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The “Advance Subscription Agreement” which follows this note has been prepared on a basis which is intended to be compatible with the requirements for SEIS / EIS relief at the time of its preparation. However, please note that we are unable to guarantee the application of any tax reliefs to any form of investment and if these reliefs are an important aspect of your plans we would strongly recommend that you apply to HMRC for “advance assurance” before completing any documentation. Although it can appear relatively simplistic this is a fairly complicated document and if you are at all uncomfortable with any part of the drafting, have any queries, or would like to make any changes to the approach we would strongly recommend that you speak to us or other suitable legal professionals before completing any documentation.

DATED                                                    20[ ]

|  |  |
| --- | --- |
| (1) | [NAME OF SUBSCRIBER] |
| (2) | [NAME OF COMPANY ISSUING ASA] |

|  |  |  |
| --- | --- | --- |
|  | ADVANCE SUBSCRIPTION AGREEMENT RELATING TO [name of company] |  |



**DATED 20[ ]**

PARTIES

1. **[NAME]** of [ADDRESS] (the "**Subscriber**"); and
2. **[NAME OF COMPANY]**,a company incorporated *a*nd registered in England and Wales with company number [NUMBER] and having its registered office at [ADDRESS] (the "**Company**").

**INTRODUCTION**

On or around the date of this agreement (the "**Advance Date**") the Subscriber shall make advance subscription funds available to the Company for the purpose and on the terms more particularly described in this agreement.

**IT IS AGREED AS FOLLOWS**

1. Definitions
	1. Unless the context requires otherwise, terms defined in the Articles shall have the same meaning in this agreement.
	2. In this agreement:

|  |  |
| --- | --- |
| **“Acting in Concert”** | has the meaning given to it in The City Code on Takeovers and Mergers published by the Panel on Takeovers and Mergers (as amended from time to time); |
| **"Advance Date"** | has the meaning given in the Introduction; |
| **"Advance Subscription Funds"** | has the meaning given in clause 2.1; |
| **"Aggregate Advance Subscriptions"** | has the meaning given in clause 2.1; |
| **"Articles"** | the articles of association of the Company from time to time; |
| **"Asset Sale"** | means the sale or transfer of the whole or substantially the whole of the undertaking or assets of the Company or any subsidiary of the Company; |
| **"Business Days"** | means a day (other than a Saturday or Sunday) on which banks are open for business in London; |
| **“Controlling Interest”** | means an interest in shares giving to the holder or holders control of the Company within the meaning of section 1124 of the Corporation Tax Act 2010; |
| **"Exit"**  | means a Share Sale or an Asset Sale; |
| **"Financing Round"** | a subscription for equity in the Company by one or more persons raising an aggregate of at least £[AMOUNT][[1]](#footnote-1) (excluding the Aggregate Advance Subscriptions), which amount can be raised in one or in a series of fundraisings on or before the Longstop Date; |
| **"Insolvency"** | means a situation in which:* + 1. an order is made for the Company's compulsory liquidation; or
		2. the Company is placed into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation); or
		3. the Company has an administrator or receiver appointed over the whole or any part of its assets or undertaking;
 |
| **"Longstop Date"** | means [the date falling 6 months from the date of this agreement][[2]](#footnote-2); |
| **"Next Round Share"**  | means, in respect of a Financing Round, the most senior class of share issued in such Financing Round;  |
| **"Ordinary Shares"** | means the ordinary shares of £[AMOUNT][[3]](#footnote-3) each in the capital of the Company; |
| **"Share Sale"** | means the sale of any of the shares in the capital of the Company (in one transaction or as a series of transactions) which will result in the purchaser of those shares and persons Acting in Concert with him together acquiring a Controlling Interest in the Company, except where following completion of the sale the shareholders and the proportion of shares held by each of them are the same as the shareholders and their shareholdings in the Company immediately prior to the sale[[4]](#footnote-4); |
| **"Subscription Price"** | means: * + 1. where the subscription takes place pursuant to clause 3.1(a), a price per Subscription Share equal to the lower of:
			1. a discount of [NUMBER][[5]](#footnote-5)% on the price paid per Next Round Share; or
			2. a price per share based on a post-money valuation of £[AMOUNT][[6]](#footnote-6) divided by the fully diluted share capital of the Company immediately prior to the Financing Round (excluding (i) any securities to be issued pursuant to the application of the Aggregate Advance Subscriptions or on the Financing Round and/or (ii) any increase in the Company’s share option pool required in connection with the Financing Round); or
		2. where the subscription takes place pursuant to clauses 3.1(b), 3.1(c) or 3.1(d), at a price per Subscription Share equal to a price per share based on a post-money valuation of £[AMOUNT][[7]](#footnote-7) divided by the fully diluted share capital of the Company immediately prior to the Exit, the Longstop Date or the event of an Insolvency (as the case may be) (excluding any securities to be issued pursuant to the application of the Aggregate Advance Subscriptions);
 |
| **"Subscription Shares"[[8]](#footnote-8)** | means:* + 1. in the case of shares issued pursuant to clause 3.1(a), either the Next Round Shares or, if the Subscriber so elects, the Ordinary Shares; or
		2. in the case of shares issued pursuant to clauses 3.1(b), 3.1(c) or 3.1(d), Ordinary Shares.
 |

