out in schedule 2.3.1.1 are within the power of the Directors or the Shareholders as a matter of national law, and make the appropriate adjustments to this document (e.g., that the directors are parties to the agreement so that they have an obligation to refer the matter to the Shareholders). These provisions may also be required to be included in the articles of association of the Company.

subsist any direct or indirect pledge, charge, mortgage, lien, hypothecation or other security interest over Shares; (iii) any agreement, arrangement or understanding in respect of votes or the right to receive dividends with respect to Shares; and (iv) any agreement to do any of the above.

3.1.2 [Founder/Key Person] Lock-Up

For a period of [■] [years/month/days] as of the date of this Agreement, each [Founder/Key Person] agrees not to transfer any of its Shares without the prior written consent of [the Investors' Majority/the Investors/[■]], unless required pursuant to the terms of this Agreement and except for any Permitted Transfers.

3.1.3 Permitted Transfers

Subject to the following provisions, the [Shareholders¹¹] agree and undertake to (A) approve and pass all resolutions necessary to approve any Permitted Transfer and (B) not make use of, and waive to exercise, the right of first refusal and other restrictions on transfers of Shares pursuant to the Articles and this Agreement in case of a Permitted Transfer.

"Permitted Transfer(s)" means (A) any transfer of Shares made in compliance with this Agreement (including pursuant to Sections 3.1.2, 3.2, 6.1 and 6.2), (B) in case of any [Founder/Key Person/Shareholder that is an individual] any transfer of Shares by such Shareholder to a wholly owned entity or (C) in case of any Shareholder that is not a [Founder/Key Person/individual], any transfer of Shares by such Shareholder to any of such Shareholder's Affiliate (each transferee under (B) and (C), a **"Permitted Transferee"**).

Any Permitted Transfer pursuant to subclauses (B) and (C) of the definition thereof shall be made under the condition subsequent that the Permitted Transferee ceases to be an Affiliate of the Permitted Transferee, with the consequence that the parties to such Permitted Transfer are obliged to unwind such transaction upon the condition subsequent being triggered.

Further, any Permitted Transferee shall agree in writing to be bound by and to be subject to any agreement governing the transferred Shares and to which the Permitted Transferee is subject, including this Agreement, and in each case as shall be amended from time to time, as if it was an original party thereunder, and accepts and assumes any and all liabilities and obligations of the Permitted Transferee following such transfer, under said agreements.

3.2 Pre-Emption Right/Right of First Refusal

3.2.1 Obligation to Make an Offer

Except for any Permitted Transfer, if a Shareholder (the **"Transferring Shareholder"**) has received a binding and (with the exception of, if necessary, mandatory regulatory approvals) unconditional acquisition offer from a *bona fide* third party ([including/excluding] any other Shareholders) (the **"Interested Party"**) for the acquisition of Shares of the Transferring Shareholder, the Transferring Shareholder shall notify the Company without undue delay. The Company shall in turn notify the other Shareholders (each, an **"Entitled Shareholder"**) without undue delay of the offer of the Interested Party and offer to the Entitled Shareholders

¹¹ **Note do Draft:** Rephrase, if consent is given (also) at board level (e.g. by "the Shareholders agree and undertake to [procure by instructing] OR [by exercising – as far as legally permissible – their influence over the members of] the [Board] accordingly to (A)

(the "**Pre-Emptive Offer**") the Shares that are subject to the offer of the Interested Party (the "**Relevant Shares**") on the same terms and conditions of such offer (such offer notice, the "**Pre-Emptive Notice**").

The Pre-Emptive Notice shall include [a certified copy of the Interested Party's offer/a summary of the key terms of the offer¹²] and shall be submitted in writing (or in such stricter form as required under applicable laws).

3.2.2 Acceptance and Declaration period

Within [15] Business Days from the date on which the Pre-Emptive Offer is delivered by the Company by registered letter (date of posting) or by e-mail to the Entitled Shareholders ("**Acceptance and Declaration Period**"), each Entitled Shareholder shall declare in writing (or in such stricter form as required under applicable laws) by registered letter or by e-mail in advance whether it accepts the Pre-Emptive Offer and if so, in which amounts.

3.2.3 Acceptance¹³

If one Entitled Shareholder accepts the Pre-Emptive Offer within the Acceptance and Declaration Period (for the entire Relevant Shares), the Transferring Shareholder and the exercising Entitled Shareholder shall without undue delay, and in any case within [ten] Business Days and subject to Section 3.2.5, negotiate in good faith and execute the necessary transfer documentation regarding the sale and transfer of all Relevant Shares from the Transferring Shareholder to the exercising Entitled Shareholder at the terms and conditions of the Pre-Emptive Offer.

If more than one of the Entitled Shareholders accept the Pre-Emptive Offer within the Acceptance and Declaration Period, the Transferring Shareholder and the exercising Entitled Shareholders shall without undue delay, and in any case within [ten] Business Days and subject to Section 3.2.5, negotiate in good faith and execute the necessary transfer documentation regarding the sale and transfer of all Relevant Shares from the Transferring Shareholder to the exercising Entitled Shareholders on a *pro rata*-basis (*pro rata* to the shareholdings of the exercising Entitled Shareholders in the Company towards each other, unless agreed differently between the exercising Entitled Shareholders) at the terms and conditions of the Pre-Emptive Offer. For the avoidance of doubt, any such sale constitutes a Permitted Transfer.

3.2.4 Non-Acceptance

If no Entitled Shareholder accepts the Pre-Emptive Offer within the Acceptance and Declaration Period (with respect to all of the Relevant Shares), the Transferring Shareholder shall be entitled to transfer all, but not less than all, of the Relevant Shares within [90] days

¹² **Note to Draft:** Submitting only a summary of the key terms may be easier to satisfy, but leaves room for interpretation and would be more prone to potential disputes than submitting a copy of the entire offer.

