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| cid:213135513@30092011-2FE7  **MBM COMMERCIAL LLP**  *Specialist legal advisers to investors, high growth companies and entrepreneurs.*  WARNING: Signing this document will make you legally bound by its terms. You should take independent legal advice before signing. | | |
| **SEED INVESTMENT AGREEMENT** | | |
| amongst | | |
| 1. | | [<>] LIMITED, a company incorporated under the Companies Acts in [Scotland/England & Wales] with registered number [<>] and having its registered office at [<>] (the “**Company**”); |
| 2. | | [<>], residing at [<>] (“**Mr [<>]**”) and [<>], residing at [<>](“**Mr [<>]**”) (together the “**Executives**” and each an “**Executive**”); |
| 3. | | THOSE PERSONS whose details are listed in Section B of Part 2 of the schedule of this Agreement (together the “**Investors**” and each an “**Investor**”); and |
| 4. | | *[TBC – include any other shareholders or warrantors]* |
| 5. | | *[TBC – include any other shareholders or warrantors]* |
| 6. | | *[TBC – include any other shareholders or warrantors]* |
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| **THE PARTIES HEREBY AGREE AS FOLLOWS:** | | |
| **Clause** |  | |
| 1. | **Interpretation:** | |
|  | The definitions and interpretation set out in Part 1 of the schedule of this Agreement (“**Schedule**”) shall apply. | |
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| 2. | **Incorporation of the MBM Standard Seed Investment Terms to this Agreement:** | |
|  | The “MBM Standard Seed Investment Terms” with version reference number [1.1] as published by MBM Commercial LLP on [date] 2014 and available to view at [www.mbmcommercial.co.uk/standard](http://www.mbmcommercial.co.uk/standard) terms of investment and a copy of which for ease of reference is set out in Part 5 of the Schedule (the “**MBM Terms**”) are hereby incorporated into this Agreement as if they were terms of this Agreement. If there is any conflict between the MBM Terms and the terms of this Agreement, then the terms of this Agreement shall prevail. | |
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| 3. | **Subscription of Investment at Completion:** | |
| 3.1 | The issued share capital of the Company immediately before Completion is as set out in Section A of Part 2 of the Schedule. | |
| 3.2 | The requisite number of shareholders of the Company must pass the Written Resolutions. | |
| 3.3 | The Investors shall on Completion, subject to matters referred to in Clauses 3.1 and 3.2 being satisfied, make the Investment by subscribing in cash for Ordinary Shares at the price and for the number of Ordinary Shares set out in Section B of Part 2 of the Schedule. | |
| 3.4 | The issued share capital of the Company immediately after Completion shall be as set out in Section C of Part 2 of the Schedule. | |
| 3.5 | The Company and Executives shall deal with the standard Completion matters referred to in Condition 2 of the MBM Terms. | |
| 3.6 | Each of the parties waives any rights conferred or to be conferred on him or it under the current articles of association of the Company, the New Articles, the Companies Act 2006 or otherwise in connection with the allotment of any Ordinary Shares to the Investors in accordance with the terms of this Agreement. | |
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| 4. | **Permitted use of Investment funds:** | |
|  | Condition 3 of the MBM Terms shall apply. Furthermore the subscription monies of the Investors shall not be used for the payment by the Company of any professional fees incurred in connection with the negotiation and completion of the Investment other than the sum of up to £[TBC] plus VAT and outlays payable to the Company’s solicitors. *[Insert here any further restriction on what the subscription funds may be used for.]* | |
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| 5. | **Warranties granted to Investors at Completion:** | |
| 5.1 | Subject to Condition 5 of the MBM Terms [and Clause 5.2], each of the Warrantors grant the Warranties to the Investors as at Completion except to the extent that such matters are Disclosed in a Disclosure Letter. *Each Warranty shall be granted on a joint and several basis unless it is expressly stipulated in the MBM Terms as being granted on a several basis. [If some additional warranties are needed then include at 5.3 and edit this clause to include them]* | |
| 5.2 | [Subject to Condition 5 of the MBM Terms, the individual liability of the following individual Warrantors in relation to any claims under the Warranties shall not exceed the following amounts: (i) [name of individual Warrantor no. 1]: £[ TBC], (ii) [name of individual Warrantor no. 2]: £[ TBC], and (iii) [name of individual Warrantor no. 3]: £[ TBC].] **OR** [This Clause 5.2 is deliberately omitted.] *[With a low investment sum individual caps may be unnecessary in most cases]* | |
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| 6. | **Investors’ Director:** | |
|  | [The Investors, acting by Investor Majority, shall be entitled to appoint one director to the Company (and any committee established by the Board) from time to time and remove from office any such person so appointed and to appoint another such person in his place (the “**Investors’ Director**”) and Condition 6 of the MBM Terms shall apply to each Investors’ Director appointed in accordance with this Clause. The Investors’ Director shall [NOT be entitled to charge any fees or expenses]/[be entitled to charge a day rate fee of £[TBC] plus VAT for each scheduled Board meeting, subject to a maximum annual sum of £[TBC]] **OR** [The Investors shall not have any express right, individually or amongst themselves or any of their number, to appoint a director to the Company (or any committee established by the Board).] | |
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| 7. | **Observer:** | |
