**FOUNDERS' AGREEMENT**

**Explanatory Note**

A founders' agreement sets out the key terms and conditions regulating the affairs of the company and the rights and obligations of the founders as shareholders of the company *inter se*, prior to any financing from third party sources.

This model founders' agreement assumes:

* a Singapore incorporated private company and its founders are entering into this founders' agreement;
* the founders hold ordinary shares in the company and there are no other shareholders in the company;
* to the extent the founders are also employees of the company or provide consultancy / advisory services to the company, separate employment / services agreement and intellectual property assignment agreement will be entered into between the company and the founders in relation to the same;
* it is being entered into as a deed and the required formalities for its execution as a deed will be complied with; and
* in the event new investors are added as new shareholders of the company (e.g. pursuant to a subsequent equity financing round), a more comprehensive shareholders' agreement (similar in form to the VIMA Series A Shareholders' Agreement) will be entered into between such investors, the founders and the company.

Further explanatory notes are included in this model founders' agreement.

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

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**THIS FOUNDERS' AGREEMENT** (the "**Agreement**") is entered into **[as a deed]**[[1]](#footnote-2) on \_\_\_\_\_\_\_\_\_**20[●]**

**BETWEEN**

(1) The persons whose names and addresses are set out inPart A of Schedule 1(collectively, the "**Founders**", and each, a "**Founder**"); and

(2) **[●]** (Company Registration. No. **[●]**), a company incorporated under the laws of Singapore with its registered office at **[●]** (the "**Company**"),

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

**WHEREAS**:

1. The Company is a private company limited by shares.
2. As at the date of this Agreement, the Company has an issued and paid-up share capital of **[●]** comprising **[●]** Shares (as defined below).
3. The Founders are the legal and beneficial owners of the number of Shares set out against their respective names in column 5 of Part A of Schedule 1.
4. The Parties have agreed to regulate the affairs of the Company and the respective rights and obligations of the Founders as Shareholders on the terms of, and subject to the conditions of, this Agreement.

**IT IS AGREED** as follows:

# Definitions and Interpretation

## In this Agreement, unless the context otherwise requires:

"**Act**" means theCompanies Act 1967 of Singapore;

"**Addressee**" shall have the meaning ascribed to it in Clause 12.1(b);

"**Affiliate**" means:

1. in relation to any person, any other person directly or indirectly Controlled through one or more intermediaries, Controlling or Controlled by or under common Control with, such first-mentioned person; and
2. in relation to a natural person, means such person's Immediate Family Member and any such partnership (general, limited or limited liability), corporation, limited liability company, association, joint stock company, trust, joint venture, or other corporate legal entity Controlled by an Immediate Family Member (if any);

"**Agreement to Mediate**" shall have the meaning ascribed to it in Clause 13.14(a);

"**Applicable Law**" means, in relation to a person, all laws, by-laws, rules, regulations, binding notifications, orders, ordinances, protocols, codes, decrees, directions or judgments of any Governmental Authority in force from time to time and to which such person is subject;

"**Bad Leaver**" means a Founder who ceases to be employed or engaged by the Company as a result of any of the following:

### the resignation of such Founder within **[●]** years after the date of this Agreement;

### the termination of such Founder's employment or engagement with the Company for Cause;

### the breach by such Founder of any provision under this Agreement (or any agreement referred to in this Agreement to which such Founder is a party) which is capable of remedy and such Founder is notified of such breach by the Company in writing and has failed to remedy such breach to the satisfaction of the Company within **[fourteen (14)]** days of the date of such notice; or

### the breach by such Founder of any of the restrictive covenants and/or confidentiality provisions as set out in Clauses 9 and 10 respectively in this Agreement or his employment or services agreement,

### and shall also include any Founder who is initially a Good Leaver but subsequently becomes a Bad Leaver as a result of any of the matters set out in paragraph (d) above;

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

"**Business**" means the business of the Company as more fully described in Part B of Schedule 1;

"**Business Day**" means a day on which banks are open for business in Singapore (excluding Saturdays, Sundays or public holidays);[[2]](#footnote-3)

"**Cause**" means being dismissed for any of the following reasons:

1. fraud, embezzlement or similar conduct against the Company or any other act causing material harm to the Company's reputation;
2. wilful misconduct or gross negligence in the performance of his duties owed to the Company;
3. committing a serious or persistent breach of his employment or services agreement;
4. a flagrant or persistent failure to observe and perform any of the duties and responsibilities set out in his employment agreement or services agreement (or otherwise allocated to him by the Board) or which are imposed by Applicable Law or administrative directions (including rules imposed by any competent authority), whether having the force of law or otherwise;
5. being convicted of a criminal offence whether in Singapore or overseas, other than an offence under road traffic legislation for which a non-custodial penalty is imposed;
6. wilful violation of any Company policy which adversely affects the Company;
7. becoming bankrupt or being presumed under the laws of bankruptcy to be unable to pay his debts, or suffer the filing of a petition in bankruptcy or make any arrangement or composition with his creditors generally, or any judgment in any court of law is obtained against him and is not paid or satisfied in full within fourteen (14) days of such judgement being obtained;
8. a distress or writ of seizure and sale is levied upon the whole or any part of his undertaking, assets or property;
9. in the reasonable opinion of the Board, committing any act which involves conduct that is likely to be regarded as illegal or which otherwise, in the opinion of the Board, is likely to discredit him to a degree which materially reduces the value of his services to the Company or may discredit the Company through its association with him; or
10. acting in such a manner as to entitle the Company to terminate his employment or appointment without notice under Applicable Law;

