

**MBM COMMERCIAL LLP**

*Specialist legal advisers to investors, high growth companies and entrepreneurs.*

**MBM SEED INVESTMENT HEADS OF AGREEMENT**

(TO BE USED WITH MBM SEED INVESTMENT AGREEMENT AND MBM SEED INVESTMENT ARTICLES OF ASSOCIATION)

**Strictly Private & Confidential**

To:

[ ] Limited (Company No. [ ])

Insert registered office

(hereinafter the “**Company**”)

&

[Insert names and home addresses of directors of the Company]

(hereinafter the “**Directors**”)

**SUBJECT TO CONTRACT**

Dear Sirs,

# OFFER LETTER

We, the Investors, are willing, subject to contract and satisfactory resolution of the conditions laid out in this offer letter, to make an investment in the Company in accordance with the terms of this letter.

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| --- | --- |
| Post-Money Valuation | For the purposes of this investment (subject to due diligence), the Company is being valued at a post-money valuation of approximately £[ ] for its entire issued share capital (on a fully diluted basis). In calculating the fully diluted share capital for the purposes of the valuation, any options or rights to subscribe or convert into shares of the Company shall be treated as being part of the issued share capital of the Company. |
| Amount of Investment | The aggregate amount to be invested by the Investors will be £[ ] (the “Investment”) as follows:-   * [Details of Investor No.1]: £[ ]; * [Details of Investor No.2]: £[ ]; and * [Details of Investor No.3]: £[ ]. |
| Form of Investment | The Investment funds will be used to subscribe for Ordinary Shares to be issued by the Company.  The table of current share capital appended at **Schedule I** sets out the current issued share capital of the Company and the fully diluted share capital of the Company (including rights to subscribe for shares whether in terms of options or warrants or otherwise) prior to the Investment. The proposed fully diluted share capital of the Company immediately following the Investment is set out in **Schedule II**. It is understood no other person is entitled to be issued shares in the share capital of the Company beyond the capital now shown in the Schedule or otherwise than as envisaged in this Term Sheet.  The Investment would result in the Investors holding [ ]% of the fully diluted share capital of the Company immediately following the Investment. |
| Conditions Precedent | The Investment is conditional upon the Investors being satisfied with all of the following conditions:-   * Satisfactory completion of due diligence in relation to the Company; * The proposed Investment being a qualifying investment for the purposes of [EIS]/[SEIS] relief, [as confirmed in writing by HMRC]; * The Directors entering into contracts of employment with the Company based on customary terms and an annual salary of £[ ]; * The Investors being satisfied with the proposed treatment of any outstanding indebtedness of the Company in terms of outstanding fees/salaries of the Directors or otherwise; * [The Investors being satisfied with the terms of any IPR licences;] and * [other Conditions Precedent]. |
| Timing of Investment | The entire Investment funds would be released to the Company on the date of execution of the relevant investment documentation (“**the Completion Date**”).  We would anticipate the Completion Date to be no later than **[insert planned completion date]**. However, this is dependent upon prompt responses to our diligence questionnaires and prompt agreement on the draft investment documents. |
| Investor Majority | The “**Investor Majority**” shall mean the Investors holding for the time being more than [TBC eg 50%] by nominal value of the shares in the Company for the time being held by the Investors. |
| Options | [Insert details of any permitted option scheme for directors and/or employees.] |
| Contractual Documentation | The documentation setting out the terms of the Investment will include:-   * The MBM Seed Investment Agreement with accompanying MBM Seed Investment Terms (as amended in line with this letter); and * New Articles of Association for the Company following the MBM Seed Investment Articles of Association.   The first draft of these documents will be prepared by MBM Commercial LLP on behalf of [the Company]/[the Investors].  The Company may also be required to put in place additional documentation such as contracts of employment, assignations of intellectual property rights and such other contracts and documents as the Investors may deem appropriate. Such documents are subject to the approval of the Investors.  The Directors will be required be enter into a restrictive covenants under the MBM Seed Investment Agreement (see Condition 16) [and the relevant contract of employment].  Save for completing relevant sections (where input is required), please note that the Investors will not accept changes to the MBM Seed Investment Agreement and MBM Seed Investment Articles of Association and you and your advisers should proceed with the Investment only on this basis. We will also proceed on the basis of not making any material changes to these documents save as highlighted in this letter. The MBM Seed Investment Terms are designed not to be changed at all.  For the avoidance of doubt the new documentation will supersede any existing documentation. |
| Representations and Warranties | The Company and [Directors (amend/expand as required)] will be expected to give such representations and warranties as would be customary in this type of transaction. Warranties will be given on a joint and several basis by the Company and each of the Directors, provided that the aggregate liability of the warrantors under the warranties will be capped at the amount of the Investment.  [In addition, each Director’s liability for any claims under the warranties will be capped at [£FIXED SUM / 2x annual salary of such Director at Completion Date].]  Any representations and warranties may only be qualified by matters fairly disclosed to the Investors in writing in a disclosure letter, to be in terms acceptable to the Investors. |
