**SUBSCRIPTION AGREEMENT**

**Explanatory Note**

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

This model subscription agreement assumes:

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

Further explanatory notes are included in this model subscription agreement.

|  |
| --- |
| DATED **[●]** |
| **THE INVESTORS**  **and**  **THE FOUNDERS**  **and**  **THE COMPANY** |
| **SUBSCRIPTION AGREEMENT**  **relating to the subscription of [●] Series A Shares in [●]** |
|  |

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

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

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

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

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

**Whereas:**

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

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

**(C)** The Investors have agreed to subscribe for, and the Company has agreed to allot and issue to the Investors, the Subscription Shares on the terms and subject to the conditions of this Agreement. Immediately following Completion, the shareholding structure of the Company will be as set out in Part 2 of Schedule 5.

**It is agreed** as follows:

# Subscription for and Issuance of Subscription Shares

## Subject to the provisions of Clauses 2 and 3, each Investor agrees to subscribe for, and the Company agrees to allot and issue to such Investor, at Completion the number of Subscription Shares, free from any Encumbrances, in consideration for the aggregate subscription price (the "**Subscription Consideration**") set opposite its name in Schedule 3.

## The Company shall apply the proceeds of the subscription by the Investors for the Subscription Shares [in the furtherance of the Business in accordance with the Business Plan and the Annual Budget] / [towards the Group's working capital requirements][[1]](#footnote-2).

# Conditions Precedent[[2]](#footnote-3)

## Completion is conditional upon the fulfilment of the conditions (the "**Conditions**") set out in Schedule 4 to the satisfaction of the Lead Investor, other than those Conditions that have been waived by the **[Lead Investor]** on or before Completion.

## Where any Condition is capable of being waived (in whole or in part), that Condition may, unless otherwise expressly stated, only be waived with the consent of the **[Lead Investor]**, and the Condition (or, where applicable, that part of it) will be deemed to have been satisfied by such waiver. For the avoidance of doubt, such waiver will be without prejudice to any other rights, claims or remedies the Investors may have against the Company for any antecedent breach of the terms hereof.

## TheCompany[[3]](#footnote-4) undertakes to use its **[best endeavours]** **/ [reasonable endeavours]**[[4]](#footnote-5) to procure (so far as it is able to do so) the fulfilment of the Conditions (including taking the actions referred to in Clause 2.4 and excluding those Conditions that are required to be fulfilled up to and including Completion where applicable) as soon as possible and in any event by the date falling **[●]** from the date of this Agreement, or such other date as may be agreed in writing between the Company and the Lead Investor (the "**Long Stop Date**").

## The Company shall:

## regularly inform the **[Lead Investor]** of the progress of the fulfilment of each Condition and notify the **[Lead Investor]** in writing as soon as the Company is aware of the fulfilment of the Condition or that a Condition has become incapable of fulfilment; and

## provide the **[Lead Investor]** with evidence reasonably required by the **[Lead Investor]** of the fulfilment of each Condition.

## Unless specifically waived by the **[Lead Investor]** in accordance with Clause 2.1, if any of the Conditions are not satisfied on or before the Long Stop Date, this Agreement (save for the Surviving Clauses) shall *ipso facto* cease and no Party shall have any claim against any other Party for costs, damages, compensation or otherwise, save for any rights, claims or remedies available or already accrued to any Investor prior to such termination.

# Pre-Completion Undertakings

## Subject to Clause 3.2, the Warrantors undertake to the Investors to procure that between the date of this Agreement and Completion:

## each Group Company shall carry on business in the ordinary course as carried on at the date of this Agreement and consistent with past practices; and

## that no action is taken or resolution passed by any Group Company in respect of the matters set out in [Schedule 4] of the Shareholders' Agreement, save with the prior written consent of the **[Lead Investor] / [Investors].**

## Clause 3.1 shall not operate to restrict or prevent:

## any action taken at the request of the **[Lead Investor] / [Investors]** or with **[its] / [their]** prior written approval;

## any action taken in accordance with any contract or arrangement entered into by any Group Company prior to the date of this Agreement;

## any act or conduct which any Group Company is required to take, or omit to take, as a result of, or in order to comply with, any applicable law or regulation of any applicable governmental or regulatory body; or

## any matter expressly contemplated or provided for in this Agreement or another Transaction Document.

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

## Subject to the satisfaction or waiver of all Conditions, Completion shall take place **[electronically]**[[6]](#footnote-7) (or at such place as the Parties may agree in writing) on the date falling **[●]** Business Days after the date of fulfilment or waiver of the last of the Conditions set out in Clause 2 (but excluding those Conditions that are required to be fulfilled up to and including Completion where applicable) or such other date as the Company and the Lead Investor may agree in writing (the "**Completion Date**").

## The following events shall occur on the Completion Date[[7]](#footnote-8):

## each Investor shall:

## subscribe for the relevant number of Subscription Shares set out against its name in the second column of the table in Schedule 3 and pay the relevant Subscription Consideration by electronic funds transfer to the bank account of the Company as set out below and payment made in accordance with this Clause 4.2.1(i) (as evidenced by a MT-103) shall constitute a good discharge for each Investor of its obligations under this Clause 4.2.1(i):

Account name : **[•]**

Bank : **[•]**

Account number : **[•]**

Swift Code : **[•]**

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

## the Company shall deliver to each Investor a copy of the written resolutions passed by the Board,[[8]](#footnote-9) in a form approved by **[the Lead Investor]** prior to Completion, under which the Board shall have:

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

## adopted the Amended Constitution;

## approved and authorised the execution and delivery to each Investor of a share certificate for the relevant number of Subscription Shares set out against its name in the second column of the table in Schedule 3;

## **[noted the resignations of each of [●] and [●] as directors of the Company;]**[[9]](#footnote-10)

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

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

## approved and authorised the proposal of the Shareholders' resolutions for the allotment and issue of the Subscription Shares and the adoption of the Amended Constitution;

## **[approved and authorised** **the execution by the Company of the employment agreements in the agreed form to be entered into between the Company and each of [the Founders][[10]](#footnote-11) (the "Founder Employment Agreements");]**

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

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

## the Company shall deliver to each Investor a copy of the written resolutions passed by the Shareholders, in a form approved by **[the Lead Investor]** prior to Completion, under which the Shareholders shall have:[[11]](#footnote-12)

* + - 1. authorised the allotment and issue of the Subscription Shares and any Ordinary Shares to be allotted and issued on the conversion of any Subscription Shares;
      2. adopted the Amended Constitution;
      3. waived pre-emption rights, rights of first refusal or similar rights in respect of the allotment and issue of the Subscription Shares;
      4. **[*insert such other resolutions as may be required for the Shareholders to approve in relation to the transactions to be effected in connection with Completion*] [; and]**
      5. any other matters as may be required to carry out the obligations of the Company under this Agreement.

## the Company shall allot and issue to each Investor the relevant number of Subscription Shares set out against its name in the second column of the table in Schedule 3 credited as fully paid to such Investor;

## the Company shall lodge the relevant return of allotment with the Registrar to update the Company's electronic register of members to reflect each Investor as the holder of the relevant number of Subscription Shares set out against its name in the second column of the table in Schedule 3;

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

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

## **[*insert other Completion items, as relevant*][[12]](#footnote-13)**.

## An Investor shall not be obliged to perform any of its obligations under this Clause 4 unless the Company simultaneously performs its obligations under this Clause 4, and *vice versa*.