"**Confirmation**" shall have the meaning ascribed to it in Clause 13.14(a);

"**Constitution**" means the constitution for the time being of the Company;

"**Control**" means the power to direct the management or policies of a person, directly or indirectly, whether through the ownership of shares or other securities, by contract or otherwise; provided that, in any event (and without limiting the foregoing), the direct or indirect ownership of more than fifty per cent (50%) of the voting share capital of a person is deemed to constitute Control of that person, and "**Controlling**" and "**Controlled**" have corresponding meanings;

"**Deadlock**" shall have the meaning ascribed to it in Clause 5.1;

"**Deadlock Notice**" shall have the meaning ascribed to it in Clause 5.2;

"**Deadlock Offerees**" shall have the meaning ascribed to it in Clause 5.5(a);

"**Deadlock Offeror**" shall have the meaning ascribed to it in Clause 5.5(a);

"**Deadlock Resolution Notice**" shall have the meaning ascribed to it in Clause 5.5(a);

"**Deed of Ratification and Accession**" means a deed of ratification and accession substantially in the form set out in Schedule 2;

"**Director**"means a director for the time being of the Company;

"**Dispute**" shall have the meaning ascribed to it in Clause 13.14(a);

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

"**Existing Intellectual Property**" means any existing Intellectual Property owned or held by a Founder in connection with the Business as at the date of this Agreement;

"**Expected Contribution**" means, in respect of a Founder, such Founder's obligations to contribute to the Company and the Business as set out in Part D of Schedule 1, which shall include (where required) the assignment of any relevant Intellectual Property as set out in Clause 3.3;

"**Expert Valuer**" shall have the meaning ascribed to it in Clause 7.2;

"**Fair Value**" shall mean a price per Share determined in accordance with Clause 7;

"**Founder Director**" means any Director appointed by a Founder;

"**Good Leaver**" means any Founder who ceases to be employed or engaged by the Company and who is not a Bad Leaver;

"**Governmental Authority**" means any national, supranational or supervisory or other government, governmental (whether trade, administrative, statutory or regulatory) body, agency, commission or authority or any court, tribunal, arbitral or judicial body, including any Tax Authority and any governmental department;

"**Immediate Family Member**" means, in relation to a person who is a natural person, such person's spouse, parents, step parents, siblings, civil partner, grandchild, child or stepchild;

"**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;

"**Investment Holding Company**" means a company in which a Shareholder, directly or indirectly, holds the entire issued share capital and over which that Shareholder exercises Control (and which shall include any trust established for estate planning purposes by any Shareholder that is a natural person);

"**Mediation Proposal**" shall have the meaning ascribed to it in Clause 13.14(a);

"**New Deadlock Offeror**" shall have the meaning ascribed to it in Clause 5.5(b);

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

"**Permitted Transferee**" shall have the meaning ascribed to it in Clause 6.3(a);

"**Purchase Price**" means, in respect of a Founder, the price paid by such Founder for his Shares, as set out in Section 4 of Part D of Schedule 1, provided that, if the purchase price paid by such Founder was nil or a nominal consideration (being a price that does not correspond to the actual value of the Shares subscribed for), the Purchase Price shall be S$1;

"**Receiving Party**" shall have the meaning ascribed to it in Clause 13.14(a);

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

"**Rejection Notice**" shall have the meaning ascribed to it in Clause 5.5(b);

"**Relevant Capacity**" shall have the meaning ascribed to it in Clause 9.5(a);

"**Relevant Period**" shall have the meaning ascribed to it in Clause 9.5(b);

"**Relevant Personnel**" shall have the meaning ascribed to it in Clause 9.5(c);

"**Relevant Territories**" shall have the meaning ascribed to it in Clause 9.5(d);

"**Representatives**" shall have the meaning ascribed to it in Clause 10.1(c);

"**Requesting Party**" shall have the meaning ascribed to it in Clause 13.14(a);

"**Sale Shares**" shall have the meaning ascribed to it in Clause 7.1;

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

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

"**Singapore Dollars**", "**SGD**" and the sign "**S$**" means the lawful currency of Singapore unless otherwise specified;

"**SMC**" shall have the meaning ascribed to it in Clause 13.14(a);

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

"**Tax Authorit**y" 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;

"**Transfer**" shall have the meaning ascribed to it in Clause 6.2(a); and

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

## **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.

## **Headings:** The headings 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 "**include**", "**includes**" or "**including**" shall not be construed restrictively but shall mean "**including without prejudice to the generality of the foregoing**" and "**including, but without limitation**".

## **Modification etc. of Statutes and Subsidiary Legislation:** 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 in accordance with this Agreement 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. References to a statute or statutory provision include any subsidiary or subordinate legislation made from time to time under that statute or statutory provision.

## **Electronic Register of Members:** 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.

## **Gender, Singular/Plural and Person**: Except where the context specifically requires otherwise, words importing one gender shall be treated as importing any gender, words importing the singular shall be treated as importing the plural and vice versa, and words importing the whole shall be treated as including a reference to any part thereof. References to a person include any company, limited liability partnership, partnership, business trust or unincorporated association (whether or not having separate legal personality).

## **Days, Months and Years**: References to "**day**", "**month**" or "**year**" is a reference to a day, month or year respectively in the Gregorian calendar, unless "**Business Days**" is specified. 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.

# Business and Organisation of the Company

## Nature of the Company's Business

## The Parties agree that they shall promote the best interests of the Company and ensure that the Business is conducted in accordance with Applicable Law and good business practice.

