

**THE INVESTORS**  
and  
**THE FOUNDERS**  
and  
**THE EXISTING SHAREHOLDERS**  
and  
**THE COMPANY**

**INVESTMENT AGREEMENT**

relating to [●] Limited

**MORTON FRASER** ●

DELIVERED ON 201●

**INVESTMENT AGREEMENT**

amongst

- (1) **[NAME OF INVESTEE] LIMITED**, incorporated under the Companies Acts (Registered in Scotland with No●) and having its Registered Office at ● (the "Company");
- (2) The persons whose names and addresses are set out in clause 1.2 below (the "**Investors**");
- (3) The persons whose names and addresses are set out in clause 1.1 below (the "**Executives**", of which each is an "**Executive**"); and
- (4) The persons whose names and addressees are set out in clause 1.1 below (the "**Existing Shareholders**").
- (5) **SCOTTISH ENTERPRISE** established by the New Towns (Scotland) Act 1990 and having its principal place of business at Atrium Court, 50 Waterloo Street, Glasgow G2 6HQ acting in its capacity as administrator of the Scottish Venture Fund III ("**SE**")

**BACKGROUND**

- (A) The Company has at the date hereof an issued share capital of £● divided into ● Ordinary Shares of £● each which are credited as fully paid and registered in the names of the Executives and the Existing Shareholders in the proportions shown opposite their names in clause 1.1 below.
- (B) Immediately prior to Completion, the directors of the Company are ● [and the Company Secretary is ●].
- (C) This Agreement contains the terms upon which the Investors are willing to invest in the Company.

**OPERATIVE CLAUSES****1. INVESTMENT PARTICULARS****1.1. SHARE CAPITAL IMMEDIATELY PRIOR TO INVESTMENT**

Issued: £● divided into ● Ordinary Shares		
Names and address and email address	Number of Shares	Percentage Shareholding
<b>Executives</b>		
<b>Existing Shareholders</b>		
Total		

**1.2. INVESTOR'S SUBSCRIPTION**

<b>Total Investment:</b> £● divided into ● Ordinary Shares			
[Premium: £●]			
<b>Name and address of Investor</b>	<b>Number of Ordinary Shares at £● per share</b>	<b>Total Price (£)</b>	<b>Percentage Shareholding</b>
Scottish Enterprise Atrium Court 50 Waterloo Street Glasgow G2 6HQ			
<b>Total</b>			

### 1.3. SHARE CAPITAL AFTER INVESTMENT

<b>Issued:</b> £● divided into ● Ordinary Shares		
<b>Names, addresses and email addresses</b>	<b>Total Number of Ordinary Shares of £● each</b>	<b>Total Percentage Shareholding</b>
Scottish Enterprise Atrium Court 50 Waterloo Street Glasgow G2 6HQ		
<b>Total</b>		

## 2. DEFINITIONS AND INTERPRETATION

2.1. In this Agreement the following expressions have the following meanings unless inconsistent with the context:

<b>“Accounts”</b>	the accounts of the Company for the period ended on the Accounts Date;
<b>“Accounts Date”</b>	[INSERT DATE];
<b>“Act”</b>	the Companies Act 2006;
<b>“Agreed Form”</b>	with reference to any document, that is in a form agreed between the parties' solicitors immediately prior to, or at, Completion;
<b>“Agreement”</b>	this Investment Agreement as amended or varied in accordance with its terms;
<b>“Apollo”</b>	Apollo Informal Investments Limited c/o Morton Fraser LLP, 5 <sup>th</sup> Floor, Quartermile Two, 2 Lister Square, Edinburgh EH3 9GL
<b>“Apollo Investors”</b>	the Investors except for SE;
<b>“Articles”</b>	the articles of association of the Company in LINC standard form as amended from time to time;
<b>“Board”</b>	the directors of the Company from time to time;
<b>“Business”</b>	[INSERT DESCRIPTION] being the business of the Company as more fully described in the Business Plan;
<b>“Business Day”</b>	any day (other than a Saturday or Sunday) on which banks are open in Edinburgh for normal banking business;