## Without prejudice to any other remedies available, if an Investor fails to perform its obligations under this Clause 4 on the Completion Date vis-à-vis the Company (the "**Defaulting Investor**"), the Company (and not the other Investors, for the avoidance of the doubt) shall be entitled to:

## defer Completion to a date not more than **[seven (7)]** days after the Completion Date (and so that the provisions of this Clause 4 shall apply to Completion as so deferred);

## effect Completion so far as practicable having regard to the defaults which have occurred; or

## terminate this Agreement (other than the Surviving Clauses) vis-à-vis itself and the relevant Defaulting Investor without liability on its part, and for the avoidance of doubt, such election shall only operate against such Defaulting Investor only, and this Agreement shall, upon such election by the Company, stand terminated only against such Defaulting Investor while continuing to be effective and valid vis-à-vis the other Investors. No Party shall have any claim against the other Parties for costs, damages, compensation or otherwise, save for any rights, claims or remedies available or already accrued to the Company prior to such termination.

## Without prejudice to any other remedies available, if the Company fails to perform its obligations under this Clause 4 on the Completion Date vis-à-vis an Investor, then such Investor not in default of this Clause 4 (the "**Non-Defaulting Investor**") (and not the other Investors, for the avoidance of the doubt) shall be entitled to:

## defer Completion to a date not more than **[seven (7)]** days after the Completion Date (and so that the provisions of this Clause 4 shall apply to Completion as so deferred);

## effect Completion so far as practicable having regard to the defaults which have occurred; or

## terminate this Agreement (other than the Surviving Clauses) as between itself and the Company without liability on its part, and for the avoidance of doubt, this Agreement shall continue to be effective vis-à-vis the other Investors. No Party shall have any claim against the other Parties for costs, damages, compensation or otherwise, save for any rights, claims or remedies available or already accrued to the Non-Defaulting Investor prior to such termination.

# Post-Completion Undertakings[[13]](#footnote-14)

## The Company shall and the Warrantors undertake to procure that the Company shall complete all post-Completion undertakings as set out in Schedule 7 within the timelines stated therein.

# Warranties

## The Warrantors warrant to the Investors that each and every Warranty set out in Schedule 6 is true, accurate and not misleading at the date of this Agreement and at the Completion Date, except that a Warranty which is expressly specified to be given on a particular date is made only on such date.

## The Warranties are qualified by the facts and circumstances Fairly Disclosed and subject to any exceptions expressly provided for under this Agreement.

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

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

## Without limitation to the rights of the Investors under this Agreement, in the case of a Claim against a Founder by any Investor, such Founder undertakes not to make any counterclaim or claim for a right of contribution or indemnity against the Company.

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

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

## **Investors' Warranties**[[14]](#footnote-15): Each Investor severally warrants that:

## (if applicable) it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation, registration or organisation and has been in continuous existence since its incorporation, registration or organisation;

## it has full right and authority to enter into and perform its obligations under this Agreement on the terms and conditions hereunder and this Agreement represents its legal, valid and binding obligations enforceable in accordance with its terms;

## the execution and delivery by it of this Agreement and the documents referred to herein, and compliance with their respective terms, shall not breach or constitute a default under its constitutive documents (if applicable), or any other agreement or instrument to which it is a party or by which it is bound, and shall not constitute a breach under any order, judgment, decree or other restriction applicable to it;

## it is not insolvent or is not unable to pay its debts as they fall due;

## no application or order has been made or resolution passed in respect of the winding-up, judicial management or administration of itself, nor so far as the Warrantors are aware, are there any circumstances in which any person would be entitled to have it wound-up or placed in judicial management or administration;

## no person has appointed or threatened to appoint or become entitled to appoint a receiver or receiver and manager or other similar officer over its business or its assets; and

## no composition in satisfaction of its debts, or scheme of arrangement of its affairs, or compromise or arrangement between itself and its creditors and/or its members or any class of its creditors and/or members, has been proposed, sanctioned or approved.

# General Indemnity and Liability Basis

## Without prejudice to any other rights, claims and remedies available to the Investors, the Warrantors shall fully indemnify each Investor on demand against any and all Losses which any Investor or a Group Company may at any time and from time to time sustain, incur or suffer as a result of or arising out of any breach by the Company or any Founder of any of its or his / her representations, Warranties, covenants or other obligations under this Agreement.[[15]](#footnote-16)

## Save as otherwise expressly provided, all warranties, representations, indemnities, undertakings, covenants and obligations given or made by the Warrantors are given or made on a **[joint and several basis / several and not joint basis / jointly and severally** **between the Company and the Founders but several between the Founders inter se].[[16]](#footnote-17)**

# Limitations on Liability

## Notwithstanding any other provision in this Agreement, the limitations set out in this Clause 8 shall not apply to (i) any Claim in relation to paragraphs **[1, 2 and 19][[17]](#footnote-18)** of Schedule 6; and (ii) any Claim arising as a result of any fraud, dishonesty, wilful concealment or wilful misrepresentation by or on behalf of a Warrantor.[[18]](#footnote-19)

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

## **[in the case of a Claim in relation to paragraphs [•][[19]](#footnote-20) of Schedule 6, [●] years following Completion;**

## **in the case of any Claim relating to Warranties (other than any Claim referred to in Clause 8.2.1), [•][[20]](#footnote-21) following Completion; and**

## **in the case of any other Claim (other than any Claim referred to in Clause 8.2.1 and Clause 8.2.2), [•][[21]](#footnote-22) following Completion,]**

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

## The aggregate liability of the Warrantors in respect of any and all Claims by an Investor shall be limited to an amount equal to **[the Subscription Consideration paid by such Investor pursuant to this Agreement]**.

## Notwithstanding Clause 8.3 above, a Founder's aggregate liability to any and all Investors in respect of all Claims shall be limited to S$**[●][[22]](#footnote-23)**.

## **[The Warrantors shall not be liable in respect of any Claim by an Investor unless the aggregate amount recoverable from the Warrantors in respect of that Claim, and any other Claims from such Investor exceeds S$[•], in which case, subject as provided elsewhere in Clause 8, the Warrantors shall be liable for the entire amount of all such Claims and not merely the excess over S$[•]. Where any number or a series of Claims by such Investor arises out of the same or substantially similar facts or circumstances, such Claims shall be aggregated and form a single Claim for the purposes of this Clause 8.5.]**

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

## to the extent that the alleged breach which is the subject of the Claim is capable of remedy and is remedied to the satisfaction of the relevant Investor (acting reasonably) within thirty (30) calendar days of the date on which the notice of such Claim by such Investor is received by the Company pursuant to Clause 8.2;[[23]](#footnote-24)

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

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

## to the extent the Claim arises from:

## the enactment or amendment of any legislation, statute, directive, judgement, decree or such other law or regulation after the Completion Date;

## a change in the judicial or administrative interpretation of any legislation, statute, directive, judgement, decree or such other law or regulation after the Completion Date; or

## a change in, or the withdrawal of, the practice or policy of any governmental authority (including any Taxing Authority's Taxing practice), introduced or having effect after the Completion Date;

## in relation to an Investor, to the extent the Claim arises from any act or omission that was made with the prior written approval of such Investor or at such Investor's direction (for the avoidance of doubt, the Warrantors would remain liable in respect of any breach of any Warranty to the other Investors who did not provide such prior written approval or direction);

## to the extent the Claim arises from any act or omission that was expressly permitted by this Agreement or any other document contemplated by it; or

## to the extent the Claim is for indirect, special, punitive, consequential, incidental or exemplary damages save in relation to (i) those which are within the reasonable contemplation of the Parties at the date of this Agreement; and (ii) those arising from any third party claims against an Investor.

## An Investor shall be entitled to make a Claim in respect of liability which is contingent provided that written notice of such Claim (giving as far as practicable the amount and details of the Claim) is given to the Warrantors before the expiry of the period specified in Clause 8.2.