¹³ **Note to Draft:** This draft intentionally requires any exercising Party to acquire all shares that are subject to the Pre-Emptive Offer as this is a simpler process. As alternative, the mechanics could be revised to entitle each Shareholder in a first round to acquire only the *pro rata* number of shares and in a second round the *pro rata* number of Shares of other Shareholders who have not exercised their pre-emptive right in the first round, provided that all shares that are subject to the Pre-Emptive Offer are eventually acquired.

after expiry of the Acceptance and Declaration Period to the Interested Party on the terms set forth in the Pre-Emptive Offer, otherwise this Section 3.2 shall apply again. For the avoidance of doubt, any such sale constitutes a Permitted Transfer if the Transferring Shareholder fully complied with this Section 3.2.

3.2.5 Consideration In-Kind

- (a) The provisions of this Section 3.2 shall apply *mutatis mutandis* where the consideration of the Interested Party is payable (partly or a as a whole) in-kind, in particular in the event of exchange/barter, as well as if the transfer shall be made without consideration.
- (b) In such case and to the extent the consideration of the Interested Party is payable (partly or a as a whole) in-kind or the transfer is made without consideration, the consideration payable by the Entitled Shareholders for the Relevant Shares shall correspond to the *pro rata* fair market value of the Company as of the date of the Offer.
- (c) If the Transferring Shareholder and the Entitled Shareholder(s), who have accepted the Pre-Emptive Offer, are unable to agree on the *pro rata* fair market value of the Company within [14] Business Days after expiry of the Acceptance and Declaration Period, the *pro rata* fair market value of the Company shall be determined by an independent expert appointed by the Parties. If the Parties are unable to agree on an independent expert within further [ten] Business Days, the independent expert shall be appointed by [■]¹⁴.
- (d) The valuation of the *pro rata* fair market value of the Company shall be based on the most suitable expert opinion for company valuations. The valuation must be carried out on the basis of what the independent expert considers to be the most adequate procedure for the valuation of the *pro rata* fair market value of the Company in accordance with such expert opinion. The costs of the independent expert shall be borne by the Entitled Shareholder(s) on the one side and the Transferring Shareholder on the other side (in equal parts).

The Shareholders shall use their rights as shareholders of the Company to ensure that the Company supports the valuation process and provides the expert with all documents and information deemed necessary by the expert for purposes of the valuation.

3.3 Subscription Rights

3.3.1 Subscription Rights

In the event of any issuance of Shares or other equity instruments, including instruments convertible into Shares or other equity instruments (other than Excluded Securities (as defined below)) ("**Equity Securities**"), each Shareholder¹⁵ is entitled (in addition to any statutory subscription right) to a *pro rata* subscription right (in proportion to the Shares held by such Shareholder to the issued and outstanding Shares held by all Shareholders, on an as converted basis) in accordance with the following terms (the "**Pro Rata Subscription**

¹⁴ **Note to Draft:** Insert appropriate mechanics to ensure that an independent expert is appointed in case of disputes, e.g. by referring the decision to a corporate body of the Company or to an independent person (e.g. a pre-defined expert).

¹⁵ **Note to draft:** Consider allowing only shareholders holding a certain type/amount of shares to be entitled to such subscription rights.

Right"). Each Shareholder shall exercise its Pro Rata Subscription Right by written notice to the Company (the "**Subscription Declaration**") within [14] Business Days (the "**Subscription Period**") of the written notification by the Company of the issuance of Equity Securities (the "**Issuance Notification**"), unless a longer period is offered. The Issuance Notification shall (i) state the Company's *bona fide* intention to issue such Equity Securities, (ii) describe the number and type of the Equity Securities to be issued, and (iii) describe their price and the general terms upon which the Company proposes to issue the same. If a Shareholder does not exercise its Pro Rata Subscription Right or does not exercise it in full within the Subscription Period, its Pro Rata Subscription Right - insofar as it has not been exercised - shall accrue to the other Shareholders who have exercised their Pro Rata Subscription Right in full (the "**Privileged Beneficiaries**") in proportion to the Shares held by them (the "**Additional Subscription Right**").

3.3.2 Acceptance

In their Subscription Declaration, Privileged Beneficiaries must bindingly declare the amount up to which they would be prepared, in the event of non-exercise of the Pro Rata Subscription Right in full by other Shareholders, to assume a portion of the instruments offered in excess of their Pro Rata Subscription Right. Failure to make this declaration shall be deemed a failure by the respective Shareholder to exercise the Additional Subscription Right.

In case the Shareholders do not subscribe to any or all Equity Securities, the Company may, during a period of [90] days following the Subscription Period, offer the remaining Equity Securities to any person or persons at a price not less than, and upon terms no more favorable than those specified and offered in the Issuance Notification.

3.3.3 No Assignment

The assignment of subscription rights to other Shareholders or third parties shall be excluded to the greatest extent permissible.

3.3.4 Exclusion of Subscription Rights

To the greatest extent legally permissible, the Pro Rata Subscription Right shall not apply to ("**Excluded Securities**"):

- (a) *[options to subscribe for shares under a Share Option Plan];*
- (b) Shares issued as consideration for the acquisition of any company or business which has been approved in writing by an *[Investor Majority]*;
- (c) Shares which the *[Investor Majority]* has agreed in writing should be issued without complying with the procedure set out in this Section 3.3[; *and*
- (d) *other exemptions*¹⁶.

¹⁶ **Note to Draft:** Depending on the local regime and number of shareholders, at times this could trigger securities law issues (prospectus requirements) and thus additional language is added to ensure no such issue is triggered.

