

STEPHENSON LAW COMMENTS ON THE FUTURE FUND CONVERTIBLE LOAN AGREEMENT

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If you have any questions regarding your particular circumstances, you should contact us at hello@stephenson.law or speak to your other professional advisers.

CONVERTIBLE LOAN AGREEMENT

DATED

2020

BY AND BETWEEN:

- (1) [COMPANY NAME] (company number [number]) whose registered office is at [address] (the "Company");¹
- (2) UK FF NOMINEES LIMITED (company number 12591650) whose registered office is at Level 37, 25 Canada Square, London E14 5LQ (the "Future Fund"); and
- (3) THE PERSONS whose names and addresses are set out in the table at paragraph 1 of the agreed terms below (together the "Other Lenders" and each an "Other Lender").

INTRODUCTION:

The Lenders have agreed to make available to the Company unsecured convertible loans on the terms set out in this convertible loan agreement, including the terms and conditions set out in schedule 1.

AGREED TERMS:

The terms of this Agreement are as follows. Words and expressions used in this Agreement and not defined below shall have the same meaning as is given to them in schedule 2 to this Agreement.

1. Each Lender set out below shall pay the respective Loan set out against its name in the table below to the Company's Solicitors' Bank Account and the Company hereby accepts such Loans and shall owe and promise to pay to each such Lender or its successors or assignees the principal amount of each such Loan, together with any Redemption Premium and/or any accrued but unpaid Interest as the case may be, in accordance with the terms of this Agreement:

Lender	Address and email address	Total Amount of Loan (£)
The Future Fund	Level 37, 25 Canada Square, London E14 5LQ futurefundsupport@british- business-bank.co.uk	█
█	█	█
█	█	█
Total		

SL COMMENT: Confirms the amount of each Loan being made by the Lenders on the date of the Agreement and the Company's obligation to repay each Loan together with the Redemption Premium and any interest which has not been paid.

2. Unconditional release of its Loan to the Company's Solicitors' Bank Account shall be a good and valid discharge of the obligation of a Lender to pay such amount (as set out in paragraph 1 above) to the Company and such Lender shall not be concerned to see the application of the monies so paid.

SL COMMENT: Once a Lender has transferred the amount of its Loan to the Company' Solicitors' Bank Account, they are not responsible for making sure that those monies make their way to the Company.

3. No Lender is obliged to make its Loan unless the other Loans are made simultaneously.

SL COMMENT: All Loans listed in paragraph 1 above should be made at the same time.

4. During the period commencing on the date of this Agreement and ending 90 days after the date of this Agreement (the "**Headroom Period**"), the Company may (at the discretion of the Board) receive up to an aggregate of the Headroom Amount in additional unsecured convertible loans of the Company from additional lenders, as reasonably determined by the Board on the same terms as set out in this Agreement, subject to the execution by the Company and each such additional lender of a Subscription Deed within the Headroom Period, upon which each such additional lender will become an Other Lender for the purposes of this Agreement. The Company shall notify the Lenders within 5 Business Days of the expiry of the Headroom Period of the aggregate amount of such additional unsecured convertible loans received by the Company, the identity of the additional lenders and the amounts of their respective Loans.

SL COMMENT: Within 90 days of the date of the Agreement, the Company's board of directors may accept further loans from eligible investors up to the maximum amount stated in paragraph 10 below, as long as those investors sign the Subscription Deed in Schedule 3. After the 90-day Headroom Period has ended, the Company must notify the Lenders of the total extra amount raised, the identity of the lenders and their individual loan amounts. It is unclear whether the Future Fund will match up to the Headroom Amount in addition to the amount of its Loan on the date of the Agreement (which would make sense).

5. The "**Company's Solicitors' Bank Account**" shall mean the client account of [*insert name of Company's Solicitors*] (the "**Company's Solicitors**") with the following details:

Account Name	[•]
Bank	[•]
Account Number	[•]
Sort Code	[•]
Reference	<<Company Name>>

SL COMMENT: Regulated solicitors' firms are required to have a separate client account for holding money which does not belong to those firms. This is where the account details for the firm handling the money should be specified.

6. **"Discount"** shall mean [] per cent. *(if no number is included, or a number lower than 20 per cent. is included, then the Discount shall be 20 per cent.)*

SL COMMENT: The amount of the discount should be specified here. The default is 20%, which is the minimum.

7. **"Interest Rate"** shall mean [] per cent per annum, simple interest *(if no number is included, or a number lower than 8 per cent. is included, then the Interest Rate shall be 8 per cent.)*.

SL COMMENT: The interest rate should be specified here. The default is 8%, which is the minimum.

8. **"Maturity Date"** means the date falling 36 months after the date of this Agreement.

SL COMMENT: This is the date on which the Loans must be converted or repaid, if a Conversion Event has not happened beforehand.

9. **"Valuation Cap"** shall mean [] *(if no number is included, then no Valuation Cap shall apply)*.

SL COMMENT: A valuation cap establishes the maximum price at which the Loans would convert into shares, to protect Lenders against the Company achieving a high valuation and them not being rewarded for their risk by receiving shares which represent a heavily diluted position. A Valuation Cap is not required by Future Fund, though the Other Investors may request one.

10. **"Headroom Amount"** shall mean [] *(if no number is included, then the Headroom Amount shall be zero)*.

SL COMMENT: This is the maximum amount that can be raised under this Agreement within the Headroom Period of 90 days following the date of this Agreement.

SIGNATURE BLOCKS:

This Agreement has been executed on the date shown on the first page¹.