## Any Claim notified by an Investor to the Warrantors pursuant to this Clause 8 shall (if it has not been previously satisfied, settled or withdrawn) be deemed to be irrevocably withdrawn **[six]** months after notice of such Claim has been given by an Investor or, in the case of any contingent liability, **[six]** months after such contingent liability becomes an actual liability and is due and payable, unless legal proceedings in respect of it:

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

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

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

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

# Confidentiality

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

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

* + 1. the disclosure or use is required for the purpose of any judicial proceedings arising out of this Agreement or any other agreement entered into under or pursuant to this Agreement;
    2. the disclosure is made to the bankers, professional advisers, consultants, related corporations or affiliates of any Party (collectively, the "Representatives") for the purpose of this Agreement or for a purpose connected or related to the operation of this Agreement;
    3. the disclosure is made by an Investor to any Affiliate, partner, member, investor or shareholder in compliance with its investor reporting obligations or in line with its internal compliance polices;
    4. the disclosure is made to any lender to a Group Company and/or to any shareholder of the Company;
    5. the information is or becomes publicly available (other than by breach of this Agreement);
    6. the Party whose information is to be disclosed or used has, or all other Parties have, given prior written approval to the disclosure or use; or
    7. the information is independently developed by the recipient or is lawfully in its possession prior to the disclosure to it of the information,

## provided that (i) prior to disclosure of any information pursuant to Clause 9.1.1, the Party concerned shall, to the extent permitted by law, promptly notify the other Party or Parties (as the case may be) of such requirement; and (ii) in relation to a disclosure in Clauses 9.1.3, 9.1.4 and 9.1.5, the recipient is subject to an obligation to keep the disclosure confidential on the same basis as is required by the disclosing Party.

* 1. Permitted Disclosure to Potential Purchasers: Clause 9.1 shall not prohibit disclosure of any information by an Investor for the purpose of effecting a sale of Shares by such Investor, if such disclosure is made to a third party which had entered into *bona fide* discussions with such Investor to purchase such Shares (the "Potential Purchaser"), or to the professional advisers or financiers of the Potential Purchaser, and if the Potential Purchaser and such professional advisers or financiers (as the case may be) agree to keep such information confidential on terms which are reasonable for the protection of the interests of the Group by the execution of confidentiality agreements in favour of the Company.
  2. Obligations to Continue: The obligations contained in this Clause 9 shall endure, even after the termination of this Agreement, without limit in point of time except and until any confidential information enters the public domain as set out above.

# Announcements

* 1. None of the Parties shall issue any press release or make any public announcement or disclosure regarding the existence or subject matter of this Agreement, or any other agreement referred to in, or executed in connection with, this Agreement, without the prior agreement of the other Parties, save as required:
     1. by law, any governmental or regulatory body or any recognised securities exchange on which the shares of any Investor are listed; or
     2. for the purpose of any judicial proceedings arising out of this Agreement, or any other agreement referred to in, or executed in connection with, this Agreement,

## provided that prior to the issue or making of such press release, announcement or disclosure, the Party concerned shall, to the extent permitted by law, promptly notify the other Parties of such requirement.

# Variation

No variation of this Agreement shall be effective unless in writing and signed by or on behalf of each Party.[[24]](#footnote-25)

# Assignment

## Subject to Clause 12.2, all rights and obligations hereunder are personal to the Parties and a Party may not assign, transfer or dispose of all or part of its rights or obligations under this Agreement (including any cause of action arising in connection with this Agreement) without the prior written consent of the other Parties.

## Notwithstanding Clause 12.1, an Investor may assign or transfer all (and not some) of its rights, benefits, interests and/or obligations under this Agreement to its Affiliates which have received a transfer all of its Shares by providing a written notice of such assignment or transfer to the other Parties prior to such assignment or transfer.

# Indulgence, Waiver, etc.

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

# Costs

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

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

# Whole Agreement

## The Transaction Documents contain the whole agreement between the Parties relating to the subject matter of this Agreement at the date of this Agreement to the exclusion of any terms implied by law which may be excluded by contract and supersedes any previous written or oral agreement between the Parties in relation to the matters dealt with in this Agreement.[[25]](#footnote-26)

# Notices

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

## must be in writing in English;

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

## if to the Company:

## Address: **[●]**

## Attention: **[●]**

## Title: **[●]**

## E-mail address: **[●]**

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

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

## must be either:

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

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

## is deemed to be received by the Addressee in accordance with Clause 16.2.

## A Notice sent according to Clause 16.1 shall be deemed to have been received:

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

## if sent by overnight express courier, at the time of delivery;

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

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

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

# General

## **Rights of Third Parties**: A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 2001.

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

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

## **Counterparts**: This Agreement may be executed by the Parties hereto in separate counterparts, each and all of which when so executed and delivered to the Parties by facsimile, or by electronic mail in "portable document format" (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by a combination of such means, shall be deemed an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the Parties hereto. Any Party may enter into this Agreement by signing any such counterpart transmitted electronically, or by facsimile, or other electronic signatures (such as DocuSign or AdobeSign), by any of the Parties to any other Party and each receiving Party may rely on the receipt of such document so executed and delivered as if the original had been received. The Parties agree that signatures executed by way of electronic means (such as DocuSign or AdobeSign) shall be recognised and construed as secure electronic signatures to the fullest extent under applicable law, and that the Parties accordingly shall deem such signatures to be original signatures for all purposes.[[26]](#footnote-27)

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

## **Dispute Resolution**

## In the event of any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination (the "**Dispute**").

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

## **[the Parties irrevocably agree that the courts of Singapore are to have exclusive jurisdiction to settle any such Dispute.][[27]](#footnote-28)**

**[OPTION 2: ARBITRATION]**

**[the Dispute shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre[[28]](#footnote-29) in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force, which rules are deemed to be incorporated by reference in this Clause. This arbitration agreement shall be governed by Singapore law. The seat of the arbitration shall be Singapore. The Tribunal shall consist of one arbitrator. The language of the arbitration shall be English. The award shall be final and binding on the Parties. Judgment upon the award may be entered by any court having jurisdiction thereof or having jurisdiction over the relevant Party or its assets.]**

The Parties hereto also agree that prior to the commencement of **[arbitration]/[litigation]** proceedings, a Party hereto (the "**Requesting Party**") may provide (but is not obliged to provide) written notice to the other Party hereto (the "**Receiving Party**") requesting to refer the Dispute to mediation in Singapore at the Singapore Mediation Centre ("**SMC**")(the "**Mediation Proposal**") in accordance with SMC’s Mediation Procedure for the time being in force.[[29]](#footnote-30) If the Receiving Party agrees to the Mediation Proposal, it shall provide its written confirmation to the Requesting Party (the "**Confirmation**") within 14 days of receipt of the Mediation Proposal. The Mediation Proposal and the Confirmation shall together constitute the Parties’ agreement to mediate at SMC(the "**Agreement to Mediate**"). For the avoidance of doubt, if no Confirmation is provided to the Requesting Party within 14 days of the Receiving Party’s receipt of the Mediation Proposal, the Receiving Party shall be deemed to have rejected the Mediation Proposal. Mediation shall be commenced by the submission by either of the Parties of the Request for Mediation to SMC. Unless otherwise agreed by the Parties hereto, the mediation shall be conducted by one mediator appointed by SMC, the mediation will take place in Singapore in the English language, and the Parties hereto shall be bound by any settlement agreement reached. If neither Party submits a Request for Mediation to SMCwithin 14 days of the Receiving Party’s receipt of the Confirmation or if the Parties hereto are unable to resolve the Dispute through mediation within **[30 days]** of the submission of the Request for Mediation to SMC, the Parties’ Agreement to Mediate will lapse unless otherwise agreed.