4. Sample Exit Clause – Alternative 1¹⁷

- 4.1 The Parties acknowledge that their agreed preferred Exit is through a Share Sale or an IPO as soon as practicable and in any event within the [■] anniversary of the Completion Date. To this end, the Parties undertake as follows:
- 4.1.1 The Parties shall assess, preferably at a physical meeting or alternatively on the occasion of a video conference or conference call organized by the Board, the feasibility of a Share Sale or IPO every six months, as from the second anniversary of the Completion Date or as of the achievement of the following milestones: [■], whichever comes first.
- 4.1.2 If Shareholders holding a Qualified Majority *[and an Investor Majority]* so require, the feasibility of a Share Sale or an IPO shall be assessed with the support of a Professional Advisor to be hired by the Company.
- 4.1.3 In the event the *[Board]* *[and an Investor Majority]* agree[s] on the feasibility of an IPO, the following shall apply:
- (a) The Company shall grant the IPO Bank a mandate to start the IPO procedure under the terms and conditions that the Board and the IPO Bank shall deem fit; *[in any case, such terms and conditions shall not be prejudicial to the liquidation preference provided for under Section 7;]*
 - (b) The Shareholders shall follow the recommendation of the IPO Bank, including in determining their sale of Shares upon the IPO, and agree to limitations of their rights to sell their respective Shares following an IPO (the "IPO Lock-Up"), if such IPO Lock-Up is, in the reasonable discretion of the IPO Bank, advisable for the successful completion of the IPO;
 - (c) The *[Company/Shareholders]* shall do anything that is necessary or expedient to ensure the success of the IPO, including changes to the corporate structure facilitating the IPO, the preparation of a prospectus or registration statements and the application for required court or administrative orders; *[The [Company/Shareholders] shall submit all declarations and take all reasonably necessary measures in order to enable the IPO;]*
 - (d) The Shareholders shall not be obliged to provide any representations, warranties or undertakings in relation to an IPO, except as to the ownership of their Shares sold in an IPO.
- 4.1.4 In the event (i) the *[Board]* *[and an Investor Majority]* agree on the feasibility of a Share Sale, or (ii) in case no mandate to the IPO Bank is granted *[by the [■] anniversary of the Completion Date]*, the Parties agree as follows:
- (a) The Shareholders shall grant the Board a mandate to start the Share Sale procedure.

¹⁷ **Note to Draft:** There are two alternative sample clauses of which "alternative 1" is a more sophisticated, "alternative 2" a simple alternative.

- (b) Within [■] months as from the relevant request of *[an Investor Majority]*, the *[Company/Shareholders]* shall grant to a Sale Advisor a mandate to a Share Sale and instruct the Sale Advisor (i) to maximize the potential sale price, including by means of a competitive sale procedure, (ii) to communicate to the Shareholders the offers it has received without delay, and (iii) to indicate the offer that it deems preferable; *[the mandate shall have a duration of [■] months and it may be extended by the [Company/Shareholders] for an additional [■] months in case of pending negotiations]*.
- (c) The Shareholders shall contextually waive their pre-emption rights according to Section 3.2.
- (d) The Shareholders shall complete the Share Sale within [■] days as from such communication of the Sale Advisor, it being understood that:
 - (i) the Shareholders shall not be obliged to agree to the Share Sale if the offered purchase price is below [■] or not payable in Cash;
 - (ii) the Shareholders, with the support of the Sale Advisor, shall negotiate in good faith the terms and conditions of the Share Sale agreement, which shall be in line with the terms and conditions of transactions of the same type and size in the Company's jurisdiction;
 - (iii) in any event, no *[Investor/Shareholder]* shall be obliged to give representations and warranties other than with respect to title and authority regarding the Shares sold by such *[Investor/Shareholder]* nor to undertake any indemnification obligation.

- 4.2 If and to the extent the Company may not bear the cost of the IPO Bank and/or the Sale Advisor, as applicable, under applicable law or if this would lead to adverse tax consequences, such expenses shall be borne by the Shareholders in proportion to the Shares sold or to be sold by them (based in sales proceeds) in such IPO or Share Sale.

For the purposes of this Section 4.2, the Company and the Shareholders shall support the IPO assessment, the IPO and the Share Sale processes by giving the IPO Bank and the Sale Advisor, as the case may be, access to the Company's books, records, properties and other proprietary materials and by making available the Company's managers, officers and employees for presentations and interviews, in each case on a need-to-know basis and subject to the entering into a customary confidentiality undertakings by the above-mentioned advisors vis-à-vis the Company.

5. Sample Exit Clause – Alternative 2

- 5.1 The Parties acknowledge that their common goal is to accomplish an Exit from their investments into the Company as soon as *[the Company has reached the following milestones: [■]/the Company's pre-money valuation has reached [■]]* but no later than [■] years from the Completion Date.
- 5.2 If, at any time, Shareholders holding a Qualified Majority *[and an Investor Majority]* so require, or if, after [■] years following the Completion Date, one Investor so requires, the Board shall

assess the feasibility of an Exit through a Share Sale or an IPO. The Board is free to take the necessary measures in that respect, including the engagement of appropriate advisors.

5.3 If the Board approves an Exit (the "**Approved Exit**"), each of the Parties undertakes, individually in its capacity as direct or indirect holder of Shares, and/or member of the Board and/or member of the Management, as the case may be, to implement the Approved Exit (including approving a sale of its Shares, waiving its subscription rights or rights of first refusal, etc.), to use the voting rights attached to the Shares and, as the case may be, the voting rights as member of the Board and/or member of the Management, to instruct the members of the Board appointed by it accordingly and to take all such further actions as may be reasonably necessary or appropriate in order to implement the Approved Exit, provided only that all Shareholders are treated relatively equal with respect to the terms and conditions of the Approved Exit.

6. Sample Tag-Along/Drag-Along Clause

6.1 Tag-Along Rights

6.1.1 The Investors are entitled to demand from a Transferring Shareholder the pro rata co-sale of their Shares (based on their ownership of Preferred Shares), provided the following conditions are met:

- (a) this sale does not qualify as a Permitted Transfer¹⁸;
- (b) the applicable pre-emption rights according to Section 3.2 have not been exercised in full; and
- (c) such sale occurs under the same terms and conditions¹⁹ as the ones set forth in a Notification.