| Reorganisation of the share capital | All shares in the Company shall be Ordinary Shares and shall rank *pari passu* and the Company shall ensure that if necessary the share capital of the Company is reorganised on or prior to the Completion Date to achieve this. |
| Return of Capital | The Ordinary Shares issued to the Investors will rank *pari passu* with the other existing Ordinary Shares and the Ordinary Shares of the Company on a return of capital, whether on a winding up or otherwise. In other words these shares all have the same rights. |
| Board Structure & Investor Directors | The structure of the board shall comprise: [TBC – insert names and roles].  The Company will hold regular board meetings and will ensure that all material business decisions are taken at board level – all in accordance with the MBM Seed Investment Terms (see Condition 10 and Condition 11).  The Investors shall [have]/[not have] the right to appoint a director (“**Investor Director**”) to the Board of the Company.  [Such Investor Director shall act as a non-executive director of the Company. The Company will pay the Investor Director fees and expenses which shall be [TBC]/[in accordance with the MBM Seed Investment Terms (see Condition 6)].]  The Investors may appoint an unpaid observer to attend board meetings in accordance with the MBM Seed Investment Terms (see Condition 7). |
| Tax Relief | [SEIS]/[EIS] tax relief [shall]/[shall not] be sought in relation to the Investors by the Company with the Company and Director complying with customary trading restrictions to achieve this – all in accordance with the MBM Seed Investment Terms (see Condition 8). |
| Investor consent matters | The consent of an Investor Majority will be required in respect of any key decisions relating to the Company or its affairs as set out in the MBM Seed Investment Terms (see Condition 9). |
| Rights to Information | The Investor Director and other directors shall be provided with Board meeting information and agendas in accordance with the MBM Seed Investment Terms (see Condition 10).  The Investors shall receive information in accordance with the MBM Seed Investment Terms (see Condition 12). |
| Rights to Dividend | [The Company shall distribute at least [TBC] % of its distributable profits each year to the shareholders. / See other alternative wording in MBM Seed Investment Agreement (Condition 14)]. |
| Offer round and pre-emption rights | The MBM Seed Investment Articles of Association will contain customary provisions relating to:   * rights of pre-emption for all shareholders over new issues of shares; and * offer-round provisions requiring shareholders proposing to transfer shares to offer these to all the existing shareholders pro rata to their respective holdings (save for a limited number of customary exceptions). |
| Tag-along rights | The MBM Seed Investment Articles of Association shall contain provisions whereby no sale of Ordinary Shares in the Company may be made if as a result of that sale over 50% of the issued Ordinary Share capital of the Company would be held by the purchaser unless the purchaser has offered to purchase the entire issued share capital of the Company on the same terms and conditions. |
| Drag-along rights | The MBM Seed Investment Articles of Association shall contain provisions whereby all shareholders may be required to sell their shares (on the same terms and conditions) at any time if the holders of more than 50% of the total number of issued Ordinary Shares (ie excluding options or warrants) require it. |
| Compulsory share transfer provisions for ‘bad leavers’ | The MBM Seed Investment Articles of Association shall contain ‘bad leaver’ provisions whereby the directors, employees and consultants of the Company have to offer their shares up for sale to the other shareholders in the event of ceasing to be directors/ employees/ consultants of the Company for a ‘bad leaver’ reason. The price can be agreed between the leaver and the Company and failing which ‘fair value’ as independently valued shall apply.  As is customary, you are a ‘bad leaver’ if you are not a ‘good leaver’, where a ‘good leaver’ is where you leave for any of the following reasons: (i) death, (ii) serious ill-health, (iii) redundancy, (iv) resignation after 5 years of service, or (v) any other reason as approved by 75% of the shareholders (excluding the leaver but which must include the Investors).  This means you will be normally treated as a ‘bad leaver’ if you are, for example, fired for gross misconduct or you resign before you have achieved 5 years of service.  These ‘bad leaver’ provisions do not apply to the shares of the Investors or to any ‘good leavers’. |
| Fees and Expenses | [Each party shall be responsible for their own fees and expenses (including legal and due diligence fees and expenses) in relation to the Investment.] |
| Exclusivity Period | The Company agrees not to negotiate with or solicit offers from any third parties (other than the Investors) to subscribe for shares in the Company until **[insert deadline]**. |
| 1. **Confidentiality** | The existence in terms of this offer letter and the fact that negotiations may be ongoing with the Investors are strictly confidential and may not be disclosed to anyone except the Company’s directors, senior executives, officers, shareholders and professional advisors, without the consent of the Investors. |
| Basis of the Offer | **Except expressly set out below, this offer letter shall not constitute a contractual commitment of the Company or the Investors.**  **Paragraphs 21 (Fees and Expenses), 22 (Exclusivity Period), 23 (Confidentiality) and 24 (Basis of the Offer) are however legally binding on the Company and, by executing this document, the Company agrees to be bound by the provisions set out in those paragraphs.** Those paragraphs shall be governed by English Law and the Company submits to the non-exclusive jurisdiction of the English Courts in relation to any dispute regarding the interpretation, validity or enforcement of the provisions contained therein. This offer letter may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts together shall constitute the one offer letter. |
| Deadline for Acceptance | This offer letter is open for acceptance by the Company and the Directors until close of business on **[insert deadline]**. |