<b>“Business Plan”</b>	the business plan for the Company in Agreed Form or such other plan as approved from time to time by the Board;
<b>“Change of Control”</b>	the obtaining of Control of the Company by any person or persons, not being a Shareholder at the date of this Agreement (whether acting individually or in concert);
<b>“Claim”</b>	any claim for any breach of the Warranties;
<b>“Completion”</b>	completion by the parties of the matters set out in clause 3;
<b>“Completion Date”</b>	[INSERT DATE] or such other date as may be agreed by the parties;
<b>“Conditions Precedent”</b>	conditions to be satisfied prior to Completion referred to in clause 3;
<b>“Confidential Information”</b>	any IPR, trade secret, know-how, business methods, finances, prices, business plans, marketing plans, development plans, manpower plans, sales targets, sales statistics, customer lists, computer systems or computer software or other confidential information concerning the businesses, finances, dealings, transactions or affairs of the Company or any of its customers or clients and any information which is marked confidential or which ought reasonably to be treated as confidential in whatever form;
<b>“Control”</b>	the meaning given to that expression by section 840 of the Income and Corporation Taxes Act 1988;
<b>“Controlling Interest”</b>	an interest (as defined in Sections 820 to 825 of the Act) in Shares in the Company conferring in aggregate more than 50% of the total voting rights normally exercisable at a general meeting of the Company;
<b>“Deed of Adherence”</b>	a deed of adherence in a form approved by the Investors and entered into pursuant to the provisions of clause 11.2;
<b>“Disclosures”</b>	the specific disclosures set out in Part 1 of the schedule as far as the same are fairly disclosed with sufficient explanation and detail to enable the Investors to identify the nature, scope and implications of the matter;
<b>“HMRC”</b>	Her Majesty's Revenue and Customs or any successor body;
<b>“Investment”</b>	the aggregate investment by the Investors of [INSERT SUM];
<b>“Investment Shares”</b>	the shares detailed in Clause 1.2 above;
<b>“Investors”</b>	the Investors specified in clause 1.2 above and any person acquiring Shares from any such persons in accordance with the Articles and any additional or replacement Investor who is named as an investor in a Deed of Adherence or otherwise;
<b>“Investors' Director”</b>	any investors' director appointed under clause 5.2;
<b>“Investor Majority”</b>	Investors holding more than 50% by value of the Shares held by the Investors (whether through nominees or otherwise) from time to time;
<b>“IP Assignment”</b>	the assignment in Agreed Form between the Company and [INSERT NAME] to assign [DESCRIPTION OF IPR] used by the Business to the Company;
<b>“IPR”</b>	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
<b>“Management Accounts”</b>	the management accounts of the Company for the period starting on the Accounts Date and ending on [INSERT DATE];
<b>“Observer”</b>	any observer appointed under clause 5.1;
<b>“Ordinary Shares”</b>	the ordinary shares of £[NOMINAL AMOUNT] each in the share capital of the Company having the rights set out in the Articles;

<b>“Resolutions”</b>	the resolutions of the Company in the Agreed Form to be passed prior to Completion including a resolution to adopt the Articles;
<b>“Sale”</b>	the transfer (other than a transfer permitted under the Articles) of any interest in Shares (as such term is defined in the Articles) to any person (whether by one transaction or by a series of transactions) resulting in that person alone or together with persons acting in concert with such person having the right to exercise a Controlling Interest;
<b>“SE Group”</b>	SE, any subsidiary for the time being of SE and any company, corporation or other body of persons which shall have acquired the whole or substantially the whole of the undertaking of SE or any subsidiary of such company, corporation or body and any other body to which the statutory functions of SE have been delegated or an SE Successor and the expression “member of the SE Group” shall be construed accordingly;
<b>“SE Successor”</b>	any party succeeding in whole or in part to the interests of SE;
<b>“SEIS”</b>	the Seed Enterprise Investment Scheme as defined in Part 5A of the Income Tax Act 2007;
<b>“Share(s)”</b>	any share forming part of the share capital of the Company from time to time;
<b>“Warrantors”</b>	shall mean the Company and each of the Executives.

- 2.2. words and expressions defined in the Articles have the same meaning in this Agreement (unless expressly defined in this Agreement);
- 2.3. words and expressions used or defined in the Act have the same meaning in this Agreement unless expressly defined in this Agreement or the Articles;
- 2.4. references to any statute or statutory provision include, unless inconsistent with the context, a reference to that statute or statutory provision as modified, re-enacted or consolidated and in force from time to time, whether before or after the date of this Agreement;
- 2.5. the headings are for convenience only and do not affect the interpretation of the Agreement;
- 2.6. references to persons include any individual, firm, body corporate, unincorporated association or partnership;
- 2.7. references to the plural will include the singular and vice versa;
- 2.8. reference to any clause, or schedule, is to a clause, or schedule, of or to this Agreement.
- 2.9. the terms “subsidiary” and “subsidiary undertaking” have the meaning given to those terms in the Act;
- 2.10. the word “material” means “material, significant and/or important as determined by a reasonable person, acting reasonably taking into account the legitimate interests of the Investors”, unless the context requires otherwise; and
- 2.11. the Schedule forms part of the operative provisions of this Agreement and references to a clause or schedule, unless the context otherwise requires, is a reference to a clause of or the Schedule to this Agreement.

### 3. **COMPLETION**

- 3.1. The parties consent to the issue of the Investment Shares and waive any rights or restrictions which may exist in the Articles, the Act, or otherwise which might prevent any such issue.