6.1.2 Such co-sale right is exercisable by way of written notice by the relevant Investors to the Transferring Shareholder [*and [the chairman of] the Board*] sent within [■] Business Days after the Notification has been received.

6.1.3 The Notification shall set forth the number of Shares the respective Investor wishes to co-sale calculated based on a pro rata mechanism.

6.1.4 The Transferring Shareholder²⁰ shall inform all Investor(s) about the extent and content of all requests that have been made within [■] Business Days counted from the lapse of the term to exercise all the co-sale rights.

¹⁸ **Note to Draft:** Permitted Transfers may allow for a small Liquidity Event by the founders – up to [■]% of the stock each founder owns at closing of the last round.

¹⁹ **Note to Draft:** We have made an (investor-friendly) choice to only allow investors co-sale rights (if the Permitted Transfers allow for some liquidity by the founders, this should be a fair approach).

The alternative would be to allow for different prices for different classes which would add an extra layer of complexity and the clause much more complex (which we believe not to be the intended outcome).

We have not included wording to adjust the price based on a conversion ratio as it seems the investor should weight this in its decision to exercise its rights (for instance because of triggering of anti-dilution protections or share splits).

²⁰ **Note to Draft:** The process may be conducted by the board if this is favored under applicable laws.

- 6.1.5** Any Investor who does not timely send a written declaration exercising the co-sale right shall be deemed to have irrevocably specified that such Investor wishes to sell no Shares.
- 6.1.6** In case the Potential Purchaser is not willing to purchase all the Shares from the Transferring Shareholder and from any of the Investors who have exercised their co-sale right, the Transferring Shareholder shall propose to the Potential Purchaser, upon request of the respective Investors who have exercised their co-sale right, to transfer to the Potential Purchaser the number of Shares held by such Investors indicated in the notice sent pursuant to Section 6.1.3 and proportionally decrease the number of its Shares to be transferred to the Potential Purchaser. If the Potential Purchaser does not accept, then the Transferring Shareholder may not sell its Shares and the tag-along right may not be exercised by the Investors.
- 6.1.7** In any case, before transferring and after having received the notification that co-sale rights have been exercised, the Transferring Shareholder is obliged to inform the Investors who have exercised their co-sale right of the total nominal value of Shares that the Potential Purchaser wishes to acquire.

6.2 Drag-Along Rights

- 6.2.1** All the Parties shall be obliged to dispose of all their Shares (or in case of a sale of less than all of the Shares, their proportionate part) or to participate in the deal on the same terms and conditions, provided the following conditions are met:
- (a) a [Qualified/Investor] Majority²¹ consents in writing (i) to dispose of all or more than 50% of all Shares (also by way of a swap, contribution or merger) or (ii) to dispose of (including by way of swap, contribution or merger or exclusive license(s)) more than 50% of the tangible and intangible assets of the Company (calculated at fair market values and irrespectively of whether such assets may be shown in the Company's financial statements under applicable, generally acceptable accounting principles);
 - (b) a [Qualified/Investor] Majority accepts the offer including the related terms and conditions;
 - (c) the acquirer's consideration shall be in cash [and/or in a divisible consideration in kind (e.g., shares)] and shall be distributed among the Shareholders in accordance with the liquidation preference (if applicable) as set out in Section [■];
 - (d) [at least [two/three] years have passed since Completion Date];
 - (e) the liability of each Investor for representations, warranties, indemnities and other claims granted to the acquirer in connection with the transaction shall be several, and not joint,

²¹ **Note to Draft:** Thresholds to be agreed and to be seen whether a majority of the ordinary shares should also be included (Qualified Majority) as opposed to having a floor on exit proceeds. If there is no saying by the ordinary shareholders, then a floor should be set – the value is often heavily debated. The type of majority and the applicable thresholds will depend if we are before a founders or an investors friendly clause and if it is an early or later stage round. The Qualified/Investor Majority concept is not defined since its definition will largely depend on the applicable majority.

and limited to the proceeds paid to each such Investor to the extent permitted by applicable law;

- (f) the Investors' representations, warranties, indemnities and other claims shall only be granted with respect to the title in, and third party rights regarding, the Shares sold by the respective Investor and their respective capacity to enter into the contract; and
- (g) unless consent is obtained by the prejudiced Investors, no Investor may be treated differently from other Investors under such contract.

6.2.2 The [Qualified/Investor] Majority shall be entitled to demand from any and all Shareholders that they enter into the contract with the acquirer(s) (or other relevant third party) within [■] Business Days of its receipt in the event that (i) the [Qualified/Investor] Majority has resolved as set forth in Section 6.2.1 above and (ii) a draft contract negotiated with a prospective acquirer(s) (or other relevant third party) meets all the requirements set forth in Section 6.2.1 above.

6.2.3 The Parties shall procure all reasonable actions and enter into all agreements necessary in order to fully carry out the transaction provided for under Section 6.2.1.

7. Sample Liquidation Preference Clauses

7.1 Distribution of Proceeds

7.1.1 In case of any Liquidity Event, the Shareholders agree and, as the case may be, shall procure that any Net Proceeds will be allocated as follows to the Shareholders (the "**Liquidation Proceeds**")²²:

Holders of Preferred Shares will be entitled to receive as consideration, individually and before any other Shareholder, the higher of the following: (i) an amount per Preferred Share equal to the Preferred Amount or (ii) an amount per Preferred Share equal to the amount such Preferred Shares would have received in a case of any Liquidity Event, should such Preferred Shares have been converted into common Shares immediately prior to the Liquidity Event. It is clarified that, the amounts due under points (i) or (ii) before shall be net of any dividends already paid. To the extent that any holder of Preferred Shares holds different series of Preferred Shares, such holder of Preferred Shares may make its election under this Section 7.1.1 separately for each class of Preferred Shares held by such holder. If the Liquidation Proceeds are insufficient to pay in full the Preferred Amount set out above to each holder of Preferred Shares, then the entire Liquidation Proceeds shall be distributed in their entirety to the holders of Preferred Shares in a pro rata basis to their holdings in the Preferred Shares. If, in the event of a Liquidity Event, the holders of Preferred Shares do not transfer all their Preferred Shares, the Liquidation Preference shall only apply as to the respective Preferred Shares transferred by its respective holder.