## Conduct of the Company's Business

## The conduct of the business of the Company and its administration shall be in accordance with Part B of Schedule 1.

# Founder Contributions

## Contribution

## The Founders shall each use their best efforts to contribute to the development and success of the Company and the Business by way of each Founder's roles and responsibilities included in the relevant Founder's employment or services agreement (as applicable), which shall reflect the terms set out in Sections 2 and 3 of Part D of Schedule 1 for each Founder.

## Nature of Role

## The manner in which a Founder is engaged by the Company (i.e. as an employee or independent contractor) to perform the roles and tasks required of him is set out in Section 2 of Part D of Schedule 1(and the remuneration payable will be as separately agreed between the Board and such Founder). Each Founder undertakes to enter into an employment agreement or services agreement (as applicable) with the Company in a form agreed between the Board and such Founder within **[six (6) months]** after the date of this Agreement. In the event of any conflict or ambiguity between this Agreement and the relevant employment agreement or services agreement, this Agreement shall prevail.

## Assignment of Intellectual Property to the Company

## Each Founder:

### agrees to assign to the Company all his rights, title and interest in, and to, the Existing Intellectual Property in accordance with the terms of an Intellectual Property assignment agreement **[which shall be entered into between such Founder and the Company within [six (6) months] after the date of this Agreement]**[[3]](#footnote-4);

### acknowledges that any and all Intellectual Property, discoveries, inventions, secret processes or improvements made or discovered by such Founder in connection with or in any way affecting or relating to the Business or capable of being used or adapted for use in the Business shall immediately be disclosed to the Company and the rights, title and interest in and to such Intellectual Property shall belong to and be the sole property of the Company and such Founder agrees to the inclusion of appropriate assignment and confidentiality provisions in his employment agreement or services agreement (as applicable) to be entered into between such Founder and the Company in accordance with Clause 3.2; and

### undertakes that he will also perform any and all acts and execute all documents and instruments as may be required by the Company (at its sole discretion) to perfect the assignment of any such Intellectual Property or Existing Intellectual Property to the Company in accordance with this Clause 3.3.[[4]](#footnote-5)

### In the event of any conflict or ambiguity between this Agreement and the relevant agreements referred to in this Clause 3.3, this Agreement shall prevail.

# Founder Rights and Obligations

## Each Founder shall exercise all voting rights in relation to the Company so as to procure (so far as is reasonably possible to do so) that, at all times during the term of this Agreement, the provisions of this Agreement are promptly observed and given full force and effect according to its spirit and intention.

## The Founders shall have the specific rights set out in the provisions of Part C of Schedule 1.

## For the avoidance of doubt, save as otherwise expressly provided, the undertakings, covenants and obligations given or made by the Founders are given or made on a several basis.

# Deadlock

## For the purpose of this Agreement, a "**Deadlock**" is deemed to have arisen where:

### there is no quorum at **[three (3)]** consecutive meetings of the Board or meetings of the Shareholders convened specifically to resolve the matter which is the subject matter of the potential deadlock; or

### the same resolution is not passed at **[three (3)]** consecutive meetings of the Board or meetings of the Shareholders.

## In the event of a Deadlock, a Founder may within **[fourteen (14)]** days of the occurrence of the Deadlock serve a notice (the "**Deadlock Notice**") on the other Founders (copied to the Company) declaring that a Deadlock has occurred and specifying the nature of the matter and the context in which the Deadlock has arisen.

## Within **[fourteen (14)]** days of receipt of the Deadlock Notice, a meeting of the Founders shall be convened to discuss the Deadlock referred to in the Deadlock Notice. The Parties agree that the Founders shall at all times deliberate and discuss the matter referred to in the Deadlock Notice with the purpose of resolving it in good faith.

## In the event the Deadlock remains unresolved after a period of **[thirty (30)]** days following the first meeting between the Founders pursuant to Clause 5.3 (or, in the event that no such meeting takes place, after a period of **[thirty (30)]** days following the expiry of the **[fourteen (14)]**-day period referred to in Clause 5.3):

### where the Deadlock does not prevent the Company from providing or carrying on the Business in its ordinary course, the matter shall not be proceeded with; or

### where the Deadlock will result in the Company not being able to provide or carry on the Business in its ordinary course, the Founders shall have the option to resolve the Deadlock by way of:

#### a winding up, in which case the Founders shall vote in favor of the winding up of the Company and do all such further acts, deeds, things and documents as may be necessary to give effect to such winding up; or

#### a buyout, in which case the Founders shall proceed in accordance with the procedure set out in Clause 5.5.

#### Notwithstanding any provision of this Agreement to the contrary, a decision of the Founders in this Clause 5.4 shall be made on the basis one (1) vote per Founder.

## In the event the Founders decide to proceed by way of a buyout pursuant to Clause 5.4(b)(ii), the Shares held by the Founders shall be subject to the following rights of purchase[[5]](#footnote-6):

### Any Founder (the "**Deadlock Offeror**") may issue a notice ("**Deadlock Resolution Notice**") to the other Founders (the "**Deadlock Offerees**") notifying them of the Deadlock Offeror's intention to purchase from the Deadlock Offerees all (but not some only) of the Shares held by the Deadlock Offerees at a price per Share as set out in the Deadlock Resolution Notice. For the avoidance of doubt, a Deadlock Resolution Notice once issued may not be withdrawn. In the event that more than one Founder issues a Deadlock Resolution Notice, the first in time to issue a Deadlock Resolution Notice shall be deemed to be the Deadlock Offeror.