## **[Process Agent: [•] irrevocably appoints [•] (the "Process Agent") with its address at [•] as its agent to receive, for it and on its behalf, service of process in Singapore in any legal action or proceedings arising out of or in connection with this Agreement. Items served at this address must be marked for the personal attention of [•]. Such service shall be deemed completed on delivery to the Process Agent (whether or not it is forwarded to and received by [•]). If for any reason the Process Agent ceases to be able to act as such or no longer has an address in Singapore, [•] irrevocably agrees to appoint a substitute Process Agent acceptable to [•], and to deliver to [•] a copy of the new Process Agent's written acceptance of that appointment, within thirty days.][[30]](#footnote-31)**

# Interpretation

In this Agreement, unless the context otherwise requires:

## **Definitions**

"**Act**" means the Companies Act 1967;

"**Addressee**" shall have the meaning ascribed to it in Clause 16.1.2;

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

"**Agreement to Mediate**" shall have the meaning ascribed to it in Clause 17.6.1;

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

"**Anti-Corruption and Anti-Bribery Laws**" means the Prevention of Corruption Act 1960 and any other applicable laws of similar purpose and scope in any jurisdiction;

"**Anti-Money Laundering Laws**" shall have the meaning ascribed to it in paragraph 14.4 of Schedule 6;

["**Annual Budget**" shall have the meaning ascribed to it in the Shareholders' Agreement;]

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

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

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

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

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

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

"**Completion**" means completion by the Parties of their respective obligations in accordance with Clause 4.2;

"**Completion Date**" shall have the meaning ascribed to it in Clause 4.1;

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

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

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

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

"**Conditions**" shall have the meaning ascribed to it in Clause 2.1;

"**Confirmation**" shall have the meaning ascribed to it in Clause 17.6.1;

"**Consents and Approvals**" means all corporate, regulatory, and third party consents, waivers, approvals, permits, authorisations, orders, grants, confirmations, filings and/or registrations necessary for or required by or from the Group Companies, the Shareholders, the Founders (where applicable) and/or the Investors in connection with the subscription of the Subscription Shares or for the execution or performance of the Transaction Documents;

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

"**control**" (including its correlative meanings, "**controlled by**", "**controls**" and "**under common control with**") shall mean, with respect to a body corporate, the right to exercise, directly or indirectly, more than 50% of the voting rights attributable to the shares of the controlled body corporate and, with respect to any person other than a body corporate, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person;

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

"**Data Room**" means the **[virtual]** data room hosted by **[●]** to which the Investors and its professional advisers have been granted access;

"**Defaulting Investor**" shall have the meaning ascribed to it in Clause 4.4;

"**Disclosure Schedule**" means the disclosure schedule substantially in the form set out in Schedule 8;

"**Dispute**" shall have the meaning ascribed to it in Clause 17.6.1;

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

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

"**Financial Statements**" shall have the meaning ascribed to it in paragraph 5 of Schedule 6;

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

**["Founder Employment Agreements" shall have the meaning ascribed to it in Clause 4.2.2(viii);]**

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

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

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

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

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

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

"**Lead Investor**" means **[●]**;

"**Long Stop Date**" shall have the meaning ascribed to it in Clause 2.3;

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

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

"**Mediation Proposal**" shall have the meaning ascribed to it in Clause 17.6.1;

"**Non-Defaulting Investor**" shall have the meaning ascribed to it in Clause 4.5;

"**Notice**" shall have the meaning ascribed to it in Clause 16.1;

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

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

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

"**Permits**" means:

1. a permit, licence, consent, approval, certificate, qualification, registration or other authorisation; or
2. a filing of a notification, report or assessment,

in each case necessary for the operation of a Group Company's business, or its ownership, possession, occupation or use of an asset;

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

"**Potential Purchaser**" shall have the meaning ascribed to it in Clause 9.2;

**["Process Agent" shall have the meaning ascribed to it in Clause 17.7;]**

"**Prohibited Payment**" shall have the meaning ascribed to it in paragraph 14.5 of Schedule 6;

"**Receiving Party**" shall have the meaning ascribed to it in Clause 17.6.1;

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

"**Representatives**" shall have the meaning ascribed to it in Clause 9.1.3;

"**Requesting Party**" shall have the meaning ascribed to it in Clause 17.6.1;

"**Series A Shares**" means the series A preference shares in the capital of the Company having the rights set out in the Amended Constitution, including the terms and conditions set out in Schedule 3 of the Shareholders' Agreement;

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

"**Shareholders' Agreement**" means the shareholders' agreement in relation to the Company which shall be effective on the Completion Date among the Investors, the Founders and the Company, substantially in the form set out in Schedule 9;

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

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

"**SMC**" shall have the meaning ascribed to it in Clause 17.6.1;

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

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

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

"**Surviving Clauses**" means **[Clauses 2.5,4.4.3, 7, 8, 9, 9.2, 12, 16, 17 and 18]**;

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

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

"**Transaction Documents**" means this Agreement and the Shareholders' Agreement;

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

"**Warranties**" means the warranty statements given by the Warrantors pursuant to Clause 6 (save for Clause 6.8) and set out in Schedule 6 and "**Warranty**" means any one of them; and

"**Warrantors**" means the Company and each of the Founders.[[31]](#footnote-32)

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

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

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

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

## **Interpretation Act**: The Interpretation Act 1965 shall apply to this Agreement in the same way as it applies to an enactment.

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

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

## **Others**

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

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

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

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

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

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

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

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

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

## References to a person connected with or to another person shall be interpreted within the meaning of "**connected person**" as defined in Section 2 of the Securities and Futures Act 2001.

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

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

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

1. Particulars of the Investors and the Founders

Part 1

The Investors

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

Part 2

The Founders

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

1. Particulars of the Company [and the Subsidiaries]

[Part 1]

**Particulars of the Company**

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

**[Part 2**

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

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

1. Subscription Details

| **(1)**  **Name of Investor** | **(2)**  **Number of**  **Subscription Shares** | **(3)**  **Subscription Consideration (S$)** | **(4)**  **Shareholding percentage (on a fully-diluted basis) (%)** |
| --- | --- | --- | --- |
| **[•]** | **[•]** | **[•]** | **[•]** |
| **[•]** | **[•]** | **[•]** | **[•]** |
| **Total** | **[•]** | **[•]** | **[•]** |

1. Conditions Precedent
2. theConsents and Approvals having been obtained and remaining valid and effective up till and including Completion, and where any such Consents and Approvals are subject to conditions, such conditions being satisfactory to the **[Lead Investor]** in its reasonable discretion and being fulfilled;
3. the allotment, issuance and subscription of the relevant Subscription Shares not being prohibited by any statute, order, rule, regulation or directive promulgated or issued after the date of this Agreement by any legislative, executive or regulatory body or authority of Singapore or elsewhere which is applicable to the Company or the Investors;
4. no Party having received notice of any claim, injunction, order or notice restraining or prohibiting the entering into or the consummation of the transactions contemplated by this Agreement or seeking damages or other recourse in respect thereof, or notice that any of the foregoing is pending or threatened;
5. the representations and warranties of the Warrantors contained in this Agreement being true, correct, accurate and complete as at the date of this Agreement and as of the Completion Date;
6. the Warrantors having performed and complied with all undertakings and obligations under the relevant Transaction Document; [;and]
7. [insert such other Conditions as may be required in connection with Completion][[32]](#footnote-33).
8. Capitalisation