²² **Note to Draft:** The following sample wording is for non-participating Preferred Shares and is structured as a "higher of" wording and does not require the Preferred Shares to be converted into common share upon a Liquidity Event. The need to include conversion provisions in the documentation should be evaluated in each case.

[Firstly, holders of Preferred Shares will be entitled to receive as consideration, individually and before any other Shareholder, an amount per Preferred Share equal to the Preferred Amount. If the Liquidation Proceeds are insufficient to pay in full the Preferred Amount set out above to each holder of Preferred Shares, then the entire Liquidation Proceeds shall be distributed in their entirety to the holders of Preferred Shares in a pro rata basis to their holdings of the Preferred Shares.

Secondly, any remaining Liquidation Proceeds will be distributed among all Shareholders of the Company on a pro rata basis²³].

- 7.1.2 The Shareholders agree that if the Liquidation Proceeds are received by the Company instead of the Shareholders (e.g., upon the sale of all or substantially all of the Company assets), the Shareholders will perform all actions in compliance with applicable laws necessary to distribute to the Shareholders such proceeds to satisfy the liquidation preferences pursuant to Section 7.1.1.
- 7.1.3 Likewise, the Shareholders agree that if the Liquidation Proceeds received by the Shareholders are in kind (e.g., by virtue of a merger), the Shareholders will perform all actions necessary in order to comply with the terms of Section 7.1.1.
- 7.1.4 If any amount that otherwise would have been paid to the Shareholders as a result of a Liquidity Event is retained as a result of an escrow, retention or provision for similar contingencies (collectively, the "**Escrow**"), each Party will ensure that the transaction documents on the Liquidity Event provide that further distributions to Shareholders of funds under the Escrow comply with the provisions of Section 7.1.1.

8. Sample Anti-Dilution Clause – Broad Based Weighted Average

- 8.1 If the Company, subsequently to the issuance and subscription of the Preferred Shares by Holders of Preferred Shares (the "**Protected Shareholders**")²⁴ issues any new shares, whether due to the exercise of subscription rights or convertible loans or otherwise, at an issue price per share lower than the Preferred Share Price [*or, in case of Preferred Shares issued to a Convertible Lender, the applicable Conversion Share Price*] (a "**Downround**"), the Protected Shareholders shall be entitled to a broad based weighted average anti-dilution adjustment in such Downround.
- 8.2 Upon a Downround, a broad based weighted average anti-dilution adjustment will apply based on the following formula:

$$P2 = P1 \times \left(\frac{(A + B)}{(A + C)} \right) - \frac{\text{minimum statutory issue price /}}{\text{nominal value per new Share}}$$

where:

²⁴ **Note to Draft:** This downround protection could be limited to a certain period of time or until the next qualifying financing round.

"P2" is the broad based weighted average share price.

"P1" is the Preferred Share Price [*or, in case of Preferred Shares issued to a Convertible Lender, the applicable Conversion Share Price, in each case*] as adjusted from time to time in accordance with Section 8.4 below;

"A" is the total number of outstanding shares [*and phantom shares included in the PSOP*] issued by the Company prior to the Downround;

"B" is the number of shares equal to the quotient of (x) the total [*currency*] amount contributed into the Company's capital (face value and share premium) in the Downround, divided by (y) P1;

"C" is the total number of new shares to be issued in the Downround; in case of fractions, C will be rounded down to the next entire number.

- 8.3 The Shareholders agree that, immediately before the Downround is implemented, they will take all actions necessary to issue new shares in favor of the Protected Shareholders, at the minimum statutory issue price, of the same class and with the same rights and entitlements, calculated in accordance with the following formula, so that the average cost per share of the Preferred Shares held by the respective Protected Shareholders plus the new shares acquired pursuant to this Section is equal to P2:

$$N1 = \left(D \times \left(\frac{(P1)}{(P2)} \right) \right) - D$$

where:

"N1" is the number of additional (of the same class) shares to be issued to the respective Protected Shareholder pursuant to this Section;

"D" is the number of Preferred Shares held by the relevant Protected Shareholder;

"P1" is the Preferred Share Price [*or, in case of Preferred Shares issued to a Convertible Lender, the applicable Conversion Share Price, in each case*] as adjusted from time to time in accordance with Section 8.4 below; and

"P2" is the broad based weighted average share price.

- 8.4 If there is an antidilution adjustment in a Downround, then after giving effect to such adjustment pursuant to this Section 8, the issue price per share of each Preferred Share shall, for the purposes of the next succeeding Downround, be adjusted to equal the P2 calculated with respect to the Downround in relation to which there was such immediately preceding adjustment.

- 8.5 This antidilution protection shall not be applicable in the case of (i) the issue of shares reserved for employees, advisors or consultants pursuant to an incentive scheme²⁵ as approved by the General Shareholders' meeting in accordance with this Agreement, (ii) shares issued pursuant to a share split or similar reorganization affecting the Company's shares from the date hereof [*or (iii) the relevant Protected Shareholders not exercising the full pro rata right in the Downround*].
- 8.6 Any issuance of shares under this Section 8 shall be considered as an adjustment to the issue price paid by the Protected Shareholders for the Preferred Shares.
- 8.7 Each of the Shareholders hereby undertakes to execute the necessary waivers required by law, the bylaws or contractual arrangements, to exercise its powers and voting rights in the general meetings of Shareholders in order to facilitate this antidilution adjustments in respect of any Downround in accordance with this Section 8.

* * *

²⁵ **Note to Draft:** In some jurisdictions there might be holders of certain rights that could be exempted from the application of the antidilution formula (e.g., IP licenses for UNI spin offs with equity options, etc.).