- 3.2. Completion of the subscription for the Investment Shares will take place at the offices of the Investors' lawyers on the Completion Date when all but not part of the following business shall be transacted:
- 3.2.1. the Company and the Executives will hold such meetings and approve all transactions and business necessary to give effect to this Agreement and pass the Resolutions;
  - 3.2.2. each Investor will subscribe in cash by way of electronic transfer to such bank account as notified to the Investors by the Company in writing for the number of Investment Shares set opposite their names in clause 1.2 at the price specified therein provided that SE's subscription for the shares set against its name in Clause 1.2 shall be subject to SE being satisfied that all of the other Investors have subscribed for the shares set against their names and paid for them in full and SE having received written confirmation (which may be provided by email) from Apollo (or their solicitors) that (i) all conditions precedent (if applicable) have been satisfied, (ii) Apollo's subscription monies and those of its members) have been irrevocably and unconditionally released in full to the Company, (iii) this Agreement and any related documents have been executed and unconditionally released by all relevant parties, and (iv) that the contents of the Schedule to this Agreement have been approved by Apollo;
  - 3.2.3. the Company will allot and issue the Investment Shares to the Investors, will enter the name of the Investors in the register of members of the Company as the registered holder of such Shares and will issue and deliver to each Investor a share certificate duly executed by the Company and any share certificate to be issued to SE shall be in the name of "Scottish Enterprise"; and
  - 3.2.4. the Executives shall waive any claims against the Company.
- 3.3. Immediately following Completion, the Company shall deliver all necessary documents to the Registrar of Companies (including, without limitation, the form SH01, a copy of the Articles together with extract copy of the Resolutions adopting the Articles, and any form AP01 required in respect of the appointment of any Investors' Director appointed at Completion).
- 3.4. Within 10 Business Days of Completion, the Company shall provide the Investors (via their nominated representative) with a three full sets of Completion documents on CD-ROM and a certified copy of the updated register of members.
- 3.5. The Company and the Executives undertake to the Investors that the proceeds of the Investment will be applied by the Company strictly for the following purposes only: (i) continuing and developing the Business in accordance with the Business Plan; and, (ii) paying the reasonable and properly incurred costs incurred in connection with the Investment (as approved in advance by the Investors).
- 3.6. Subject to clause 3.5 above, at Completion the Company shall:
- 3.6.1. pay to Apollo its research fee of £[ ] plus VAT; and
  - 3.6.2. reimburse to the Apollo Investors' all professional fees and out-of-pocket expenses of the Apollo Investors in connection with this Agreement and the Investment up to the agreed maximum of £2,000 plus VAT and outlays and shall also **bear its own professional fees in connection with the Investment**, such fees not to exceed £1,500 plus VAT and outlays.
- 3.7. The Company acknowledges that the monies invested by SE pursuant to this Agreement and any rights of pre-emption in respect of the issue of new shares by the Company exercised by SE pursuant to the Articles or otherwise after the date of this Agreement may be part funded by the European Regional Development Fund through the European Structural Fund Programme for Lowlands and Uplands Scotland 2014-2020.

#### 4. INFORMATION

- 4.1. The Company agrees to maintain effective and appropriate control systems in relation to the financial, accounting and record keeping functions of the Company.
- 4.2. The Company agrees to prepare and send to (i) SE and (ii) the Investors' Director, where one is appointed, failing which to the Observer, where one is appointed, failing which to the Investors:
  - 4.2.1. within 20 Business Days of the end of each month, monthly management accounts for the Company and such other information required by the Investors (all in a format approved by the Investors);
  - 4.2.2. statutory accounts for each accounting reference period of the Company forthwith upon the same being available and in any event not later than three months after the end of such accounting reference period; and
  - 4.2.3. details of any litigation or arbitration proceedings commenced or threatened against or by the Company within 3 days after such commencement or threat.
- 4.3. At least 4 weeks before the commencement of a financial period the Company will deliver to (i) SE and (ii) the Investors' Director, where one is appointed, failing which to the Observer, where one is appointed, failing which to the Investors, an annual plan, capital expenditure budget, trading budget and cash flow projections for the Company for that period together with the Board's written explanation thereof.
- 4.4. The Company shall send copies of all resolutions and notices of general meetings to the Investors at the same time as any such resolutions or notices are sent to any other member of the Company. Notwithstanding any term of this Agreement such copies may be sent to the Investors by email.

#### 5. INVESTORS' DIRECTOR AND OBSERVER

- 5.1. For so long as any Investor holds Shares in the Company, the Investors, acting by Investor Majority decision, shall be entitled (but not obliged) to appoint one person as a director of the Company who shall be designated as the Investors' Director. The removal of any Investors' Director shall be made by notice in writing from any Investor to the Company.
- 5.2. Save where the Investors have exercised their right to appoint an Investors' Director in line with clause 5.1 above, the Investors, acting by Investor Majority decision, shall be entitled at any time to appoint one person as an observer to the Company who shall be designated as the Observer for the purposes of this Agreement. For the avoidance of doubt, SE shall be entitled at any time to appoint an observer to the Company who shall be designated as the SE Observer for the purposes of this Agreement.
- 5.3. Notwithstanding any other terms of this Agreement, the Investors' Director and the Observer and the SE Observer shall be entitled to disclose to the Investors (and their professional advisers) such information concerning the Company as they think fit.
- 5.4. The Company shall send to the Investors' Director, where one is appointed, failing which to the Observer and SE Observer, where either is appointed:
  - 5.4.1. not less than 5 Business Days' notice of each meeting of the Board and an agenda of the business to be transacted at such meeting (together with all relevant Board papers); and
  - 5.4.2. as soon as practicable (and not more than 10 Business Days) after each meeting of the Board a copy of the minutes thereof.
- 5.5. For so long as any Investors' Director, Observer or SE Observer is appointed, no Board meeting shall be quorate unless the Investors' Director, Observer or SE Observer (as appropriate) is in

attendance unless such Investors' Director, Observer or SE Observer is unable to attend a Board meeting and has confirmed in writing (which may be by email) that he is satisfied that the Board meeting in question is quorate without him being present.