Part 1

Fully-diluted Capitalisation immediately prior to Completion

**[*insert capitalisation table*]**

**Part 2**

Fully-diluted Capitalisation immediately following Completion

**[*insert capitalisation table*]**

1. Warranties[[33]](#footnote-34)
2. Share Capital
   1. Part 1 of Schedule 5 sets out a true, complete, accurate and not misleading list of, as at immediately prior to Completion, all holders of Shares or options or other rights convertible into or exchangeable for shares of the Company, together with the number of Shares or rights held by each of them.
   2. Part 2 of Schedule 5 sets out a true, complete, accurate and not misleading list of, as at immediately after the allotment and issuance of the Subscription Shares at Completion, all holders of Shares or options or other rights convertible into or exchangeable for shares of the Company, together with the number of Shares or rights held by each of them.
   3. The Subscription Shares, when issued at Completion, will comprise **[•]**% of the Company's allotted and issued share capital **[on a fully diluted and as-converted basis]**, will be duly authorised, properly allotted and issued as fully paid free of any Encumbrances, and will have the rights, powers and preferences of the Series A Shares as set out in Schedule 3 of the the Shareholders' Agreement.
   4. The Ordinary Shares issuable upon the conversion of the Series A Shares, when issued upon such conversion, will be duly authorised, properly allotted and issued as fully paid free from any Encumbrances.
   5. There is no Encumbrance, and there is no agreement, arrangement or obligation to create or give any Encumbrance, in relation to any of the Subscription Shares or shares or equity interests in the capital of any Group Company.
   6. Other than this Agreement, there is no agreement, arrangement or obligation requiring the issue, transfer, redemption or repurchase of, or the grant to a person of the right (conditional or not) to require the issue, transfer, redemption or repurchase of, the Shares or any shares or equity interests in the capital of any Group Company (including, without limitation, any right of pre-emption or options or other rights convertible into or exchangeable or exercisable for any shares or equity interests in the capital of any Group Company).
   7. Other than as set out in Part 2 of Schedule 2 **[,of which such Subsidiaries are wholly-owned subsidiaries of the Company]**, no Group Company has or has ever had any subsidiary and has not at any time been the holding company of any company or a member of or the beneficial owner of any shares, securities or other interest in any company or other person.
   8. Each Group Company is the legal and beneficial owner of the shares registered in its name in the Group Company set out in Schedule 2, free from Encumbrances.
   9. The shares in each Group Company have been validly authorised, allotted and issued and fully paid-up
3. Capacity and Authority
   1. The Company is duly incorporated and validly existing under the laws of Singapore and each other Group Company is duly incorporated under the respective laws of its jurisdiction of incorporation, registration or organisation and has been in continuous existence since its incorporation, registration or organisation.
   2. Each Warrantor has full right and authority to enter into and perform its obligations under this Agreement on the terms and conditions hereunder and this Agreement represents its legal, valid and binding obligations enforceable in accordance with its terms.
   3. The execution and delivery by the Warrantors of this Agreement and the documents referred to herein, and compliance with their respective terms, shall not breach or constitute a default under the Company's constitution, or any other agreement or instrument to which any Warrantor is a party or by which any Warrantor is bound, and shall not constitute a breach under any order, judgment, decree or other restriction applicable to any Warrantor.
4. Information
   1. All information contained in the Disclosure Schedule, as at the date of this Agreement, and the information contained or referred to in the Recitals and Schedule 2 and Schedule 5 is true, complete, accurate and not misleading.
   2. All information which has been provided by or on behalf of the Company or its authorised representatives to the Investors, and their respective advisers or agents in the course of the due diligence conducted by the Investors and the negotiations leading to this Agreement is true, complete, accurate and not misleading.
   3. All information about the Subscription Shares and each Group Company's business which might be material for disclosure to a buyer of the Subscription Shares has been disclosed to the Investors in writing.
5. Business Plan
   1. The Business Plan has been diligently prepared by the Warrantors in good faith and each of the Warrantors believes that, as at the date of this Agreement, it represents a realistic plan in relation to the future progress, expansion and development of the Business.
   2. The financial forecasts, projections or estimates contained in the Business Plan have been diligently prepared, are fair, valid and reasonable and have not been disproved in the light of any events or circumstances which have arisen subsequent to the preparation of the Business Plan up to the date of this Agreement.
   3. The assumptions upon which the Business Plan has been prepared have been carefully considered and are believed to be reasonable, having regard to the information available and to the market conditions prevailing at the time of their preparation.
6. Financial Statements and Management Accounts
   1. The **[the audited financial statements of the Company] / [the audited [consolidated] financial statements of the [Group Companies]]** for the period ended on the Financial Statements Date (the "**Financial Statements**"):
      1. have been prepared in accordance with accounting principles, standards and practices which are generally accepted in Singapore and on the same basis and in accordance with the same accounting policies as the corresponding accounts for the preceding **[three]** financial years;
      2. comply with the requirements of the Act and any other applicable law; and
      3. give a true and fair view of the state of affairs of the Group as at the Financial Statements Date and of the profits and losses for the period concerned.
   2. The accounting records of each Group Company are accurate, up to date, in its possession or under its control and properly completed in accordance with the applicable laws and accounting standards.
   3. The Management Accounts:
      1. have been prepared on a basis consistent with the Financial Statements;
      2. reasonably reflect the financial affairs of the Group at the date to which they have been prepared and its results for the period covered by the Management Accounts; and
      3. are not inaccurate or misleading in any material respect.
7. Events since the Financial Statements Date

Since the Financial Statements Date:

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

1. Tax
   1. Each Group Company is only liable to pay Taxes in the jurisdictions in which the relevant Group Company is incorporated. Each Group Company is not liable to pay and has at no time incurred any liability to Tax chargeable under the laws of any jurisdiction other than the jurisdiction in which the relevant Group Company is incorporated.
   2. Each Group Company has paid all Tax which it has become liable to pay and is not, and has not been, liable to pay any penalty, surcharge, fine or interest in connection with Tax.
   3. Each Group Company has correctly deducted or withheld all Tax which it has been obliged by applicable laws to deduct or withhold from amounts paid by it, and has properly accounted to the relevant Taxing Authority for all amounts of Tax so deducted or withheld.
   4. Each Group Company has filed all returns, provided all such information and maintained all such records as required to be filed or provided or maintained by it under applicable laws.
   5. Each Group Company is not involved in any dispute with any Taxing Authority in relation to Tax.
   6. All acquisitions or disposals of assets by each Group Company and all supplies of services by and to each Group Company have occurred at arm's length between unconnected persons and for a consideration in cash at market value.
   7. The Company is registered as a "taxable person" under applicable Taxation laws, including the Goods and Services Tax Act 1993, and has not at any time been treated as a member of a group of companies for such purpose. The Company has complied with all statutory provisions, regulations and notices relating to Taxation.
2. Litigation
   1. Neither any Group Company nor, so far as the Warrantors are aware, any person for whose acts and defaults any Group Company may be vicariously liable is at present engaged whether as claimant, defendant or otherwise in any legal action, proceeding or arbitration or is being prosecuted for any criminal offence (other than as claimant in the collection of debts arising in the ordinary course of the business carried on by it none of which exceeds S$**[•]** and which do not exceed S$**[•]** in aggregate) and so far as the Warrantors are aware, no such legal action, proceeding or arbitration is threatened or pending. There are no ongoing governmental, regulatory or official investigation or inquiry concerning a Group Company and so far as the Warrantors are aware, no such governmental, regulatory or official investigation or inquiry concerning a Group Company is threatened or pending.
   2. There are no circumstances known to any of the Warrantors likely to lead to any such claim or legal action, proceeding or arbitration, prosecution, investigation or inquiry.
   3. Neither any Group Company nor any of the Founders nor, so far as the Warrantors are aware, any person acting for or on behalf of any Group Company is being prosecuted for an offence in such capacity, nor are they or have they been the subject of any investigation, or inquiry by, or on behalf of, any governmental, administrative or regulatory authority, in respect of any offence or alleged offence in such capacity, under any applicable laws or regulations of any jurisdiction (including anti-corruption laws or regulations), and there are no circumstances known to any of the Warrantors likely to give rise to any such prosecution, investigation or inquiry.
3. Properties

None of the Group Companies has any right of ownership, right of use, option, right of first refusal or contractual obligation to purchase, or any other legal or equitable right affecting any land and buildings.