Definitions Schedule

Acceptance and Declaration Period	has the meaning given in Section 3.2.2.
Accounts	means <i>[the audited balance sheet and profit and loss account of the Company] [a consolidation of the audited balance sheets and profit and loss accounts of the Company and any of its Subsidiaries]</i> for the period ended on the Accounts Date in the agreed form.
Accounts Date	means [■].
Accountants' Report	means [■].
Additional Subscription Right	has the meaning given in Section 3.3.1.
Affiliate	means, with respect to any person, any other person (A) directly or indirectly Controlling, (B) Controlled by, or (C) under common Control with such person, provided that "Control" mean any circumstance in which such legal entity is controlled by another person, including by virtue of the possession, directly or indirectly, of the power to (a) direct or cause the direction of the affairs, management and policies of such person, whether through the ownership of voting securities, by contract or otherwise, or (b) elect, or cause the election of, the majority of the members of the board of directors (supervisory board or management board), the administrators or any analogous corporate body of the legal entity, whether through the ownership of voting securities, by contract or otherwise.
Agreement	means this <i>[Shareholders]</i> agreement, as amended from time to time.
Approved Exit	has the meaning given in Section 5.3.
Articles	means the articles of association of the Company as adopted from time to time.
Asset Sale	means the disposal by the Company of all or substantially all of its undertaking and assets.
Basket Amount	has the meaning given in Section 1.3.5.
Board	means the board of directors of the Company as constituted from time to time.

Business	means [■], as more fully described in the Business Plan.
Business Day	means any day on which banks are ordinarily open for the transaction of normal banking business in [■] (other than a Saturday or Sunday).
Business Plan	means the business plan for the Company as amended from time to time.
Cash	means (i) cash in [USD, EUR, GBP, CHF], or a currency freely convertible thereto, and (ii) securities traded on an internationally recognized stock exchange.
Company	has the meaning given in [■] ²⁶ .
Completion	means completion by the parties of their respective obligations in accordance with [■] ²⁷ .
Completion Date	means the date upon which Completion occurs.
Connected Person	means [■] ²⁸ .
Constitutional Documents	means the [■] ²⁹ of the Company in the agreed form to be adopted on or prior to Completion as amended or superseded from time to time ³⁰ .
[Conversion Share Price]	means [■].
[Convertible Lender]	means [■].
[De Minimis Exclusion]	has the meaning given in Section 1.3.5. ³¹ .
Director	means a member of the Board.
Downround	has the meaning given in Section 8.1.
Encumbrance	means any mortgage, charge, security interest, lien, pledge, assignment by way of security, equity, claim, right of pre-emption, option, covenant, restriction, reservation, lease, trust, order, decree, judgment, title defect (including retention of title claim), conflicting claim of ownership or any other

²⁶ **Note to Draft:** Reference to be included.

²⁷ **Note to Draft:** Respective Investment Agreement for reference to be included.

²⁸ **Note to Draft:** Include relevant statutory references.

²⁹ **Note to Draft:** Articles of association to be included.

³⁰ **Note to Draft:** To be updated according to jurisdiction.

³¹ **Note to Draft:** See Section 1.3.5.

	encumbrance of any nature whatsoever (whether or not perfected other than liens arising by operation of law).
Entitled Shareholder	has the meaning given in Section 3.2.1.
Equity Securities	has the meaning given in Section 3.3.1.
Escrow	has the meaning given in Section 7.1.4.
Excluded Securities	has the meaning given in Section 3.3.4.
Existing Shareholder	means any person/entity whose name and address are set out in Part [■] of Schedule [■].
Existing Shareholders' Representations and Warranties	has the meaning given in Section 1.1.1.
Exit	means a Share Sale, an Asset Sale or an IPO.
Financial Statements	<i>[has the meaning given in Section [■] / means [■]].</i>
Financial Year	means a financial year of the Company ending on <i>[date]</i> .
Founder(s)	means any person whose name and address is set out in Part [■] of Schedule [■].
Founders' and the Company's Representations and Warranties	has the meaning given in Section 1.2.1.
Indemnified Parties	has the meaning given in Section 1.3.1.
Indemnifying Parties	has the meaning given in Section 1.3.1.
Interested Party	has the meaning given in Section 3.2.1.
Investment	means the investment by the Investor(s) in the Company to be completed at Completion.
Investor Director Consent	means the <i>[prior written]</i> consent of <i>[all]</i> the Investor Directors.
Investor Directors	means the directors appointed in accordance with Section 2.1.2.

Investor Majority	means the holders of at least 50% of [■] ³² from time to time ³³ .
Investor Majority Consent	means the [<i>prior written</i>] consent of the Investor Majority.
Investor(s)	means any person/entity whose name and address are set out in Part 1 of Schedule [■] and any other person/entity who becomes a party to and in accordance with this Agreement as an "Investor" by signing a deed of adherence and is named therein as an "Investor".
IPO	means the admission of all or any of the Shares or securities representing those shares to or the grant of permission for the same to be traded or quoted on [a qualified stock exchange, regulated market place, multilateral trading facility or other exchange of trading of shares of recognized national or international standing anywhere in the world].
IPO Bank	means [■].
IPO Lock-Up	has the meaning given in 4.1.3(b).
Issuance Notification	has the meaning given in Section 3.3.1
[<i>Key Person</i>] ³⁴	[<i>means any person whose name are set out in Schedule [■] .</i>]
Liquidation Proceeds	has the meaning given in Section 7.1.1.
Liquidity Event	means (i) any Asset Sale, lease, transfer, exclusive license or other disposal, in a single or series of related transactions, by the Company or any Subsidiary of the Company, of all or substantially all of the assets of the Company and its Subsidiaries taken as a whole, (ii) any merger of the Company [<i>except any such merger does not cause a change of Control of the Company</i>], (iii) Share Sale or (iv) dissolution or winding-up of the Company, with or without liquidation, (v) distribution of dividends.
Loss or Losses	has the meaning given in Section 1.3.3.
Management	means [■].