* 1. In this agreement, references to a party include its successors in title, transferees and assignees.
	2. In this agreement, references to each gender includes the other genders.
1. ADVANCE SUBSCRIPTION
	1. Advance Subscription

Subject to the terms of this agreement, on the Advance Date, the Subscriber made available to the Company funds in an aggregate amount of £[AMOUNT] (the "**Advance Subscription Funds**"). The Company may issue similar agreements with other investors for advance subscriptions which, together with the Advance Subscription Funds, aggregate up to £[AMOUNT] (the "**Aggregate** **Advance Subscriptions**").

* 1. Purpose

The Company will apply the Advance Subscription Funds towards growing and developing the business of the Company in accordance with the Company's business plan.

* 1. Payment

The Advance Subscription Funds shall be paid to the following bank account held by the Company (or such other account as the Company and Subscriber may agree) on or around the Advance Date:

|  |  |
| --- | --- |
| Name of Bank:  | [•] |
| Account name: | [•] |
| Sort Code:  | [•] |
| Account Number:  | [•] |
| BIC Number: | [•] |
| IBAN Number:  | [•] |

* 1. Waiver

The Company hereby undertakes to procure all consents, waivers and shareholder resolutions necessary (pursuant to the Articles or otherwise) so as to enable the issue of shares in the capital of the Company contemplated by this agreement to proceed free of pre-emption rights or other restriction.

1. SUBSCRIPTION
	1. The Advance Subscription Funds shall automatically be applied to the subscription of Subscription Shares at the Subscription Price, and the Company shall issue and allot to the Subscriber (or as the Subscriber shall direct) the number of fully paid Subscription Shares to which it is entitled:
		1. in the event of a Financing Round, immediately prior to the unconditional completion of such Financing Round; or
		2. in the event of an Exit, immediately prior to the unconditional completion of such Exit; or
		3. on the Longstop Date (if no Financing Round or Exit has unconditionally completed on or prior to the Longstop Date); or
		4. in the event of an Insolvency occurring before any of the events set out in sub-clauses (a) to (c) above, immediately prior to the occurrence of such Insolvency event,

and (in each case) Subscription Shares so allotted and issued shall be in full satisfaction and discharge of all obligations of the Company under this agreement to the Subscriber and this agreement shall terminate automatically and immediately on completion of such subscription.