1. Intellectual Property
   1. The operations of the Group Companies and any products or services supplied by them do not infringe the rights of any person and the Warrantors are not aware of any claims in relation to the same.
   2. All Intellectual Property, which is currently used for the business of the Group Companies or which is or is likely to be material to the business of the Group Companies as now conducted and as presently proposed to be conducted:
      1. is legally and beneficially owned and vested exclusively in the Group Companies; or
      2. is licensed to the relevant Group Company by third parties by way of an agreement and/or licence which enable the relevant Group Company to use the Intellectual Property as it requires in the ordinary course of its business.
   3. All Intellectual Property which is registered in the name of a Group Company, or in respect of which the relevant Group Company has made application for registration, is:
      1. valid and enforceable and has not been subject to any claims of opposition from any third party; and
      2. not subject to any licence, estoppel or authority or similar right in favour of any other person, except as set out in the agreements listed in the **[Disclosure Schedule] / [Data Room]**.
   4. Nothing has been done or omitted to be done whereby any of the Intellectual Property owned or used by any Group Company have ceased or might cease to be valid and enforceable or whereby any person is or will be able to seek cancellation, rectification or any other modification of any registration of any such Intellectual Property.
   5. Each Group Company has not granted and is not obliged to grant a licence (other than end user licences (if any) in the ordinary course of business), assignment or other right or Encumbrance in respect of any of the Intellectual Property (either owned or used by the relevant Group Company) to any person.
   6. Each employee and consultant of each Group Company has assigned to the relevant Group Company all Intellectual Property he or she owns that are related to the relevant Group Company’s business as now conducted and as presently proposed to be conducted and all Intellectual Property that he, she or it solely or jointly conceived, reduced to practice, developed or made during the period of his, her or its employment or consulting relationship with the relevant Group Company that:
      * 1. relate, at the time of conception, reduction to practice, development, or making of such Intellectual Property, to the relevant Group Company’s business as then conducted or as then proposed to be conducted;
        2. were developed on any amount of the relevant Group Company’s time or with the use of any of the relevant Group Company’s equipment, supplies, facilities or information; or
        3. resulted from the performance of services for the relevant Group Company.

It will not be necessary for the relevant Group Company to use any inventions of any of its employees or consultants (or persons it currently intends to hire) made prior to their employment by the relevant Group Company, including prior employees or consultants.

* 1. No party to an agreement relating to the use: (a) by a Group Company of any Intellectual Property owned by another person; or (b) by a third party of any Intellectual Property owned by a Group Company and licensed to such third party, has at any time been, in breach of the agreement and so far as the Warrantors are aware no circumstances exist which would give rise to any breach of any such agreement or to any such agreement being terminated, suspended, varied or revoked without the relevant Group Company's consent (other than termination without cause upon notice in accordance with the terms of the agreement).
  2. None of the Intellectual Property owned by a Group Company has been the subject of any opposition, invalidation, revocation or cancellation proceeding or any other proceeding concerning its validity, enforceability, or the relevant Group Company's title to such right. So far as the Warrantors are aware, no such proceedings have been threatened and no fact or circumstance exists which might give rise to a proceeding of that type.
  3. So far as the Warrantors are aware, there has not been any infringement, misappropriation, misuse, violation or other unauthorised use by third parties of any of the Intellectual Property owned by a Group Company.
  4. Each Group Company has not knowingly disclosed or permitted to be disclosed to any person (other than to the Investors and to their agents, employees or professional advisers) any of its know-how, trade secrets, confidential information or lists of customers or suppliers and has put into place policies designed and taken such actions as may be necessary to protect such information.
  5. No Company Product contains, is derived from, is distributed with, or is being or was developed using Open Source Code that is licensed under any terms that:
     1. impose or could impose a requirement or condition that any Company Product or part thereof:
        1. be disclosed or distributed in source code form;
        2. be licensed for the purpose of making modifications or derivative works; or
        3. be redistributable at no charge; or
     2. otherwise impose or could impose any other material limitation, restriction, or condition on the right or ability of a Group Company to use or distribute any Company Product or to enforce Intellectual Property.
  6. Each Group Company has in place adequate back-up, disaster recovery and other systems and procedures (details of which have been provided to the Investors) to enable its business to continue without material adverse change in the event of a failure of the Computer System.

1. Assets
   1. Each Group Company has not granted any Encumbrance over any part of its undertaking or assets.
   2. Each asset owned by any Group Company is: (i) legally and beneficially owned solely by the relevant Group Company free from any Encumbrance; (ii) not subject to any finance lease or hire purchase agreement or sale on deferred, credit or conditional terms; and (iii) where capable of possession, in the possession or under the control of the relevant Group Company.
   3. Each Group Company owns or has the right to use each asset necessary for the operation of its business as currently conducted.
   4. All plant, machinery, vehicles and equipment owned, possessed or used by each Group Company are in good condition and working order, have been regularly and properly maintained and are in compliance with all applicable laws.
   5. Each Group Company's **[inventory or stock]** is of satisfactory quality and saleable in the ordinary course of its business.
2. Related Party Agreements
   1. Save as stated in the **[Disclosure Schedule] / [Data Room]**,other than the Transaction Documents, there has not been, any agreement or arrangement (legally enforceable or not) between, on the one hand, any Group Company and, on the other hand, (i) the Founder, (ii) any of its Affiliates, (iii) any shareholder, director or manager of any Group Company, the Founder or any of their Affiliates, or (iv) any person connected with any of them (including immediate family members).
   2. No Founder nor any person connected with a Founder owns any property used by the Company.
3. Employment and Consultancy Arrangements
   1. The **[Disclosure Schedule] / [Data Room]** sets outs full details of all contracts of service or for services and other arrangements (including, without limitation, length of service, details of notice periods, confidentiality obligations, intellectual property rights and obligations and all remuneration) of all officers, employees, workers and consultants of each Group Company or copies are annexed thereof.
   2. Each Group Company is not involved in any dispute with any trade union or organisation representing the employees or a group of employees and there are no circumstances likely to give rise to any such dispute.
   3. There are no agreements or arrangements (whether legally enforceable or not) in relation to which a Group Company has incurred, will incur or could incur any liability or responsibility for or in relation to the provision of any share incentive, share option, profit sharing, bonus or other incentive arrangements, or any pensions, allowances, lump sums gratuities or other like benefits on redundancy, retirement, withdrawal from service or on death or during periods of sickness or disablement or accident for or in respect of any director or former director, or employee or former employee, of a Group Company or any person who has at any time agreed to provide services to a Group Company or any dependants of any such persons and no proposals or announcements have been made about the introduction, continuance, variation of, or payment of any contribution towards any such agreements or arrangements.
   4. There is no outstanding dispute or complaint in relation to the types of benefits described in paragraph 13.3 of this Schedule 6.
   5. Each Group Company has, in relation to its current and former employees, directors or workers, complied with all applicable laws and has no outstanding liabilities for termination of any such employment contracts or owe any other amounts to such persons other than remuneration accrued during the month in which this Agreement has been entered into.
   6. The Group Companies have implemented policies and procedures reasonably designed to prevent or remedy any conduct that could reasonably constitute unlawful harassment (including, but not limited to sexual harassment), discrimination or retaliation under applicable laws. There are no such unlawful harassment (including, but not limited to, sexual harassment), discrimination or retaliation claims pending or filed with any governmental authority or otherwise against any employee, officer or director of any Group Company, and no Group Company has entered into any settlement agreement or conducted any investigation related to any such claims brought or filed against or involving an employee, officer or director of any Group Company. So far as the Warrantors are aware, no allegations of unlawful harassment (including, but not limited to, sexual harassment), discrimination or retaliation have been made in the last **[three]** years against any employee, officer or director of any Group Company.
4. Compliance with Law
   1. Each Group Company has conducted its business in all material respects in accordance with all applicable laws and all Permits have been obtained and all conditions applicable thereto complied with and so far as the Warrantors are aware there are no circumstances which might lead to the suspension, alteration or cancellation of any such Permits, authorities, licences or consents, nor is there any agreement which materially restricts the fields within which such Group Company may carry on its business.
   2. No Founder has been disqualified from being a company director or has been in breach of any directors' duties to the Company or any Group Company (if applicable).
   3. No person, not being a director of a Group Company, has any actual or ostensible authority, whether under a power of attorney, agency agreement or otherwise, to commit such Group Company to any obligation other than an obligation of a nature which is usual for it to incur in the ordinary course of its business.
   4. The operations of each Group Company are, and have at all times been, conducted in compliance with all anti-money laundering laws and all applicable financial record keeping and reporting requirements, rules, regulations and guidelines (collectively, "**Anti-Money Laundering Laws**") and no investigation, action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving any Group Company with respect to Anti-Money Laundering Laws is pending and, so far as the Warrantors are aware, no such actions, suits or proceedings are threatened or contemplated.
   5. No Group Company, no director, officer, employee, agent or distributor of a Group Company, and no other person associated with or acting on behalf of a Group Company has (i) violated or is in violation of any Anti-Corruption and Anti-Bribery Laws, or (iii) made, offered to make, promised to make or authorised the payment or giving of, directly or indirectly, any bribe, rebate, payoff, influence payment, facilitation payment, kickback or other unlawful payment or gift of money or anything of value prohibited under any applicable law or regulation (any such payment, a "**Prohibited Payment**"). Each Group Company has put in place adequate procedures to prevent any Prohibited Payment.
   6. No Group Company, director, officer, agent, employee, significant shareholder or Affiliate of a Group Company has been subject to any investigation by any governmental agency with regard to any Prohibited Payment.
   7. Each Group Company:
      1. has complied with Data Protection Legislation;
      2. has not received any notice, letter or complaint alleging a breach by it of any of the provisions of Data Protection Legislation or requesting information as to its data protection policies or practices and no circumstances exist which may give rise to any of the above;
      3. has not awarded compensation to an individual under Data Protection Legislation, no claim for such compensation is outstanding and so far as the Warrantors are aware there is no reason to believe that any circumstances exist which might lead to any claim for compensation being made; and
      4. is not the subject of any order or direction made against it under Data Protection Legislation, no application for such an order or direction is outstanding and, so far as the Warrantors are aware there is no reason to believe that any circumstances exist which might lead to any application for such an order or direction being made.
   8. In respect of any Grant Funding provided to each Group Company full details of which are set out in the **[Disclosure Schedule] / [Data Room]**:
      1. such Group Company has complied in all respects with the terms and conditions on which any Grant Funding has been provided to the relevant Group Company;
      2. the entry into this Agreement and the fulfilment of the Business Plan will not:
         1. breach any terms or conditions of any Grant Funding; or
         2. alter or abrogate any rights of the relevant Group Company under any Grant Funding; and
      3. no Grant Funding will be terminated or be required to be repaid as a result of the entry into this Agreement or the fulfilment of the Business Plan.
5. Records