### A Deadlock Offeree may, upon receipt of a Deadlock Resolution Notice, either accept or reject (by way of written notice to the Deadlock Offeror) the offer to sell all (but not some only) of its Shares to the Deadlock Offeror (on the terms set out in the Deadlock Resolution Notice). If a Deadlock Offeree sends a written notice (a "**Rejection Notice**") to the Deadlock Offeror rejecting the offer to sell all (but not some only) of its Shares to the Deadlock Offeror, such Deadlock Offeree (the "**New Deadlock Offeror**") shall purchase all (but not some only) of the Shares held by the Deadlock Offeror and the other Deadlock Offerees at the price per Share set out in the Deadlock Resolution Notice. In the event that more than one Deadlock Offeree rejects the offer to sell all of their Shares to the Deadlock Offeror, the first in time to issue a Rejection Notice to the Deadlock Offeror shall be deemed to be the New Deadlock Offeror.

# Transfers of Shares

## For the purpose of this Clause 6, reference to the transfer of a Share includes the transfer or assignment of a beneficial or other interest in that Share or the creation of a trust or Encumbrance over that Share and reference to a Share includes a beneficial or other interest in a Share.

## Restriction on Transfers[[6]](#footnote-7):

### Each Founder severally undertakes to the Company that he shall not, and shall not agree to, transfer, mortgage, charge or otherwise dispose (including by way of trust) of the whole or any part of his interest in, or grant any option or other rights over, his Shares to any person (each a "**Transfer**") unless the Transfer is approved by the Board, and is made in accordance with the provisions of this Agreement and the Constitution.

### A Founder shall not undertake a Transfer without first obtaining from the transferee a Deed of Ratification and Accession executed and delivered to the Company.

### Any attempted Transfer that does not comply with the terms and conditions of this Agreement and the Constitution shall be void *ab initio*. The Founders shall procure that the Company complies with the requirements of this Clause 6 and shall cause the Directors not to register any Transfer unless the provisions of this Agreement and the Constitution have been fully complied with.

## Permitted Transfers

### The restrictions on Transfer contained in Clause 6.2 shall not apply in the case of a transfer of all (but not some only) of the Shares owned by:

#### any Founder who is a natural person to any Immediate Family Member or Investment Holding Company; or

#### any Founder who is not a natural person, to any of its Affiliates,

### **[in each case, for tax and estate planning purposes only]** (each such transferee, a "**Permitted Transferee**", provided that such Transfer is undertaken in compliance with Applicable Law and Clauses 6.3(b) to 6.3(d).

### A Permitted Transferee shall execute and deliver a Deed of Ratification and Accession to the Company as a condition to any such Transfer.

### Following a transfer of Shares to a Permitted Transferee, the original transferring Founder (but not a subsequent transferor in a series of transfers to Permitted Transferees) shall remain party to this Agreement and shall be jointly and severally liable with the transferee under this Agreement as a Founder in respect of the transferred Shares.

### If, however, at any time after a transfer of Shares is effected by a Founder to its Permitted Transferee, such transferee ceases to be a Permitted Transferee of the transferring Founder, it shall be the duty of the transferring Founder and such transferee to notify the Board in writing that such event has occurred and both the transferring Founder and such transferee shall jointly and severally undertake to procure and ensure that all (and not some only) of the Shares held by such transferee are immediately transferred to the transferring Founder or another Permitted Transferee of the transferring Founder.

## **[Bad Leavers**

### **In the event that any Founder becomes a Bad Leaver, the Shares held by such Founder shall be subject to the provisions of this Clause 6.4.**

### **[●].**

## **Good Leavers**

### **In the event that any Founder becomes a Good Leaver, the Shares held by such Founder shall be subject to the provisions of this Clause 6.5.**

### **[●].]**[[7]](#footnote-8)

## Exercise of Right to Purchase

## Where the Company notifies a Bad Leaver or a Good Leaver (as the case may be) that it or any of the remaining Founders wishes to exercise their right to purchase all or part of the Shares held by such Bad Leaver or Good Leaver (as the case may be) in accordance with Clause 6.4 or Clause 6.5 respectively, the Bad Leaver or Good Leaver (as the case may be) undertakes to take all steps (including executing any documents and resolutions) necessary to give effect to the purchase by the Company or the relevant Founder of the relevant number of Shares held by such Bad Leaver or Good Leaver (as the case may be). If such Bad Leaver or Good Leaver (as the case may be) fails to comply with such undertaking, the Company and each Director (except any Director appointed by such Bad Leaver or Good Leaver (as the case may be)) shall be constituted and shall be deemed to have been appointed the agent and attorney of such Bad Leaver or Good Leaver (as the case may be) with full power to:

### take such actions and complete, execute and deliver, in the name and on behalf of such Bad Leaver or Good Leaver (as applicable), any documents or other agreements as are necessary to effect the transfer of the Shares held by such Bad Leaver or Good Leaver (as applicable) to the Company or the relevant Founder (as applicable); and

### (subject to the transfer being duly stamped) enter the Company or the relevant Founder (as applicable) in the electronic register of members as the holder of the relevant Shares purchased by it.

# Valuation of Shares

## Subject to Clause 7.2, the Fair Value of any Shares to be purchased by the Company or any remaining Founder ("**Sale Shares**") pursuant to Clause 6.5 shall be a price reflecting the fair market value of such Shares as agreed between the Board and the Good Leaver (in each case acting reasonably and in good faith).