- 5.6. The Investors' Director shall be paid an annual fee agreed in advance by the Board and the Investors' Director to be appointed. In the event that the Board and the Investors' Director to be appointed cannot agree such annual fee, that annual fee shall be at a market level decided upon by SE.

## 6. WARRANTY LIMITATIONS

- 6.1. In consideration of the Investors agreeing to enter into this Agreement the Warrantors hereby jointly and severally warrant to the Investors that each of the statements set out in **clause 7 of the Agreement (the "Warranties", of which each is a "Warranty")** is true and accurate in all material respects as at the Completion Date subject only to the Disclosures.
- 6.2. In the case of fraud, bad faith, negligent misrepresentation or deliberate or reckless non-disclosure by any Executive giving rise to a Claim the liability of that Executive in respect of such Claim will not be limited by clauses 6.6 or 6.7 and the Executives hereby agree to indemnify and keep fully and effectually indemnified the Investors on demand from and against any and all losses, liabilities, damages, claims, costs and expenses (including reasonable legal expenses) made against, suffered or incurred by the Investors (or any of them) which relate to, arise from or in connection with any such Claim as referred to in this clause 6.2.
- 6.3. Each of the Warrantors and the Company waive any right of counterclaim or set-off or any other right of recovery against the Company (including any of its employees and directors) in relation to any Claim.
- 6.4. Where any Warranty or statement in the Disclosures is expressly qualified by the knowledge or awareness or belief of any Warrantor it will be deemed to include an additional statement that it has been made after due and careful enquiry and the Warrantors shall be deemed to have knowledge of anything which all or any of them ought to have knowledge of given the Warrantor's particular position and responsibilities to the Company and/or their capacity as owners of Shares in the Company.
- 6.5. The Warrantors and the Company acknowledge that they have given the Warranties with the intention of inducing the Investors to enter into this Agreement and that the Investors have relied on the Warranties in entering into this Agreement. The rights and remedies of each Investor shall not be affected by any investigations made by or on behalf of the Investors into the affairs of the Company or by the knowledge of any Investor, their agents or professional advisors whether actual, implied or constructive.
- 6.6. Subject to clauses 6.2 and 6.9, the Warrantors will not be liable in respect of a Claim unless they have been given written notice of the Claim on or before the date falling 18 months from Completion and legal proceedings have been issued and served in respect of such a Claim within 3 months of that date. Without prejudice to the liability of the Warrantors or the Company for a breach of Warranty, each notice given under this clause 6.6 shall contain reasonable details of the subject matter of the Claim so far as such information is then available and an estimate of the amount of alleged liability under the Claim.
- 6.7. Subject to clauses 6.2 and 6.9, the aggregate liability of all of the Warrantors in respect of all or any Claim shall not exceed the total sum of the Investment plus all of the Investors' costs (including professional fees on an indemnity basis) incurred in respect of any Claim.
- 6.8. The following provisions shall apply to any Claim unless the Investors otherwise agree:-
- 6.8.1. notice of a Claim or proposed Claim (containing reasonable details of the subject matter of such Claim) shall be provided to all the other Investors in writing or by email;



- 6.8.2. the costs incurred by any Investors in bringing a Claim shall be borne by all of those Investors bringing such Claim in proportion to their holding of Shares in the capital of the Company at that time; and
- 6.8.3. any damages or other sum obtained as a result of any Claim shall (after deduction of all costs and expenses) be divided amongst the Investors bringing the Claim in the proportions referred to in clause 6.8.2 above.
- 6.9. Each Warranty is to be construed separately and independently and (except where this Agreement provides otherwise) is not limited by any other provision of this Agreement or any other Warranty and each Investor shall have a separate claim in respect of every breach of every Warranty.

## 7. WARRANTIES

- 7.1. **Each Warrantor severally warrants without qualification the following statement in respect of himself:**
- 7.1.1. That he is not prevented by the terms of any previous or current employment from working for the Company and has authority and capacity to enter into this Agreement.
- 7.1.2. That he never been a director of or concerned with the management of any company or other business which has, while he was such a director or so concerned or within one year thereafter, gone into receivership, insolvent liquidation or administration or entered into any arrangements with its creditors generally.
- 7.1.3. That he never been a director of a company where the auditors have qualified the accounts of that company.
- 7.1.4. That he never been made bankrupt or signed a Trust Deed for his creditors or entered into any other arrangements with his creditors and that to the best of his knowledge and belief no application for any bankruptcy is pending or threatened against him.
- 7.1.5. That he never been the subject of a disqualification order under the Company Directors' Disqualification Act 1986 or any equivalent legislation in any other jurisdiction and that to the best of his knowledge and belief no application for any such order against him is pending or threatened.
- 7.1.6. That he never been convicted of any crimes, is not subject to any criminal charges and, to the best of his knowledge and belief, no such charges are pending or threatened against him (except, in each case, minor traffic offences).
- 7.1.7. That he is not aware of being investigated by the Inland Revenue, HMRC, Customs & Excise or similar body, other than through routine enquiries.
- 7.1.8. That neither he nor any person connected to him has any interest which could conflict with the affairs or Business of the Company.
- 7.2. The projections and forecasts contained in the Business Plan were compiled in good faith and after careful consideration and were based on assumptions which in the opinion of the Warrantors were reasonable and appropriate at the date of preparation of the Business Plan. There has been no material change in the Business since the date of the Business Plan which means that such assumptions are no longer reasonable or appropriate. The Company has never carried on any business other than the Business.
- 7.3. The Management Accounts have been prepared with due care and attention and reasonably reflect the financial position and state of affairs of the Company as at the date of preparation.