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

1. Insurance

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

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

1. Agreements and Capital Commitments
   1. Each Group Company:[[34]](#footnote-35)
      1. has no material capital commitments;
      2. is not a party to any contract, arrangement or commitment (whether in respect of capital expenditure or otherwise) which is of an unusual, onerous or long-term nature or which involves or could involve a material obligation or liability;
      3. is not bound by any guarantee or contract of indemnity or suretyship under which any liability or contingent liability is outstanding;
      4. has not entered into any agreement which requires or may require, or confers any right to require, the sale (whether for cash or otherwise) or the transfer by it of any asset;
      5. is not a party to any joint venture, consortium, partnership, unincorporated association or profit sharing arrangement or agreement; or
      6. is not a party to nor does it enjoy the benefit of any agreement requiring registration or notification under or by virtue of any statute.
   2. Each Group Company has not been and is not a party to any contract or arrangement binding upon it for the purchase or sale of property or the supply of goods or services at a price different to that reasonably obtainable on an arm's length basis.
   3. So far as the Warrantors are aware, no fact or circumstance exists which might invalidate or give rise to a ground for termination of any agreement, arrangement or obligation to which a Group Company is a party. No party with whom a Group Company has entered into any agreement, arrangement or obligation has given notice of its intention to terminate such agreement, arrangement or obligation.
   4. Neither any Group Company nor any party with whom a Group Company has entered into any agreement, arrangement or obligation is in breach of such agreement, arrangement or obligation. So far as the Warrantors are aware, no fact or circumstance exists which might give rise to a breach of this type.
2. Borrowings and Facilities

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

1. Insolvency
   1. No Group Company is insolvent or unable to pay its debts as they fall due.
   2. No application or order has been made or resolution passed in respect of the winding-up, judicial management or administration of any Group Company, nor so far as the Warrantors are aware are there any circumstances in which any person would be entitled to have any Group Company wound-up or placed in judicial management or administration.
   3. No person has appointed or threatened to appoint or become entitled to appoint a receiver or receiver and manager or other similar officer over any Group Company's business or assets.
   4. No composition in satisfaction of the debts of any Group Company, or scheme of arrangement of its affairs, or compromise or arrangement between it and its creditors and/or members or any class of its creditors and/or members, has been proposed, sanctioned or approved.
2. Post-Completion Undertakings

## Subject to the Company's electronic register of members being updated, the Company shall, within two (2) days from the Completion Date, issue and deliver to each Investor:

## a share certificate for the relevant number of Subscription Shares set out against its name in the second column of the table in Schedule 3; and

## a copy of the electronic register of members reflecting each Investor as the holder of the relevant number of Subscription Shares set out against its name in the second column of the table in Schedule 3; [and]

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

1. Disclosure Schedule
2. The Company hereby delivers this Disclosure Schedule hereto in respect of the Warranties contained in Clause 6 and Schedule 6 of this Agreement as of the date of this Agreement.
3. Each disclosure contained in this Disclosure Schedule pertains to the specific Warranties as indicated in the "Paragraph Number of Schedule 6 of this Agreement" column in the table below.
4. The headings and numbering used in this Disclosure Schedule shall not affect the interpretation hereof.
5. Where any conflict arises between the contents of any document supplied to the Investors by the Warrantors (including, without limitation, any document referred to in this Disclosure Schedule) and the information contained in this Disclosure Schedule, the information contained in this Disclosure Schedule shall prevail unless otherwise expressly stated herein.
6. The Warranties provided in Schedule 6 of this Agreement shall be qualified by the specific matters and general matters Fairly Disclosed against such other Warranties as may be appropriate and/or relevant. The Warrantors acknowledge that the Warranties are deemed to be qualified by the disclosures in this Disclosure Schedule only to the extent of those matters which are Fairly Disclosed therein. Nothing in this Disclosure Schedule, shall be deemed adequate to disclose an exception to the specific Warranty made herein, unless the Disclosure Schedule identifies the exception with reasonable particularity and describes the relevant facts in reasonable detail. Without limiting the generality of the foregoing, the mere listing, or inclusion of a copy of a document or other item shall not be deemed adequate to disclose an exception to the Warranties, unless the Warranty is being made as to the existence of the document or other item itself.
7. The disclosures made in this Disclosure Schedule are exceptions to the representations and Warranties provided by the Warrantors. The Warrantors shall not be in breach of any of the Warranties in respect of the matters Fairly Disclosed in this Disclosure Schedule.
8. No disclosure shall imply any representation, warranty or undertaking not expressly given in the Agreement nor shall any disclosure be taken as extending the scope of any of the representations and Warranties given by the Warrantors in the Agreement.
9. The disclosures made in this Disclosure Schedule are without prejudice and in addition to any and all other limitations and qualifications in the Agreement.

| **Paragraph Number of Schedule 6 of this Agreement** | **Disclosure** |
| --- | --- |
| **[•]** | **[•]** |

Forand on behalf of

**[•]**

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

Name:

Designation:

1. Shareholders' Agreement

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

**The Company**

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

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

………………………..

Director

Name:

**[Investor 1]**

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

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

………………………..

Director

Name:

**[Investor 2]**

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

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

………………………..

Director

Name:

**[Founder 1]**

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

………………………..

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

**[Founder 2]**

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

………………………..