## If no price can be agreed between the Board and the Good Leaver in accordance with Clause 7.1 within **[five (5)]** Business Days after the later of the date that: (i) the Founder becomes a Good leaver; and (ii) the Company becomes aware that the Founder is a Good Leaver, then, the Board shall appoint an expert valuer in accordance with Clause 7.3 ("**Expert Valuer**") to certify the Fair Value of the Sale Shares.

## The Expert Valuer will be either:

### the auditors of the Company from time to time; or

### an independent firm of chartered accountants practising in Singapore, or a chartered valuer and appraiser certified by the Institute of Valuers and Appraisers of Singapore, which is agreed between the Board and the Good Leaver.

## Save where Clause 7.1 applies (in which case the Fair Value will be as agreed between the Board and the Good Leaver), the Fair Value of the Sale Shares shall be determined by the Expert Valuer on the following assumptions and bases:

### valuing the Sale Shares as on an arm's-length sale between a willing seller and a willing buyer;

### if the Company is then carrying on business as a going concern, on the assumption that it will continue to do so;

### that the Sale Shares are capable of being transferred without restriction;

### valuing the Sale Shares as a rateable proportion of the total value of all the issued Shares (excluding any Shares held as Treasury Shares) without any premium or discount being attributable to the percentage of the issued share capital of the Company which they represent but taking account of the rights attaching to the Sale Shares; and

### any other factors which the Expert Valuer reasonably believes should be taken into account.[[8]](#footnote-9)

## If any difficulty arises in applying any of these assumptions or bases then the Expert Valuer shall resolve that difficulty in whatever manner they shall in their absolute discretion deem fit.

## The Expert Valuer shall be requested to determine the Fair Value within **[twenty (20)]** Business Days of their appointment and to notify the Board of their determination.

## The Expert Valuer shall act as expert and not as arbitrator and their determination shall be final and binding on the Parties (in the absence of fraud or manifest error).

## The Board shall give the Expert Valuer access to all accounting records or other relevant documents of the Company subject to them agreeing to such confidentiality provisions as the Board may reasonably impose.

## The Expert Valuer shall deliver their certificate to the Company at the conclusion of the period referred to in Clause 7.6. As soon as the Company receives the certificate, it shall deliver a copy of it to the Good Leaver.

## The fees of the Expert Valuer shall be paid by the Company unless the Fair Value certified by the Expert Valuer is less than the price (if any) offered by the Board to the Good Leaver for the Sale Shares before the Expert Valuer was instructed, in which case the Good Leaver shall bear the cost.

# Duration and Termination

This Agreement shall take effect without limit in point of time save that in the event of a public listing of the Company on a recognised securities exchange or the sale by the Founders of all (but not some only) of the share capital of the Company, this Agreement shall automatically terminate (except for any antecedent breach or breaches of this Agreement). If any Founder ceases to hold any Shares, he shall be released from all his obligations hereunder (other than any provisions in this Agreement which are expressed to continue in force after termination, including Clauses 9 and 10), save that nothing in this Clause 8 shall release any Founder from liability for any antecedent breaches by him of any of the terms and conditions of this Agreement.

# Restrictive Covenants[[9]](#footnote-10)

## Restrictive Covenants

## Each Founder hereby severally undertakes and covenants with the other Founders and the Company that he shall not, in any Relevant Capacity, directly or indirectly, during the Relevant Period:

### carry on, be engaged in or be economically interested in any business in any of the Relevant Territories, which is of the same or similar type to the Business or which is or is likely to be in competition with the Business;

### solicit with a view to the employment or engagement of, or employ or engage, any Relevant Personnel, whether as employee or consultant; or

### otherwise induce or persuade, or seek to induce or persuade, any Relevant Personnel to leave or terminate his employment, service or engagement with the Company,

## in each case in Clauses 9.1(b) and 9.1(c) provided that this shall not include any hire following a recruitment offer made to any person who contacts a Founder: (i) solely on his own initiative (without any breach of this Clause 9.1); and/or (ii) in response to a bona fide general employment advertisement that is not directed at one or more employees of the Company.

## Reasonableness

## Each restriction set out in this Clause 9 is separate and distinct and is to be construed separately from the other restrictions. Each Founder hereby acknowledges and agrees that he considers such restrictions to be reasonable both individually and in the aggregate and that the duration, extent and application of each such restriction are no greater than are reasonable and necessary for the protection of the interest of the other Founders and the Company or the goodwill of the Business. However, if any such restriction shall be found to be void or unenforceable but would be valid or enforceable if some part or parts thereof were deleted or reduced in application, each Founder and the other Parties agree that such restriction shall apply with such deletion or modification as may be necessary to make it valid and enforceable.

## Damages are Insufficient

## If Clause 9.1 is breached, the Founders agree that damages alone are not likely to be sufficient compensation, and that injunctive relief is reasonable and is likely to be essential to safeguard the interests of the other Founders and the Company and that injunctive relief (in addition to any other equitable remedies) may (subject to the discretion of the courts) be obtained.

## Exclusions: Nothing contained in this Clause 9 precludes or restricts a Founder from:

### holding or having an interest in the shares or other securities of a company traded on a recognised securities exchange so long as such shares or other securities is not more than **[three per cent. (3%)]** of the issued share capital of the company or the relevant class of securities; or

### holding or having an interest in any securities of any company, or carrying out or doing any acts, activities or undertakings, if the prior consent of the Board has been obtained. For the avoidance of doubt, such consent may be subject to conditions or, upon election by the Board, withdrawn at any time.