1. Warranties
	1. The Company hereby warrants to the Subscriber that:
		1. the Company is a company duly formed, validly existing and in good standing under the laws of England and Wales, with full corporate power and authority to enter into and perform its obligations under this agreement;
		2. the consummation of the transactions contemplated hereunder and the performance of this agreement by the Company do not violate the provisions of the Articles, or any applicable law, and will not result in any breach of, or constitute a default under, any note or instrument to which the Company is a party or by which it is bound; and
		3. this agreement is valid and binding upon the Company and enforceable in accordance with its terms.
2. Status of Subscriber [[9]](#footnote-9)

[*FOR US RESIDENTS*:

* 1. The Subscriber represents, warrants and undertakes to the Company and each of its directors that:
		1. they are entering into this agreement to acquire Subscription Shares for their own account for investment and not for the account of another nor with a view to, or for resale in connection with, any distribution or public offering thereof within the meaning of the United States Securities Act of 1933, as amended (the "**Securities Act**") or the rules and regulations promulgated thereunder or the state securities laws of any applicable jurisdiction;
		2. they are able financially to bear the risk of losing their entire investment, has adequate means of providing for their current needs and has no need for liquidity of this investment;
		3. they are an "accredited investor" within the definition set forth in Rule 501(a) of Regulation D promulgated under the Securities Act;
		4. they have, or are relying on a professional representative who has, sufficient knowledge and expertise in business, tax and financial matters to be able to evaluate the risks and merits inherent in investments of this type;
		5. they have received information from the Company with respect to all matters they consider material to their investment decision, have had the opportunity to ask questions of the officers of the Company on any matter material to their investment decision, and all such questions have been answered to their satisfaction;
		6. they understand that they must bear the economic risk of the investment for an indefinite period of time because the Subscription Shares will not be registered under the Securities Act, and therefore, must be held unless they are subsequently registered under the Securities Act or an exemption from such registration is available; and
		7. their residence is as set forth at the beginning of the agreement; all offers for the issuance of the Subscription Shares were made to them at that address or if not at that address, at an address outside of the United States; no offer or solicitation was made to them in any jurisdiction other than that jurisdiction or outside of the United States; and they accept the offer for the issuance of the Subscription Shares by executing this agreement within that jurisdiction; and prior to such acceptance, they did not accept the offer for the issuance of the Subscription Shares in any other jurisdiction, orally, in writing, or otherwise.]

**OR**

[*FOR UK RESIDENTS*:

* 1. [In entering into this agreement to acquire the Subscription Shares on the terms of this agreement, the Subscriber undertakes that:
		1. they are resident in the United Kingdom;
		2. they fall into one or more of the following categories of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 as amended (the "**Order**"):
1. a "certified high net worth individual" within the meaning of Article 48(2) of the Order, and accordingly he has signed a certificate in the form set out in Part I of Schedule 5 of the Order within a period of 12 months prior to the date of this agreement; or
2. a "self-certified sophisticated investor" in Article 50(A)(1) of the Order, and accordingly he has signed a certificate in the form set out in Part II of Schedule 5 of the Order within a period of 12 months prior to the date of this agreement, or
3. they are a person to whom an invitation or inducement to engage in investment activity (within the meaning of section 21 of the Financial Services and Markets Act 2000) in connection with the issue or sale of any securities may otherwise lawfully be communicated or caused to be communicated;
	* 1. they have received sufficient information from the Company with respect to all matters they consider material to their investment decision, they have had the opportunity to ask questions of the management of the Company in relation to their investment decision and all such questions have been answered to their satisfaction; and
		2. they have sufficient knowledge and expertise in business, tax and financial matters to be able to evaluate the risk and merits of an investment in the Company, or they have sought such advice as they consider necessary from a professional adviser with such knowledge and expertise.]
4. communications
	1. In writing

Unless otherwise expressly stated herein, all communications under this agreement will be in writing and may be made by letter or email.

* 1. Address

Any communication by letter to be made or delivered by one party to the other(s) will be made or delivered to that other party at the address shown next to its name on the first page of this agreement or to such other address as may from time to time be notified by one party to the other(s) in accordance with this clause and any communication by email to be made by one party to the other(s) will be made to that other party at the email address as may from time to time be notified by one party to the other(s) in accordance with this clause.