- 7.4. There has been no material adverse change in the financial position or trading position of the Company since the date of preparation of the Management Accounts and, so far as the Warrantors are aware, there is no fact or circumstance which might give rise to any such adverse change.
- 7.5. The Company is not engaged in or about to initiate any litigation, arbitration, administrative, employment related or other legal proceedings of any kind and, so far as the Warrantors are aware, there are no such actions pending against the Company and there are no facts or circumstances which might reasonably be expected to give rise to such proceedings.
- 7.6. The Company is at Completion the sole beneficial owner or licensor of all IPR used or required by the Company for the business carried out by the Company at the date of this Agreement.
- 7.7. No IPR used or required by the Company is and, so far as the Warrantors are aware, will be the subject of a claim or opposition from any person (including an employee or former employee of the Company) as to title, validity, enforceability, entitlement or otherwise.
- 7.8. No Warrantor is aware of any fact or matter which is not set out in the Disclosures and which directly affects the Business or the financial or trading prospects of the Company, the disclosure of which might reasonably affect the willingness of a reasonable investor to subscribe for Shares, or the price at or terms on which an investor would be willing to subscribe for them.

## 8. **CONSENT MATTERS**

- 8.1. The Company and each Executive agrees with the Investors that whilst any Investor holds Shares in the Company, none of the matters set out in this clauses 8.1.1 to 8.1.14 (inclusive) shall be effected by the Company unless it is approved in advance by the Investor Majority (including SE). The Company shall copy all requests by the Company for such approval to each Investor at the same time as it is made to the Investor Majority.
- 8.1.1. Make any material change to the Business or the Business Plan.
- 8.1.2. Expand, change or develop the Company or the Business other than through the Company or a wholly owned subsidiary of the Company.
- 8.1.3. Save as required by law, enter into, permit or encourage any dealings that are not in the ordinary course of business and on an arms' length basis.
- 8.1.4. Grant, execute or implement any warrants, share option schemes, share incentives, pension schemes or any other director, consultant and/or employee incentive schemes.
- 8.1.5. Pay any interim or final dividend.
- 8.1.6. Modify or alter the rights attaching to any Shares in the Company.
- 8.1.7. Permit the issue, allotment or transfer of Shares otherwise than in accordance with the provisions of the Articles.
- 8.1.8. Make any alteration to the Articles.
- 8.1.9. Pass any resolution that would disapply any of the foregoing rights or remove any rights of the Investors under this Agreement or the Articles.
- 8.1.10. Appoint any employee or engage any consultant or contractor not provided for in the Business Plan or allow any contract of employment or service agreement with a director, employee or consultant of the Company to be entered into or amended on terms materially inconsistent with the terms set out in the Business Plan.

- 8.1.11. Borrow or enter into any agreement to borrow any monies which are not expressly provided for in the Business Plan.
- 8.1.12. Save where necessitated by insolvency legislation, the making of any petition or passing of any resolution for winding-up, the making of an application for an administration order or the appointment of an administrator in respect of the Company or any subsidiary.
- 8.1.13. Sell or otherwise dispose of any IPR owned by the Company (other than non-exclusive licences of such IPR in the ordinary course of business and on an arms' length basis).
- 8.1.14. Sell, transfer, license or otherwise dispose of, or agree to sell, transfer, license or dispose of, the whole or a substantial part of the business, undertaking or assets of the Company (other than trading stock or the licensing on a non-exclusive basis of IPR in the ordinary course of business and on an arms' length basis) whether by a single transaction or by a series of transactions.

## 9. **SALE**

It is hereby acknowledged by each party to this Agreement that no Investor will give any warranties or indemnities in connection with a Sale, Change of Control or other disposal (except a warranty as to the title to Shares such Investor holds)

## 10. **UNDERTAKINGS**

- 10.1. Each of the obligations, undertakings and rights pursuant to this Agreement will continue in full force and effect notwithstanding Completion.
- 10.2. Each of the Executives undertakes to each of the Investors that:
  - 10.2.1. he will use the powers vested in him from time to time as director, officer, employee and shareholder to procure that the Company observes and performs its obligations under the Articles and this Agreement; and
  - 10.2.2. he will observe and perform his obligations under this Agreement, his Service Agreement (if any) and the Articles.