## Definitions:

## For the purpose of this Clause 9:

### "**Relevant Capacity**" means for his own account or for that of any person, firm or company (other than the Company) and whether through the medium of any company controlled by him or as principal, partner, director, employee, consultant or agent;

### "**Relevant Period**" means, in relation to each Founder, **[the period during which such Founder [(and/or his Permitted Transferee)] is and remains a Shareholder] [and for a period of [●] after such Founder [(and/or his Permitted Transferee)] ceases to be a Shareholder]**;

### "**Relevant Personnel**" means, in relation to each Founder, any person who is or was during the **[one (1) year period prior to the end of the Relevant Period]**, employed at a managerial or senior level, or engaged as a consultant, by the Company, and with whom such Founder shall have had dealings during such **[one (1) year period prior to the end of the Relevant Period]**; and

### "**Relevant Territories**" means **[●]**.

# Confidentiality

## All communications between the Company and the Founders or any of them and all information and other material supplied to or received by any of them from any one or more of the others which is either marked "confidential" or is by its nature intended to be exclusively for the knowledge of the recipient alone, or to be used by the recipient only for the benefit of the Company, any information concerning the business transactions or financial arrangements of the Company or of the Founders or any of them, or of any person with whom any of them is in a confidential relationship with regard to the matter in question coming to the knowledge of the recipient, or any information arising out of or in connection with this Agreement or the negotiations of this Agreement, shall be kept confidential by the recipient and shall be used by the recipient solely and exclusively for the benefit of the Company unless:

### the disclosure or use is required by Applicable Law or any Governmental Authority;

### 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;

### the disclosure is made to the bankers, directors, officers, employees, professional advisers, consultants or Affiliates of any Party (collectively, the "**Representatives**"), in each case for the purpose of this Agreement or for a purpose connected or related to the operation of this Agreement;

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

### 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;

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

### the information is disclosed by the Company to potential investors, lenders, professional advisers, auditors or bankers in connection with any investment round or capital raising process relating to the Company,

### provided that (i) prior to disclosure or use of any information pursuant to Clause 10.1(a), the Party concerned shall, to the extent permitted by Applicable Law, promptly notify the other Party or Parties (as the case may be) of such requirement; and (ii) in relation to any disclosure under Clauses 10.1(c) or 10.1(g), the recipient of any information agrees to comply with the provisions of this Clause 10.1 in respect of such information as if it were a party to this Agreement.

## Without prejudice to the generality of the foregoing, the Founders shall procure the observance of the abovementioned restrictions by the Company and shall take all reasonable steps to minimise the risk of disclosure of confidential information, by ensuring that only the Company's employees, officers and directors and those of the Company whose duties will require them to possess any of such information, shall have access thereto, and that they shall be instructed to treat the same as confidential.

## The obligations contained in this Clause 10 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

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:

### by Applicable Law or any Governmental Authority; or

### 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 Applicable Law, promptly notify the other Parties of such requirement.

# Notices

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

### shall be in writing in English;

### shall 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 purpose of this Clause:

#### if to the Company:

### Address : **[●]**

### Attention : **[●]**

### Title : **[●]**

### Email Address : **[●]**

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

### shall either be delivered by hand or sent by 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

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

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

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

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

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

except that if a Notice is deemed received on a day which is not a Business Day or is deemed received 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

## Assignability

### Subject to Clause 13.1(b), this Agreement, and all rights and obligations hereunder, are personal to the Parties and each Party shall not assign or transfer or attempt to assign or transfer all or part of its rights or obligations under this Agreement to any third party without the prior written consent of the other Parties.

### A Founder may assign the whole or part of any of its rights in this Agreement to any Permitted Transferee who has received a transfer of Shares from such Founder in accordance with Clause 6.3 and the Constitution, and has executed a Deed of Ratification and Accession.

## 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.

## No Partnership

## The relationship between the Founders shall not constitute a partnership.

## Severance

## If any provision of this Agreement or part thereof is rendered void, illegal or unenforceable by any Applicable Law 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.

## Costs

## The Parties to this Agreement shall bear their own costs and disbursements incurred in the negotiation and preparation of this Agreement and of matters incidental to this Agreement.

## 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 under Applicable Law, in equity 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 Applicable Law, in equity, 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.

## Whole Agreement

## This Agreement and the documents referred to herein 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 Applicable 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.

## Variation

## **[No amendment or variation of this Agreement shall be effective unless in writing and signed by or on behalf of each of the Parties.]**

## **[OR]**

## **[All and any of the provisions of this Agreement may be deleted, varied, supplemented, restated or otherwise changed in any way at any time with the prior written consent of the Company and [the holders of at least [•] per cent. of the Shares (excluding Treasury Shares)],[[10]](#footnote-11) in which event such change shall be binding against all of the Parties provided that if such change would impose any new obligations on a Party[, vary an express contractual right of that Party under this Agreement] or increase any existing obligation, the consent of the affected Party to such change shall be specifically required.]**

## Prevalence of Agreement

## In the event of any inconsistency or conflict between the provisions of this Agreement on the one hand and the provisions of the Constitution or any of the agreements contemplated herein on the other hand, the provisions of this Agreement shall as between the Founders prevail and the Founders shall, so far as they are able, cause such necessary alterations to be made to the Constitution as are required so as to remove such inconsistency.

## Rights of Third Parties:

## Except as expressly provided herein, a person who is not a party to this Agreement has no rights, benefits, obligations or liabilities hereunder or under the Contracts (Rights of Third Parties) Act 2001 of Singapore.

## Further Assurance

## Each Party shall promptly execute and deliver all such documents, and do all such things, as the other Party may from time to time reasonably require for the purpose of giving full force and effect to the 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.