* 1. Delivery

Any communication made or delivered under this agreement will be deemed made or delivered

* + 1. when received, in the case of an email;
		2. when left at the relevant address, in the case of a personally delivered letter; or
		3. two Business Days after dispatch, in the case of a letter sent by prepaid first class post in an envelope addressed to the relevant address.
1. GENERAL
	1. Status of funds

The Advance Subscription Funds do not constitute a debt in any circumstances. No interest is payable on the Advance Subscription Funds. No amount of the Advance Subscription Funds is repayable by the Company in any circumstance. The Advance Subscription Funds shall be applied to the subscription of shares in the Company in accordance with clause 3. The parties acknowledge that this agreement is irrevocable.

* 1. Termination, variation and assignment

This agreement shall automatically terminate in accordance with clause 3 and may not otherwise be cancelled, varied or assigned[[10]](#footnote-10).

* 1. Counterparts

This agreement may be executed in counterpart, and this has the same effect as if the signatures on the counterparts were on a single copy of this agreement. The exchange of a fully executed version of this agreement (in counterparts or otherwise) by electronic transmission in PDF format shall be sufficient to bind the parties to the terms and conditions of this agreement and no exchange of originals is necessary.

* 1. Entire Agreement

This agreement sets forth the entire understanding among the parties with respect to the subject matter hereof.

* 1. Severance

If one or more provisions of this Agreement is held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

1. law

This agreement will be governed by and construed in accordance with English law and the English courts shall have exclusive jurisdiction.

This agreement has been executed on the date stated at the beginning of this agreement.

|  |  |  |
| --- | --- | --- |
| Signed by | ) |  |
| [**NAME OF** **SUBSCRIBER**] | ) |  |
|  | ) |  |

|  |  |  |
| --- | --- | --- |
| Signed by | ) |  |
| **[COMPANY NAME]**, acting by……………………………, a director | )) |  |
|  | ) |  |

1. Note: this is the amount of investment which, if raised by the Company, will trigger an automatic conversion of the advance subscription(s). [↑](#footnote-ref-1)
2. Note: Longstop Date for the conversion of the advance subscription to be confirmed. If the Company intends for the ASA funds to benefit from SEIS / EIS relief following conversion, then HMRC guidelines state that this Longstop Date should generally not be more than 6 months from the date of the agreement. [↑](#footnote-ref-2)
3. Note: include the appropriate nominal value for the Company’s ordinary shares. [↑](#footnote-ref-3)
4. Note: this essentially provides that a share sale will trigger conversion of the ASAs if the sale results in a change of control of the Company. [↑](#footnote-ref-4)
5. Note: any agreed discount on the price paid per Next Round Share should be confirmed here. A material discount may lead to the reduction/withdrawal of S/EIS relief, and so for enhanced certainty we would recommend that advance assurance is obtained from HMRC in respect of any proposed discount. [↑](#footnote-ref-5)
6. Note: valuation of Company to be confirmed here in order to set the maximum cap on the Subscription Price which would apply on conversion in connection with a Financing Round. Note that an alternative approach here may be to simply refer to a set price per share (which could be the price at which investors would have received shares in this round, were it not for the ASAs). [↑](#footnote-ref-6)
7. Note: as above, valuation of Company to be confirmed here to determine the applicable Subscription Price for conversion as a result of i) an Exit, ii) the Longstop Date or iii) an Insolvency event. See footnote above re set price per share as an alternative. [↑](#footnote-ref-7)
8. Note: This provides that if the advance subscription converts on a Financing Round then the subscriber shall receive either i) the Next Round Shares or ii) Ordinary Shares (which they should opt for if they wish to seek SEIS/EIS relief). Next Round Shares are the most senior shares allotted on the Financing Round. If the advance subscription converts on i) an Exit, ii) the Longstop Date or iii) an Insolvency event, then the subscriber shall receive simply Ordinary Shares. [↑](#footnote-ref-8)
9. Note: relevant section to be deleted as appropriate depending on residency of subscriber. [↑](#footnote-ref-9)
10. Note: HMRC guidance states an ASA which is ultimately intended to benefit from SEIS / EIS relief cannot be varied, cancelled or assigned. If for any reason the parties wished to change or cancel the terms of the ASA in future we would recommend that you speak with us in the first instance. [↑](#footnote-ref-10)