## 11. **ASSIGNATION AND NEW SHAREHOLDERS/EXECUTIVE DIRECTORS**

- 11.1. No party will assign or in any other way dispose of any of its rights or obligations under this Agreement save as agreed between the parties or as set out in this Agreement or the Articles.
- 11.2. Except with the prior written consent of the Investor Majority or as otherwise permitted under this Agreement no Shares in the capital of the Company will be allotted or transferred to any person who is not already a party to this Agreement unless at the time of or prior to such allotment or transfer he (and, if he is a nominee of another person, that other person) enters into a Deed of Adherence.
- 11.3. SE shall be entitled to assign its interest under this Agreement to any member of the SE Group at any time.

## 12. **SEIS**

- 12.1. The Company and the Executives undertake to the Investors to use all reasonable endeavours to procure that (i) SEIS Certificates are obtained on behalf of and issued to the Investors within 6 months of the date of this Agreement; and (ii) the Company shall conduct its affairs in a manner which will not prejudice SEIS status.

12.2. The Company and the Executives undertake to the Investors at all times only to carry on an “eligible business” or a “qualifying trade” for the purposes of SEIS for a minimum of three years from the last date of subscription by the Investors pursuant to this Agreement.

12.3. The Company and the Executives undertake to the Investors as soon as possible following Completion, to make all necessary applications to HMRC for the grant of SEIS relief to the Investors (and thereafter confirm the same to the Investors).

### 13. CONFIDENTIALITY

13.1. Except as provided elsewhere in this Agreement, each party agrees to keep secret and confidential and not at any time to use, disclose or divulge to any third party (other than a party’s professional advisers) any:

13.1.1. Confidential Information;

13.1.2. information relating to the negotiation, provisions or subject matter of this Agreement (or any document referred to in it); or

13.1.3. information concerning any Investor;

provided that this clause 13.1 shall not apply to information which is in the public domain (other than through wrongful disclosure of any party), or which any party is required to disclose by law, by the rules of any regulatory body to which the relevant party is subject, or where it is necessary for the Company to secure such regulatory approval as may be required to allow any IPR to be commercialised or in the ordinary course of business.

13.2. The Company authorises

13.2.1. **the Investors to consult fully with their professional advisors and funders as to the affairs of the Company and to exchange information with such persons whether oral or written in such manner (on a confidential basis) as the Investors consider desirable;**

13.3. SE to exchange information whether oral or written in such manner (on a confidential basis) as SE considers desirable with any member of the SE Group or the Investors’ Director or the SE Observer provided that such exchange of information is in connection with or for the purposes of the Investment (including the monitoring and/or management of the Investment), and such exchange of information extends only to that which is necessary in the circumstances.

13.4. Any press release, announcement or other public intimation of the subject matter of this Agreement or any ancillary matter shall be agreed in writing by the Executives, the Company, SE and Apollo. No other announcement or disclosure shall be made by or on behalf of the Company or by the Executives.

### 14. INTELLECTUAL PROPERTY

14.1. It shall be part of the normal duties of the Executives at all times to consider in what manner and by what new methods any devices, products, services, processes, equipment or systems of the Company might be improved and promptly to give to the Board full details of any invention, discovery, design, improvement or other matter or work whatsoever in relation to the Business (the “Inventions”) which each of them may from time to time make or discover during their respective employment with the Company and to further the interests of the Company with regard thereto and each of the Executives hereby acknowledges and agrees that the sole ownership of the Inventions and all proprietary rights therein discovered or made by each of them (whether alone or jointly with others) at any time during their respective employment shall (subject to any contrary provisions of the Patents Act 1977 and the Copyright Design and Patents Act 1988 and any rights of a joint inventor thereof) belong free of charge and exclusively to the Company or as it may direct provided

that the provisions of this clause will not apply to any material produced by any Executive which is not produced in the normal course of his duties and which do not relate to the improvement of the Company's interests.

- 14.2. Subject to Clause 14.1 all records, documents, papers (including all copies and summaries thereof) copyright protected works made or acquired by any Executive in the course of his employment, together with all world wide copyright and design rights in all the Inventions, shall be and remain the property of the Company.
- 14.3. For the avoidance of doubt each Executive irrevocably and unconditionally waives all rights granted by Chapter IV of Part I of the Copyright Designs and Patents Act 1988 that vest in that Executive the authorship of any copyright works in respect of the Inventions by such Executive in the course of his employment with the Company including without limitation the right to be identified as the author of any such works and the right not to have any such works subjected to derogatory treatment.
- 14.4. Each Executive hereby agrees (at any time during his employment or thereafter) to do all such acts and things (including without limitation making application for letters patent) as the Board may reasonably request to vest effectually any Invention (whether owned by the Company in accordance with Clause 14.1 or owned by the Executive) and any protection as to ownership or use (in any part of the world) of the same in the Company or as it may direct, jointly if necessary with any joint inventor thereof, and each Executive hereby irrevocably appoints the Company for the purposes aforesaid to be his attorney in his name and on his behalf to execute and do any such documents, acts and things aforesaid.
- 14.5. The Executives shall not knowingly do or omit to do anything which will or may have the result of imperilling any such protection aforesaid or any application thereof. The Executives agree to give all necessary assistance to the Company to enable it to enforce its IPR against third parties, to defend claims for infringement of third party IPR and to apply for registration of IPR, where appropriate throughout the world, and for the full term of those rights
- 14.6. Should any Executive during his employment with the Company make any Inventions that do not belong to the Company by reasons of the Patents Act 1977 or otherwise, the Executive shall forthwith license or assign (as determined by the Company) to the Company all the Executive's rights in relation to such Invention and will deliver to the Company all documents and other materials relating thereto whereupon the Company shall pay the Executive such compensation as is provided in Section 40 of the Patents Act 1977.