## Governing law

## This Agreement and any non-contractual obligations arising out of or in connection with it 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.][[11]](#footnote-12)**

**[OPTION 2: ARBITRATION]**

**[the Dispute shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre[[12]](#footnote-13) 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.[[13]](#footnote-14) 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.][[14]](#footnote-15)**

1. 1. – Founder Details:

| **(1)**  **Name** | **(2)**  **NRIC / Passport No.** | **(3)**  **Address** | **(4)**  **E-mail Address** | **(5)**  **No. of Shares held** | **(6)**  **% Shareholding** |
| --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

* 1. – Conduct of Company Business and Administration

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Appointment of Directors** | **:** | Each Founder shall, so long as he remains a Shareholder and remains employed by or engaged as a **[service provider]** to the Company, have the right to appoint **[one (1)]** Director to the Board. |
|  | **Size of Board** | **:** | The Board shall consist of no more than **[●]** Directors. |
|  | **Board Meetings**[[15]](#footnote-16) | **:** | The Board shall meet at least **[*insert time frame*]**.  Quorum of Board meetings shall be **[●]** Directors, of which the following Founder Directors must be present:   * + - 1. **[*insert Founder*]**;       2. **[*insert Founder*]**; and       3. **[*insert Founder*]**. |
|  | **Business** | **:** | **[*insert description*]** |

* 1. – Founder Rights

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Founder Rights**[[16]](#footnote-17) | **:** | **[*insert any Founder rights*]** |

* 1. – Expected Contributions and Purchase Price[[17]](#footnote-18)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Founder Name** | **:** | **[*insert name*]** | |
|  | **Role in Company** | **:** | **[*insert appointment/role*]** | Independent Contractor  Employee |
|  | **Responsibilities** | **:** | **[*insert if any*]** | |
|  | **Purchase Price** | **:** | [SGD] **[●]** | |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Founder Name** | **:** | **[*insert name*]** | |
|  | **Role in Company** | **:** | **[*insert appointment/role*]** | Independent Contractor  Employee |
|  | **Responsibilities** | **:** | **[*insert if any*]** | |
|  | **Purchase Price** | **:** | SGD **[●]** | |



**Deed of Ratification and Accession**

**THIS DEED** is made on [ ]

**BY** [ ]

**INTRODUCTION**

(A) By a transfer dated [of even date herewith] [  ] (the "**Transferor**") transferred to [ ] (the "**Transferee**") Shares in the capital of [ ] (the "**Company**") (together the "**Transferred Shares**").

(B) This deed is entered into in compliance with the terms of Clause [ ] of an agreement dated [ ] made between (1) [name parties to the agreement] and (2) the Company [and others] (all such terms as are therein defined) (which agreement is herein referred to as the "**Founders' Agreement**").

**AGREED TERMS**

1. Words and expressions used in this deed shall have the same meaning as is given to them in the Founders' Agreement unless the context otherwise expressly requires.

2. The Transferee hereby agrees to assume the benefit of the rights of the Transferor under the Founders' Agreement in respect of the Transferred Shares and hereby agrees to assume and assumes the burden of the Transferor's obligations under the Founders' Agreement to be performed after the date hereof in respect of the Transferred Shares.

3. The Transferee hereby agrees to be bound by the Founders' Agreement in all respects as if the Transferee were a party to the Founders' Agreement as one of the Founders and to perform:

(a) all the obligations of the Transferor in that capacity thereunder; and

(b) all the obligations expressed to be imposed on such a party to the Founders' Agreement;

in both cases, to be performed or on or after [the date hereof].

4. This deed is made for the benefit of:

(a) the parties to the Founders' Agreement; and

(b) any other person or persons who may after the date of the Founders' Agreement (and whether or not prior to or after the date hereof) assume any rights or obligations under the Founders' Agreement and be permitted to do so by the terms thereof,

and this deed shall be irrevocable without the consent of the Company acting on their behalf, in each case only for so long as they or their Permitted Transferees hold any Shares in the capital of the Company.

5. For the avoidance of doubt, nothing in this deed shall release the Transferor from any liability in respect of any obligations under the Founders' Agreement due to be performed prior to [the date of this deed].

6. The address and email address designated by the Transferee for the purpose of Clause [**●**] of the Founders' Agreement are:

Address : [**●**]

Attention : [**●**]

Title : [**●**]

Email address : [**●**]

7. None of the Shareholders:

(a) makes any representation or warranty or assumes any responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of any of the Founders' Agreement (or any agreement entered into pursuant thereto);

(b) makes any representation or warranty or assumes any responsibility with respect to the content of any information regarding the Company or otherwise relates to the acquisition of Shares in the Company; or

(c) assumes any responsibility for the financial condition of the Company [or any subsidiary] or any other party to the Founders' Agreement or any other document or for the performance and observance by the Company or any other party to the Founders' Agreement or any other document (save as expressly provided therein),

and any and all conditions and warranties, whether express or implied by law or otherwise, are excluded.

8. This deed shall be governed by and construed in accordance with the laws of Singapore.

This deed of ratification and accession has been executed and delivered as a deed on the date shown on the first page.

Signed, sealed and delivered[[18]](#footnote-19) by **[*insert name of Transferee*]**:

………………………..

**[*insert name of Transferee*]**

in the presence of:

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

Witness

Name:

Address:

IN WITNESS WHEREOF this Agreement has been executed and delivered as a deed on the date stated at the beginning.[[19]](#footnote-20)

**The Company**

Executed and delivered as a deed by **[*insert name of director*]**

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

………………………..