|  | The Investors shall, acting by Investor Majority, be entitled to appoint a person to the Board (and any committee established by the Board) as an observer and remove any such person so appointed and appoint another such person in his place (the “**Observer**”) and Condition 7 of the MBM Terms shall apply to each Observer appointed in accordance with this Clause. | |
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| 8. | **SEIS / EIS Tax Relief for individual Investors:** | |
|  | Condition [8.1 (SEIS) / 8.2 (EIS)] of the MBM Terms shall [apply in relation to each of the Investors] **OR** [only apply in relation to [list relevant investors]]. Condition [8.1 (SEIS) / 8.2 (EIS)] of the MBM Terms shall NOT apply at all. *[If SEIS Relief to apply then condition 8.1 to apply and 8.2 not to apply / If EIS Relief to apply then condition 8.2 to apply and 8.1 not to apply]* | |
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| 9. | **What the Company is not allowed to do without Investor Majority permission:** | |
|  | Condition 9 of the MBM Terms shall apply. [*Insert here any further restrictions for IM approval beyond the MBM Terms should this be necessary.*] | |
|  | [*insert here if any permitted options or warrants are possible without further IM approval*] | |
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| 10. | **Notice of and frequency of Board meetings:** | |
|  | Condition 10 of the MBM Terms shall apply. | |
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| 11. | **Good governance obligations of the Board:** | |
|  | Condition 11 of the MBM Terms shall apply. | |
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| 12. | **Information which the Investors must receive:** | |
|  | Condition 12 of the MBM Terms shall apply. | |
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| 13. | **Insurance obligations of the Company:** | |
|  | Condition 13 of the MBM Terms shall apply. | |
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| 14. | **Dividend policy:** | |
|  | [No dividends shall be paid by the Company unless expressly permitted by the Business Plan and the Board]. / [Condition 14 of the MBM Terms shall apply]. *[Assumes investors have no specific need to have a block on dividends or require to force them]* | |
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| 15. | **Business restrictions:** | |
|  | Condition 15 of the MBM Terms shall apply. | |
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| 16. | **New executive directors to sign a deed of accession:** | |
|  | Condition 16 of the MBM Terms shall apply. | |
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| 17. | **New shareholders to sign a deed of adherence:** | |
|  | Condition 17 of the MBM Terms shall apply. | |
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| 18. | **Press releases regarding Investment:** | |
|  | Condition 18 of the MBM Terms shall apply. | |
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| 19. | **Confidentiality:** | |
|  | Condition 19 of the MBM Terms shall apply. | |
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| 20. | **General terms:** | |
| 20.1 | In the case of any conflict between the terms of this Agreement and the provisions of the MBM Articles, the terms of this Agreement shall prevail for as long as this Agreement remains in force. | |
| 20.2 | This Agreement (which incorporates the MBM Terms), together with the documents referred to herein, constitutes the entire agreement and understanding of the parties and supersedes all prior agreements, representations, discussions, negotiations and arrangements whether written or oral, express or implied, between the parties, their representatives or agents. To avoid doubt, all and any previous shareholder agreements between any of the parties in relation to the Company are hereby terminated and shall have no further legal force or effect (notwithstanding any other terms to the contrary). | |
| 20.3 | No modification or variation of this Agreement shall be enforceable except by an amendment agreed in writing by (i) the Company, (ii) a majority of those Executives who are still employees or directors of the Company from time to time, and (iii) an Investor Majority; provided always that any variation shall apply to all holders of the same class of share equally and that no variation which increases or imposes an obligation on any party shall bind that party unless they have also agreed in writing to such variation. | |
| 20.4 | Subject to Clause 20.3, in the event that an Executive ceases to be involved with the Company following Completion, then the terms of this Agreement shall cease to apply to that Executive, save for Clauses 5 (Warranties), 15 (Business Restrictions) and 19 (Confidentiality) which shall continue to apply to that Executive. | |
| 20.5 | The benefit of, and rights and obligations under, this Agreement may not be assigned or transferred by any party, except as expressly provided for the Investors in this Agreement, or as may be agreed subsequently in writing by the parties. Each of the Investors shall be able to assign the benefit of, and rights and obligations under this Agreement to any purchaser or transferee of all or any of the shares in the Company of the relevant Investor's. | |
| 20.6 | If any provision of this Agreement shall be found by any court or analogous administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions unaffected by such invalidity or unenforceability shall remain in full force and effect. | |
| 20.7 | Any party or any successor of a party who ceases to be legally and beneficially entitled to any shares in the Company and who has complied with all applicable provisions of this Agreement relating to the transfer of such shares shall cease to be bound by this Agreement with the exception (i) of Clause 19 (Confidentiality), and (ii) in the case of an Executive, Clauses 5 (Warranties) and 15 (Business Restrictions), and subject to these exceptions shall cease to be a party to the Agreement and all references to a “party” shall be construed accordingly. | |