## 15. NON-COMPETITION

- 15.1. Each of the Executives acknowledges that during the course of his respective employment with the Company he will acquire information about the affairs of the business of the Company which is of a confidential or trade sensitive nature. Accordingly, in order to protect the legitimate business interests of the Company each Executive hereby undertakes to and agrees with the Company that he will not either on his own account, or for any other person, firm, company or other organisation directly or indirectly:-
  - 15.1.1. for a period of 24 months from the date on which he ceases to be employed by the Company ("**Termination Date**"), be interested or concerned in any capacity in any business which competes (or within 24 calendar months after the Termination Date may reasonably be expected to compete) with such part or parts of the business of the Company carried on at the Termination Date and in such geographical areas as the Executive was personally concerned to a material extent on behalf of the Company during the 12 months immediately prior to the Termination Date;
  - 15.1.2. for a period of 24 calendar months from the Termination Date, solicit, interfere with or endeavour to entice away from the Company the business of any person, firm, company or other organisation who was at any time during the 12 calendar months prior to the Termination Date a customer, supplier, prospective customer of or in the habit of dealing

with the Company and with whom during such period the Executive had contact or dealings on behalf of the Company;

- 15.1.3. for a period of 24 calendar months from the Termination Date, in competition with the Company, seek any work from or render any goods or services to (or assist any other person, firm, company or other organisation so to do) any person, firm, company or other organisation who was at any time during the 12 calendar months prior to the Termination Date a customer, supplier, prospective customer of or in the habit of dealing with the Company and with whom during such period the Executive had contact or dealings on behalf of the Company;
  - 15.1.4. for a period of 24 calendar months from the Termination Date, solicit, endeavour to entice away from, discourage from being employed by or engaged in performing services for the Company, employ, engage, attempt to employ or engage, negotiate or arrange the employment or employment of (or assist any other person, firm, company or other organisation so to do) any person who was at any time during the 12 calendar months prior to the Termination Date:
    - 15.1.4.1. a senior executive or officer of the Company with whom during such period the Executive had material personal contact or dealings in the performance of his duties on behalf of the Company; or
    - 15.1.4.2. an executive or employee of the Company who reported to the Executive as part of his team; or
    - 15.1.4.3. an executive of the Company (with whom during such period the Executive had material personal contact or dealings in the performance of his duties on behalf of the Company) who had material personal contact or dealings in the performance of his duties on behalf of the Company with customers of such part or parts of the Company's business as the Executive was concerned to a material extent during the final 12 months of employment, with a view to recruiting that person to a business venture which competes, (or which will, once operational, compete) with such part or parts of the Company's business and in such geographical areas with which the Executive was concerned to a material extent during the final 6 months of his employment with the Company;
  - 15.1.5. at any time falsely represent himself as being in any way connected with or interested in any business carried on by the Company;
- 15.2. None of the restrictions in clause 15 shall prevent the Executive from holding an investment by way of shares or other securities of not more than 5% of the total issued share capital of any company, whether or not it is listed or dealt on a recognised stock exchange.
  - 15.3. The Executive acknowledges that each of the undertakings in Clause 15.1 constitutes an entirely separate and independent undertaking on him and that the duration, extent and application of each of the undertakings is reasonable in the circumstances and is no more than is required to protect the legitimate business interests of the Company.
  - 15.4. While the undertakings in Clause 15.1 are considered by the Company and the Executive to be reasonable in all the circumstances it is recognised that undertakings of the nature in question may fail for technical reasons unforeseen or because of changing circumstances and accordingly it is hereby declared and agreed that if any of such undertakings shall be adjudged to be void as going beyond what is reasonable in all the circumstances for the protection of the interests of the Company but would be valid if part of the wording thereof was deleted and/or the periods (if any) thereof reduced and/or area dealt with/range of activities covered thereby reduced in scope the said undertaking shall apply with such deletions or modification as may be necessary to make them valid and effective and any such modification shall not thereby affect the validity of any other undertaking.