Yours faithfully,

Executed by each of the Investors

on day of (month) at (place i.e. town/city)

by

………………………………………………………. Signature of [print full name of Investor], Investor

………………………………………………………. Signature of [print full name of Investor], Investor

………………………………………………………. Signature of [print full name of Investor], Investor

All in the presence of the following witness:

………………………………………………………Witness

……………………………………………………….Name of witness

………………………………………………………Address

………………………………………………………

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The foregoing letter is accepted by [ ] Limited and the Directors as follows:

Executed for and on behalf of [ ] Limited

on day of (month) at (place i.e. town/city)

by

……………………………………………………..(Director)

……………………………………………………..(Director)

and

Executed by each of the Directors

on day of (month) at (place i.e. town/city)

………………………………………………………. Signature of [print full name of [ ]], Director

………………………………………………………. Signature of [print full name of [ ]], Director

All in the presence of the following witness:

………………………………………………………Witness

……………………………………………………….Name of witness

………………………………………………………Address

………………………………………………………

**SCHEDULE I**

**EXISTING SHAREHOLDINGS IN [ ] LIMITED**

|  |  |  |  |
| --- | --- | --- | --- |
| **Shareholder** | **Ordinary Shares of £[ ]** | **Options** | **Percentage of Fully Diluted Share Capital** |
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| **Option holder** |  |  |  |
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|  |  |  |  |
| **Total issued shares (excl options)** |  |  |  |
| **Total fully diluted (incl options)** |  |  |  |

**SCHEDULE II**

### SHARE CAPITAL IN [ ] LIMITED

### AFTER INVESTMENT BY INVESTORS

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| --- | --- | --- | --- |
| **Shareholder** | **Ordinary Shares of £[ ]** | **Options** | **Percentage of Fully Diluted Share Capital** |
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| **Investors** |  |  |  |
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| **Option holder** |  |  |  |
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|  |  |  |  |
| **Total issued shares (excl options)** |  |  |  |
| **Total fully diluted (incl options)** |  |  |  |