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| 20.8 | The construction, validity and performance of this Agreement shall be governed by the Law of Scotland and the parties irrevocably submit to the non-exclusive jurisdiction of the Scottish Courts. |
| IN WITNESS WHEREOF these presents consisting of this and the [four] preceding pages together with the Schedule comprising [five] Parts are executed in duplicate as follows:-   |  |  | | --- | --- | | They are subscribed for and on behalf of | They are subscribed by | | **[ ] LIMITED** | **[Name of Executive]** | | at [place] | at [place] | | on [ day ] [ month ] Two Thousand and [ year ] | on [ day ] [ month ] Two Thousand and [ year ] | | by Director |  | | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[Director]** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[Executive]** | | Before this witness:- | Before this witness:- | | Witness | Witness | | Full Name | Full Name | | Address | Address | |  |  | |  |  | |  |  |  |  |  | | --- | --- | | They are subscribed by | They are subscribed by | | **[Name of Executive/Warrantor]** | **[Name of Executive/Warrantor]** | | at [place] | at [place] | | on [ day ] [ month ] Two Thousand and [ year ] | on [ day ] [ month ] Two Thousand and [ year ] | | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **[Executive/Warrantor]** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **[Executive/Warrantor]** | | Before this witness:- | Before this witness:- | | Witness | Witness | | Full Name | Full Name | | Address | Address | |  |  | |  |  |  |  |  | | --- | --- | | They are subscribed by | They are subscribed by | | **[Name of Investor]** | **[Name of Investor]** | | at [place] | at [place] | | on [ day ] [ month ] Two Thousand and [ year ] | on [ day ] [ month ] Two Thousand and [ year ] | | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **[Investor]** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **[Investor]** | | Before this witness:- | Before this witness:- | | Witness | Witness | | Full Name | Full Name | | Address | Address | |  |  | |  |  | | |

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| This is the Schedule in [five] parts referred to in the foregoing Seed Investment Agreement between [     ] Limited, the Executives (as defined therein), the Investors (as defined therein) [and others] dated on or around [     ] | | |
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|  | **Part 1 of the Schedule – Definitions** | |
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| “Agreement” | | means this Seed Investment Agreement as amended or varied in accordance with its terms; |
| “Board” | | means the directors of the Company from time to time, present at a meeting of the directors, duly convened and held; |
| “Business” | | means the business of the Company as set out in the Business Plan or such other business as an Investor Majority may approve in writing; |
| “Business Plan” | | means the business plan specified in Part 3 of the Schedule (and as amended from time to time in accordance with Clause 9); |
| “Completion” | | means the last date of execution of this Agreement when the Investment shall complete in accordance with Clause 3; |
| “Disclosure” | | means any matter fairly disclosed to the Investors in the Disclosure Letter with sufficient explanation and detail to enable the Investors to identify the nature, scope and implications of the matters disclosed and “Disclosed” shall be construed accordingly; |
| “Disclosure Letter” | | means a disclosure letter from the Company and the Warrantors and acknowledged in writing as having been received by the Investors on or prior to Completion; |
| “Financial Statements” | | means the relevant accounts and/or other financial statements of the Company as detailed in Part 4 of this Schedule; |
| "Investment" | | means the aggregate investment by the Investors as detailed in Section B of Part 2 of this Schedule; |
| “Investor Majority” | | means the Investors holding for the time being more than [50 - TBC]% by nominal value of the shares in the Company for the time being held by the Investors; |
| “New Articles” | | means the new Articles of Association adopted by the Company on or before Completion in a form approved by the Investors; |
| “Warranties” | | means the warranties set out in Condition 4 of the MBM terms and any other part of this Agreement; |
| “Warrantors” | | means the Company and the [Executives – TBC – consider if other founders to also grant warranties]; and |
| “Written Resolutions” | | means the written resolutions to be passed by the requisite majority of shareholders of the Company on or before Completion to adopt the New Articles and to give the Board authority to issue the relevant Shares to the Investors for the Investment. |

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|  | **Part 2 of the Schedule** |
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|  | Section A – Share capital of Company immediately before Completion/Investment |
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|  | Section B – Details of Investment by Investors |
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|  | Section C – Share capital of Company immediately after Completion/Investment |
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|  | **Part 3 of the Schedule – Business Plan of Company (attach here)** |
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|  | **Part 4 of the Schedule - Financial Statements of Company to be warranted (attach here)** |
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|  | **Part 5 of the Schedule – MBM Standard Seed Investment Terms (attach here)** |
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