## 16. NOTICES

- 16.1. Any notice or other communication in connection with this Agreement will be in writing and may be delivered by hand, pre-paid first class post (or airmail if overseas) or (subject to the provisions below) by fax (but not by e-mail which shall be invalid other than as specifically permitted in this Agreement), to the address or fax number of such party herein given marked for the attention of the recipient (or such other address or fax number which the recipient has notified in writing to the sender in accordance with this clause 16.2, to be received by the sender not less than seven Business Days before the notice is despatched). For the avoidance of doubt, notices to SE shall not be sent by fax and any such notice or other demand sent by fax shall be invalid.
- 16.2. The notice or communication will be deemed to have been duly served if delivered by hand, at the time of delivery and if delivered by first class post, two Business Days after being posted or, in the case of airmail, six Business Days after being posted; if delivered by fax, when confirmation on completion of its transmission has been recorded by the sender's fax machine provided that, where in the case of delivery by hand or transmission by fax, such delivery or transmission occurs either after 4.00 pm on a Business Day, or on a day other than a Business Day, service will be deemed to occur at 9.00 am on the next following Business Day.
- 16.3. The Investors confirm that notices or other communications to be served upon them will be sent to them at the registered office of: Apollo Informal Investments Limited, marked for the attention of Michiel Smith.
- 16.4. Notices to SE shall be sent to 4<sup>th</sup> Floor, Atrium Court, Waterloo Street, Glasgow G2 6HQ or to such other address as may previously have been communicated to the other parties in accordance with this clause 16. Such notice must be marked for the attention of "The Head of Transactions" and copied to "The Head of the Portfolio Team".

## 17. NO PARTNERSHIP

Nothing contained in this Agreement will be deemed to constitute a partnership between the parties or any of them and save as expressly provided otherwise, none of them shall have authority to bind the others in any way.

## 18. CONFLICT WITH ARTICLES

In the event of this Agreement conflicting or being inconsistent in any way with the Articles, this Agreement shall prevail and the parties shall procure that any necessary changes are made to the Articles to give effect to this Agreement.

## 19. ENTIRE AGREEMENT AND SEVERABILITY

- 19.1. This Agreement, and the documents referred to in it, constitutes the entire agreement between the parties and supersedes and replaces any previous agreement, understanding, representation, warranty or arrangements of any nature whatsoever between the parties relating to the subject matter of this Agreement.
- 19.2. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall be severable from such invalid or unenforceable provision and remain in full force and effect.
- 19.3. In the event that an Executive ceases to be an executive of and hold Shares in the Company, the terms of this Agreement shall cease to apply to that Executive save for clause 13 (Confidentiality) which shall continue to apply to the Executive.

## 20. WAIVER, VARIATION AND TIME

- 20.1. Other than as otherwise expressly set out in this Agreement, a waiver of any term, provision or condition of, or consent granted under this Agreement will be effective only if given in writing and signed by the waiving or consenting party and then only in the instance and for the purpose for which it is given.
- 20.2. No failure or delay on the part of any party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any such right, power or privilege preclude any other further exercise thereof or the exercise of any other right, power or privilege. No breach of any provision of this Agreement will be waived or discharged except with the express written consent of the parties.
- 20.3. No variation to this Agreement shall be effective unless made in writing and signed by all parties to this Agreement.
- 20.4. Time shall be of the essence as regards any date or period mentioned in any clause of this Agreement save only to the extent that any date or period may be altered by mutual written agreement between the parties.

## 21. COUNTERPARTS AND DELIVERY

- 21.1. In accordance with the Legal Writings Act, this Agreement may be executed in any number of counterparts.



21.2. No counterpart shall be effective, notwithstanding its execution, until all parties have executed and delivered at least one counterpart in terms of this Clause.

21.3. The Parties agree that, if executed in counterpart –

21.3.1. for the purposes of section 2(1) of the Legal Writings Act, each of the Parties nominates Morton Fraser LLP, Solicitors, Quatermile Two, 2 Lister Square, Edinburgh EH3 9GL to take delivery of all of the counterparts of this Agreement and thereafter, but in any event within 5 Business Days of having taken delivery of all of the counterparts, to circulate a copy of this Agreement, as fully executed, to each of the Parties hereto (or their agent). Morton Fraser LLP shall not be obliged to hold the counterparts pursuant to section 2(3) of the Legal Writings Act;

21.3.2. this Agreement shall become effective, notwithstanding the date or dates of execution, on the date when the nominated person has taken delivery of all of the counterparts which shall be confirmed by the nominated person by email sent to all of the parties (or their agent).

21.4. The Parties agree that, for the purposes of section 4(4) of the Legal Writings Act, delivery may be made by electronic transmission of a document in pdf or jpeg format.

**22. GOVERNING LAW AND JURISDICTION**

The formation, existence, construction, performance, validity and all aspects whatsoever of this Agreement or of any term of this Agreement shall be governed by and construed in accordance with the law of Scotland and the parties hereto prorogate the jurisdiction of the Scottish Courts.

**IN WITNESS** whereof these presents typewritten on this and the preceding • pages and the Schedule annexed hereto are executed in counterpart as follows and DELIVERED on 201•:

SUBSCRIBED for and on behalf of **NAME OF PARTY**

by  
at  
on 20

in the presence of:-

.....  
Director

Witness .....

Full Name .....

Address .....

.....

SUBSCRIBED by **NAME OF PARTY**

at  
on 20

in the presence of:-

.....  
[NAME OF PARTY]

Witness .....

Full Name .....

Address .....

.....

**SCHEDULE**

This is the Schedule referred to in the foregoing Investment Agreement between Apollo Informal Investments Limited, Scottish Enterprise and •

**SCHEDULE PART 1****DISCLOSURES**

Warranty Number (s)	Disclosures

DRAFT