Director

Name:

in the presence of:

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

Witness

Name:

Address:

**The Founders**

Signed, sealed and delivered by **[*insert name of Founder 1*]**:

………………………..

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

in the presence of:

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

Witness

Name:

Address:

Signed, sealed and delivered by **[*insert name of Founder 2*]**:

………………………..

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

in the presence of:

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

Witness

Name:

Address:

Signed, sealed and delivered by **[*insert name of Founder 3*]**:

………………………..

**[*insert name of Founder 3*]**

in the presence of:

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

Witness

Name:

Address:

1. Drafting Note: Legal advice should be sought to consider if this Agreement should be entered into as a deed (e.g. if the agreement should contain a power of attorney, or any waivers etc.). [↑](#footnote-ref-2)
2. Drafting Note**:** Consider whether any other jurisdictions should be included here depending on the location of the Parties. [↑](#footnote-ref-3)
3. Drafting Note: Each Founder should either enter into a separate IP assignment agreement with the Company or provide for such an assignment in his employment agreement / services agreement. For a sample of the terms of an IP assignment, parties may refer to the VIMA Deed of Assignment of Intellectual Property Rights which may be accessed at: https://www.singaporelawwatch.sg/About-Singapore-Law/VC-Investment-Model-Agreements. [↑](#footnote-ref-4)
4. Drafting Note: Legal advice should be sought on the employment agreement / services agreement and IP Assignment Agreement to ensure that the IP has been correctly assigned under Applicable Law. [↑](#footnote-ref-5)
5. Drafting Note: Where the Founders are unable to amicably resolve a Deadlock but do not wish to unwind the business altogether, one solution is the sample buyout mechanism provided for in this Clause 5.5, otherwise known as a "Russian Roulette". The parties should seek legal advice and carefully consider if a different mechanism should be used (for example, a silent auction/"Dutch Auction", a "Texas Shootout" or you may wish to first refer the matter to mediation services). [↑](#footnote-ref-6)
6. Drafting Note: Consider if Shares should be subject to a lock-in period where Founders are restricted from making any Transfers (except Permitted Transfers).

   This Agreement provides only for the governance of the rights and obligations amongst the Founders. Where it is contemplated for investors to be added as new shareholders to the Company, a more comprehensive shareholders' agreement (setting out other restrictions and rights in connection with share issuances and transfers e.g. pre-emptive rights, tag-along rights, drag-along rights, etc.) should be entered into. A copy of the VIMA Series A Shareholders' Agreement may be accessed at: https://www.singaporelawwatch.sg/About-Singapore-Law/VC-Investment-Model-Agreements. [↑](#footnote-ref-7)
7. Drafting Note**:** Consider if (part or all of) the Shares shall be subject to reverse vesting, and if so, the applicable vesting schedule, e.g. vesting over 3-4 years with a 6-12 month cliff. Where both reverse vesting and the Good Leaver / Bad Leaver concepts apply, consider if: (a) unvested Shares would be forfeited at nominal consideration in both Good Leaver and Bad Leaver scenarios; and (b) vested Shares would be subject for sale at a price to be set out in Clause 6.4(b) for Bad Leavers, and at a price to be set out in Clause 6.5(b) for Good Leavers. [↑](#footnote-ref-8)
8. Drafting Note: Financial advisors to comment on fair market valuation assumptions. [↑](#footnote-ref-9)
9. Drafting Note: This is a sample clause setting out a restrictive covenant. Legal advice should always be sought in relation to such clauses as generally, restrictive covenants are *prima facie* not enforceable unless certain conditions are satisfied, e.g. that the restrictive covenant protects a legitimate interest of the relevant party and it is reasonable. [↑](#footnote-ref-10)
10. Drafting Note**:** The second option attempts to cater for more flexibility in the obtaining of agreement to certain variations. If this option is chosen, Parties will need to take into account factors such as the respective shareholding proportion of the Founders, in agreeing on the threshold (or any alternative manner of calculating the relevant threshold). [↑](#footnote-ref-11)
11. 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-12)
12. Drafting Note: The Singapore International Arbitration Centre's website may be accessed at: <http://www.siac.org.sg/>. [↑](#footnote-ref-13)
13. 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-14)
14. Drafting Note: To be included where the chosen dispute resolution mechanism is court proceedings and a Party is not domiciled in Singapore. [↑](#footnote-ref-15)
15. Drafting Note: The location of Board Meetings and the number of Directors physically present are factors which affect the tax residency of the Company. Tax advice should be sought as appropriate. [↑](#footnote-ref-16)
16. Drafting Note: This Agreement provides flexibility to the Founders to input the rights that they wish to have. Some of the commonly held rights include the right for certain Founders to vote on certain reserved matters. For a sample on some of these rights, parties may refer to the VIMA Series A Shareholders' Agreement which may be accessed at: <https://www.singaporelawwatch.sg/About-Singapore-Law/VC-Investment-Model-Agreements>. [↑](#footnote-ref-17)
17. Drafting Note: Relevant details to be inserted in relation to each Founder. The details and terms of assignment of IP are to be determined in the relevant IP assignment agreement to be entered into between the relevant Founder and the Company. [↑](#footnote-ref-18)
18. Drafting Note: The Transferee should obtain legal advice, as appropriate, to ensure that the required formalities for its execution of this deed of ratification and accession are complied with. [↑](#footnote-ref-19)
19. Drafting Note: Each Party should obtain legal advice, as appropriate, to ensure that its manner of execution of this Agreement as a deed is in compliance with law and its constitutional documents (if any) and is binding on it. [↑](#footnote-ref-20)