³² **Note to Draft:** *The respective Investor Shares, e.g., Series A Shares, to be included.*

³³ **Note to Draft:** *Although the Investor Majority is set at 50%, it is acknowledged that under applicable law in the relevant jurisdiction, a higher majority may actually be required (e.g., a share capital increase may require a 75% vote). Such statutory majorities would clearly need to be achieved too.*

³⁴ **Note to Draft:** *See Section 3.1.2.*

NASDAQ	means the NASDAQ Stock Market of the NASDAQ OMX Group Inc.
Net Proceeds	means the aggregate cash proceeds received in respect of a Liquidity Event (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received in any Liquidity Event), net of the direct costs relating to such Liquidity Event, including, without limitation, legal, accounting and investment banking fees, sales commissions, and, to the extent such proceeds are received by the Company or any of its Subsidiaries, (i) any taxes paid or payable as a result of the Liquidity Event, in each case, after taking into account any available tax credits or deductions and any tax sharing arrangements, (ii) any amounts required to be applied to the repayment of indebtedness secured by a lien on the asset or assets that were the subject of such Liquidity Event and (iii) any reserve for adjustment in respect of the sale price of such asset or assets established in accordance with the generally accepted accounting principles in [country of the head-office of the Company] as in effect from time to time.
Notification	means the written communication sent by any Transferring Shareholder informing the intent to transfer its Shares ³⁵ .
Ordinary Shares	means ordinary shares of [■] each in the capital of the Company from time to time having the rights set out in this Agreement.
Party	means any party to this Agreement.
Permitted Transfer(s)	has the meaning given in Section 3.1.3.
Permitted Transferee	has the meaning given in Section 3.1.3
Potential Purchaser	means any Party or a <i>bona fide</i> third party willing to acquire/buy any Shares.
Pre-Emptive Notice	has the meaning given in Section 3.2.1.
Pre-Emptive Offer	has the meaning given in Section 3.2.1.

³⁵ **Note to Draft:** The definition of Notification (or Notification to Sell or Notification of Transferring Shareholder) to include the standard market terms adjusted to comply with applicable laws and jurisprudence: name and registered office of the Potential Purchaser, the nominal value of the Share(s) intended to be transferred, the purchase price and the due date for payment. We would also advise including mention of representations, warranties and indemnities the Transferring Shareholder may give as well as the remedies available in case of a breach thereof.

Preferred Amount	means in respect to each Preferred Share <i>[an amount equal to EUR [■] as adjusted for shares splits, bonus issues, redemptions and combinations] [an amount equal to the original subscription price paid for such Preferred Shares[, including payments on such Preferred Shares (e.g., contributions) after subscription³⁶] [plus [■]% per annum on the sum of the foregoing from the date of payment capitalized on an annual basis³⁷].</i>
Preferred Dividend³⁸	has the meaning given in Section Errore. L'origine riferimento non è stata trovata.
Preferred Shares	means all preferred Shares issued by the Company (irrespective of the existence of different classes of Shares and seniority).
Privileged Beneficiaries	has the meaning given in Section 3.3.1.
Pro Rata Subscription Right	has the meaning given in Section 3.3.1.
Professional Advisor	means [■].
Protected Shareholders	has the meaning given in Section 8.1.
[PSOP	<i>has the meaning given in Section [■]³⁹.</i>
Relevant Shares	has the meaning given in Section 3.2.1.
Representations and Warranties	has the meaning given in Section 1.3.7.
Sale	means a Share Sale or an Asset Sale.
Sale Advisor	means [■].
Series A Shares	means series A shares of [■] each in the capital of the Company from time to time having the rights set out in the Constitutional Documents ⁴⁰ .

³⁶ **Note to Draft:** The preferred wording to be included depending on whether the liquidation preference should refer to a set amount or the original subscription price of the Preferred Shares. The intention with the wording "including payments on such Preferred Shares (e.g., contributions) after subscription" is to capture also future payments made by the holder of Preference shares in favor of the target company, if relevant.

³⁷ **Note to Draft:** Wording to be included in case the Preferred Shares will bear interest.

³⁸ **Note to Draft:** To be included in case the parties have agreed that holders of Preferred Shares shall have preference to dividend (see Section **Errore. L'origine riferimento non è stata trovata.**).

³⁹ **Note to Draft:** Respective Phantom Share Option Program to be included.

⁴⁰ **Note to Draft:** Consider referring to this Agreement instead in case of statutory limitations on lawful content of Constitutional Documents.

Service Agreements	means [■].
[Share Option Plan]	<i>means the share (option) plan to be established by the Company pursuant to Section [■].</i>
Share Sale	means the sale of (or the grant of a right to acquire or to dispose of) any of the Shares (in one transaction or as a series of transactions) which will result in the purchaser of those Shares (or grantee of that right) and its affiliates or persons acting in concert with it together acquiring an interest in Shares giving to the holder(s) control of the Company, except where following completion of the sale the Shareholders and the proportion of Shares held by each of them are the same as the Shareholders and their shareholdings in the Company immediately prior to the sale.
Shareholder	means any shareholder of the Company from time to time who is a Party to this Agreement <i>[(but excludes the Company holding Shares as Treasury Shares from time to time)]</i> .
Shares	<i>[means issued shares in the capital of the Company] / [means the Ordinary Shares and the Series A Shares]</i> .
Subscription Declaration	Has the meaning given in Section 3.3.1
Subscription Period	has the meaning given in Section 3.3.1.
Subsidiaries	means [■] ⁴¹ .
Transferring Shareholder	has the meaning given in Section 3.2.1.
Treasury Shares	means Shares in the capital of the Company held, directly or indirectly, by the Company as treasury shares, to the extent permitted by applicable law.

⁴¹ **Note to Draft:** Include relevant statutory references.