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

1. Drafting Note: To amend, as appropriate, to reflect the agreed use of the Investors' subscription proceeds. [↑](#footnote-ref-2)
2. Drafting Note: This draft assumes that there are Conditions which are to be satisfied only after signing and before / on Completion, such that there will be an intervening period between the date of signing and the Completion Date. Completion will only take place after each Condition has been satisfied or waived. [↑](#footnote-ref-3)
3. Drafting Note: Parties may consider the possibility of having Investor-specific Conditions which would be procured by the relevant Investor and not by the Company. [↑](#footnote-ref-4)
4. Drafting Note: Parties to consider the appropriate standard for the satisfaction of the Conditions. [↑](#footnote-ref-5)
5. Drafting Note: To consider including a clause before Clause 4 to set out the convertible securities (e.g. any convertible promissory notes, Simple Agreements for Future Equity (SAFE), Convertible Agreements Regarding Equity (CARE) or convertible loans) that are intended to be converted at Completion. Depending on the terms of the convertible securities and whether the Investors are holders of such convertible securities, Parties to consider providing that once such convertible securities have been converted, the Company shall not have further obligations under such convertible securities and the convertible securities shall be cancelled and terminated in whole, and the lenders thereto shall have discharged and released the Company from all Losses pursuant to or in connection with the termination of such convertible securities. [↑](#footnote-ref-6)
6. Drafting Note: We have provided for an electronic completion for greater convenience. However, Parties still have the flexibility to agree on an alternative form or place of completion. [↑](#footnote-ref-7)
7. Drafting Note: This draft is prepared on the basis there would only be one (1) completion where all the Investors will fund at the same time. To also consider the possibilities of (a) completion in multiple tranches if for example there are certain KPIs / milestones that would need to be fulfilled as conditions precedent before the subsequent tranche can be triggered; or (b) a rolling close whereby additional investors could fund over an agreed period of time and sign up to this Agreement on the same terms either through a joinder or to deliver a counterpart signature page. [↑](#footnote-ref-8)
8. Drafting Note: The Board could, alternatively, convene and hold a meeting of the Board to pass the resolutions in relation to the same matters. [↑](#footnote-ref-9)
9. Drafting Note: In case there are any directors who are to resign on Completion. [↑](#footnote-ref-10)
10. Drafting Note: To consider if the key employees / officers of the Company should also enter into similar employment agreements. [↑](#footnote-ref-11)
11. Drafting Note: This should be included as a completion item to be delivered to the Investors, if not previously delivered prior to Completion. [↑](#footnote-ref-12)
12. Drafting Note: If there are any convertible instruments (e.g. convertible loans issued previously as part of bridge financing before this Series A round) that are intended to be converted and terminated on Completion, these may be set out here if not already covered under the proposed clause in Drafting Note 5. [↑](#footnote-ref-13)
13. Drafting Note: If there are any post-Completion undertakings required of the Company and/or the Founders in this Agreement, e.g. the adoption by the Company of an employee share option plan within a certain period from Completion; the obtaining of any key person insurance; or the entry by the Founders into a confidential information and proprietary rights assignment agreement, these may be set out in this schedule. [↑](#footnote-ref-14)
14. Drafting Note: It is not uncommon for Investors to provide standard fundamental warranties relating to share capital, authority and capacity, and insolvency. [↑](#footnote-ref-15)
15. Drafting Note: As drafted, the representations, warranties, covenants or other obligations by the Warrantors under this Agreement are given on an indemnity basis. This would have implications on *inter alia* the need to mitigate, proof of loss and remoteness of damages. An alternative would be to limit this Clause 7 to specific indemnities only. [↑](#footnote-ref-16)
16. Please refer to the Lexicon for an explanation on the different liability bases. [↑](#footnote-ref-17)
17. Drafting Note: The representations and warranties given in paragraphs 1, 2 and 19 of Schedule 6 are standard fundamental warranties relating to share capital, authority and capacity, and insolvency. The determination of what other representations and warranties will be deemed fundamental is typically a negotiating point between Parties. Fundamental representations and warranties should not be subject to any forms of limitations (e.g. on time periods or amounts). [↑](#footnote-ref-18)
18. Drafting Note: Whether the limitations would apply to all breaches of this Agreement or breaches of the warranties only is subject to negotiations between the Parties and depending on the resolution of the negotiations, the definition of "Claim(s)" may have to be amended accordingly. [↑](#footnote-ref-19)
19. Drafting Note: A typical carve-out here will be for Tax representations and warranties. Do note that where a claim is for a breach of warranty, the cause of action accrues at the point when the warranty is given (in this case, at the date of this Agreement and on Completion). [↑](#footnote-ref-20)
20. Drafting Note: The time period here would typically cover between one (1) to two (2) audit cycles of the Company. [↑](#footnote-ref-21)
21. Drafting Note: As this provision deals with Claims other than Warranties, the time period here would depend on the scope of other obligations by the Company and the Founders under this Agreement such as the post-completion undertakings (if any). [↑](#footnote-ref-22)
22. Drafting Note: An alternative to putting a dollar amount here would be to peg this to the value of the Founder's Shares at the material time. Parties to customise as appropriate. [↑](#footnote-ref-23)
23. Drafting Note: Claims relating to fundamental warranties on share capital, authority and capacity, and insolvency would typically not have a cure period. [↑](#footnote-ref-24)
24. Drafting Note: As an alternative, to consider only requiring consent of the Lead Investor or a supermajority of the Investors for any variation of the SSA, instead of unanimous consent by all Parties. If so, to consider the necessary protections for other investors which should be included. [↑](#footnote-ref-25)
25. Drafting Note: Clause 15 should take into account all other documents which shall be entered into at the same time as the Transaction Documents (for example, the environmental, social and/or governance (ESG) letter agreement). [↑](#footnote-ref-26)
26. Drafting Note: While this Agreement may be executed electronically via secure electronic signing platforms like DocuSign, Parties to note that certain deliverables like the Shareholders' Agreement and share certificates may not be able to be executed electronically. Parties are advised to seek independent legal advice on this. [↑](#footnote-ref-27)
27. Drafting Note: Parties may also wish to consider the Singapore International Commercial Court as a dispute forum and its website may be accessed at: <https://www.sicc.gov.sg/>. [↑](#footnote-ref-28)
28. Drafting Note: The Singapore International Arbitration Centre's website may be accessed at: <http://www.siac.org.sg/>. [↑](#footnote-ref-29)
29. Drafting Note: The Singapore Mediation Centre's website may be accessed at: <http://www.mediation.com.sg/>. The Singapore International Mediation Centre is another designated mediation service provider in Singapore, and its website may be accessed at: <http://simc.com.sg/>. [↑](#footnote-ref-30)
30. Drafting Note: To be included where the chosen dispute resolution mechanism is court proceedings and a Party is not domiciled in Singapore. [↑](#footnote-ref-31)
31. Drafting Note: To be amended, as appropriate, depending on whether the Founders are required to be "Warrantors” for the purposes of this Agreement. [↑](#footnote-ref-32)
32. Drafting Note: Transaction-specific conditions precedent, for example, any work to be done to rectify gaps uncovered by due diligence should be included here. [↑](#footnote-ref-33)
33. Drafting Note: Parties should note that this is only a sample set of warranties and intended to serve only as a possible starting point for Parties' discussion or use. For each transaction, Parties should consider and seek legal advice on the suitability of this set of warranties and the amendments that may need to be made to take into account the circumstances of the transaction (for example, either to cut down / beef up certain key warranties or to include knowledge qualifiers / materiality thresholds where appropriate). Parties to also note that it is standard practice to include fundamental warranties on share capital, authority and capacity, and insolvency in almost all situations. [↑](#footnote-ref-34)
34. Drafting Note: Parties may consider including ordinary course of business qualifications or monetary thresholds to the warranties on capital commitments and agreements. [↑](#footnote-ref-35)