Schedule 2.2.1(a)

Part 1: Matters requiring Investor Majority Consent

1. Permit or cause to be proposed any alteration to its share capital [(including any increase or removal of the limit on the number of shares that may be allotted by the Company)] or the rights attaching to its shares or waive any right to receive payment on any of its shares issued partly paid.
2. Create, allot, issue, buy-in or redeem any share or loan capital or grant or agree to grant any options [*other than pursuant to the Share Option Plan*] or warrants for the issue of any share or loan capital or issue any securities convertible into shares, or establish any employee incentive scheme, except in accordance with the Constitutional Documents or this Agreement.
3. Permit the Company to hold any Treasury Shares or permit the sale or transfer or cancellation of any shares held by the Company as Treasury Shares, if allowed by the applicable law.
4. Permit or cause to be proposed any amendment to the Constitutional Documents.
5. Propose or pay any dividend or propose or make any other distribution.
6. Subscribe or otherwise acquire, or dispose of any shares in the capital of any other company.
7. Acquire or dispose of the whole or part of the undertaking of any other person or dispose of the whole or part of the undertaking of the Company or merge the Company or any part of its business with any other person or propose to do so.
8. Negotiate or permit the disposal of shares in the Company amounting to a Sale or IPO.
9. Permit the Company to cease, or propose to cease, to carry on its business or permit the Company or its Directors (or any one of them) to take any step to wind up the Company, save where it is insolvent.
10. Permit the Company or its Directors (or any one of them) to take any step to place the Company into administration (whether by the filing of an administration application, a notice of intention to appoint an administrator or a notice of appointment), permit the Company or its Directors to propose or enter into any arrangement, scheme, moratorium, compromise or composition with its creditors or permit the Company or its Directors to invite the appointment of a receiver or administrative receiver over all or any part of the Company's assets or undertaking.
11. Enter into or give or permit or suffer to subsist any guarantee of or indemnity for or otherwise commit itself in respect of the due payment of money or the performance of any contract, engagement or obligation of any other person or body other than a wholly-owned Subsidiary of the Company.
12. Offer or grant any superior registration rights to any future shareholder in the Company without offering substantially similar rights to the Investors.

13. Enter into any right of first refusal, negotiation or notification that applies in relation to a Sale or IPO which gives a third party a preferential right to negotiate, make an offer or receive information in relation to such Sale or IPO.
14. Adopt the Business Plan in respect of each Financial Year of the Company.
15. Deal in any way (including the acquisition or disposal, whether outright or by way of license or otherwise howsoever) with intellectual property other than in the ordinary course of business.
16. *[Other than is specifically set out in the Business Plan for the relevant Financial Year,]* make any material change to the nature of the Business or the jurisdiction where it is managed and controlled or change the name of the Company.

Part 2: Matters requiring Investor Director Consent

1. Incur any capital expenditure (including obligations under hire-purchase and leasing arrangements) which exceeds the amount for capital expenditure in the relevant capital expenditure of the Business Plan *[by more than [■]%]* or (where no items were specified but a general provision made) in relation to any item exceeding EUR [■].
2. Dispose (otherwise than in accordance with any relevant capital disposals forecast in the Business Plan) of any asset of a capital nature having a book or market value greater than EUR [■].
3. *[Other than as is specifically set out in the Business Plan for the relevant Financial Year,]* establish any new branch, agency, trading establishment or business or close any such branch, agency, trading establishment or business.
4. Do any act or thing outside the ordinary course of the business carried on by [it? the Company].
5. Make any change to:
 - (a) its bankers or the terms of the mandate given to such bankers in relation to its account(s);
 - (b) its accounting reference date;
 - (c) its accounting policies, bases or methods from those set out in the Accounts and the Accountants' Report (other than as recommended by the auditors of the Company); or
 - (d) the Business Plan.
6. Factor any of its debts, borrow monies (other than by way of its facilities in place at the date of this Agreement), incur indebtedness in excess of EUR [■] or accept credit (other than normal trade credit).
7. *[Other than as is specifically set out in the Business Plan for the relevant Financial Year,]* engage any employee or consultant on terms that either his contract cannot be terminated by three months' notice or less or his emoluments and/or commissions or bonuses are or are likely to be at the rate of EUR [■] per annum or more or increase the emoluments and/or commissions or bonuses of any employee or consultant to more than

EUR [■] per annum or vary the terms of employment of any employee earning (or so that after such variation he will, or is likely to earn) more than EUR [■] per annum.

8. *[Other than as is specifically set out in the Business Plan for the relevant Financial Year,]* vary or make any binding decisions on the terms of employment and service of any Director or company secretary of the Company, increase or vary the salary or other benefits of any such officer, or appoint or dismiss any such officer.
9. *[Other than as is specifically set out in the Business Plan for the relevant Financial Year,]* mortgage or charge or permit the creation of or suffer to subsist any mortgage or fixed or floating charge, lien (other than a lien arising by operation of law) or other Encumbrance over the whole or any part of its undertaking, property or assets *[(other than those mortgages and charges detailed in schedule 2)]*.
10. Make any loan or advance or give any credit (other than in the ordinary course of business) to any person or acquire any loan capital of any corporate body (wherever incorporated).
11. Conduct any litigation which is material to the Company and is outside of the ordinary course of its Business (such as debt collection in the ordinary course), save for any application for an interim injunction or other application or action (including interim defense) which is urgently required in the best interests of the Company in circumstances in which it is not reasonably practicable to obtain prior consent as aforesaid.
12. Propose or implement any variation to the Company's pension scheme or any of the benefits payable to members of the scheme.
13. Take or agree to take any leasehold interest in or license over any real property.
14. Other than where expressly contemplated by this Agreement or the Service Agreements, enter into or vary any transaction or arrangement with, or for the benefit of any of its Directors or Shareholders or any other person who is a "**Connected Person**" with any of its Directors or Shareholders.
15. Enter into any transaction or make any payment other than on an arm's length basis for the benefit of the Company.
16. Enter into any partnership, joint venture or consortium agreement.
17. Surrender or agree to any material change in the terms of any substantial supply or distribution agreement to which it is from time to time a party.