Signed:

For and on behalf of: **[COMPANY NAME]**

Signed: _____

For and on behalf of: **UK FF NOMINEES LIMITED**

¹ **NOTE:** Company and other lender names to be inserted into the respective signature blocks.

Signed:

For and on behalf of: **[OTHER LENDER NAME]**

Signed:

For and on behalf of: **[OTHER LENDER NAME]**

SCHEDULE 1
TERMS AND CONDITIONS

1. **CONDITION.** The Loans shall be subject only to the passing of all directors' and shareholders' resolutions of the Company to provide the requisite authority to receive the Loans and satisfy any related conversion under the terms of this Agreement (including the waiver of any pre-emption rights howsoever expressed) and receipt by the Company of any written approval or waiver under any existing agreement that the Company is a party to, including pursuant to any existing debt financing arrangements required by the Company to avoid such receipt and conversion being a breach of such agreement.

SL COMMENT: The Company's board of directors should approve the terms of the Loans (which should be recorded in board minutes), pass the necessary resolutions of its shareholders (notably giving the directors authority to allot shares on conversion of the Loan and disapply pre-emption rights) and obtain any approvals or waivers under existing documents (for example, loan facility documents or other debt or equity instruments).

2. **SECURITY.** The obligations of the Company under this Agreement: (a) shall be unsecured; (b) shall rank pari passu within this Agreement and with all other unsecured indebtedness or obligations of the Company; and (c) shall be subordinated to any existing secured debt of the Company.

SL COMMENT: The Loans are unsecured, will rank equally alongside any other unsecured loans and will not rank above any existing secured debts of the Company.

3. **USE OF PROCEEDS.** The Loans shall not be used by the Company to: (a) repay any borrowings from a shareholder or a shareholder related party (other than the repayment of any borrowings pursuant to any bank or venture debt facilities); (b) pay any dividends or other distributions; (c) for a period of twelve months from the date of this Agreement, make any bonus or other discretionary payment to any employee, consultant or director of the Company other than as contracted prior to the date hereof and as paid by the Company in the ordinary course of business; or (d) pay any advisory or placement fees or bonuses to any corporate finance entity or investment bank or similar service provider on monies advanced by the Future Fund.

SL COMMENT: The Loans may only be used for general working capital purposes and for the purposes of growing the Company's business. The Loans cannot be used for any of the things listed in this clause. Typically, legal and professional fees would be netted off any amounts advanced to the Company as part of a fundraising; however they can't be netted off against any monies advanced by the Future Fund (the Company needs to make sure this is clear in the terms with its professional advisers).

4. **INTEREST.**

- a. Subject to Section 4(c), interest will only be payable in respect of each Loan at the Interest Rate: (i) on an Event of Default; or (ii) on a Conversion Event ("**Interest**").

SL COMMENT: Interest will accumulate, but will not need to be paid unless there is an Event of Default (which includes the Company materially breaching its obligations and failing to put things right in the reasonable opinion of Lenders representing more than 50% of the Loans within 20 Business Days of being notified of it) or there is a Conversion Event.

- b. Interest, if payable, will accrue from day to day at the Interest Rate and will be calculated on the basis of a 365-day year and the actual number of days elapsed from the date of this Agreement to the Redemption Date in the case of an Event of Default or the Conversion Date (as the case may be).

SL COMMENT: Simple annual interest applies for the period between the date of the Agreement when the Loans are made and the date on which the Loans are repaid or converted.

- c. The payment of any Interest shall be satisfied by the Company: (i) in respect of an Event of Default, by way of a payment of such Interest in cash to each Lender; and (ii) in respect of a Conversion Event, at the discretion of the Board, by way of: (A) a payment of such Interest in cash by the Company, in whole or in part, to any relevant Lender on the relevant Conversion Date; and/or (B) to the extent any such Interest has not been paid in cash under part (A) above, conversion of such Interest into shares in the capital of the Company pursuant to Section 5.

SL COMMENT: If there is an Event of Default, Interest must be paid in cash. If there is a Conversion Event, the Company's board of directors can decide to either pay some or all of the Interest to the Lenders in cash or convert the Interest into shares together with the principal amount of the Loan.

- d. The Company shall make all payments to be made by it under this Agreement without any Tax Deduction, unless a Tax Deduction is required by law.

SL COMMENT: Any payments due to be made by the Company should be made without any deductions unless required by law.

5. CONVERSION.

- a. To the extent it remains outstanding and subject to Sections 6 and 7, each Loan and any accrued but unpaid Interest (to the extent such Interest is not otherwise paid in cash pursuant to Section 4) will convert into shares in the capital of the Company on the earliest of the following (each a "**Conversion Date**"):

SL COMMENT: This introduces the following clauses which explain when the Loan and unpaid Interest will convert into shares, such date being the Conversion Date.

- (i) Qualified Financing: automatically, on a Qualified Financing, into the most senior class of shares with identical rights and preferences as attached to, and with the same obligations as, the securities issued to the investor(s) in the Qualified Financing (including any warrants, options, bonus shares or other economic rights made available to investor(s) in such Qualified Financing) at the Conversion Price;

SL COMMENT: A Qualified Financing occurs where the Company completes an equity fundraising round after the date of the Agreement of an amount at least equal to the amount of the Loans received under it (excluding the amount of the Loans, shares issued on conversion of the Loans or the issue of shares under a share option scheme or other option grant). This clause provides for automatic conversion in such circumstances into the most favourable class of share that the new investors would be issued with. The price at which the Loan converts will be the lowest price paid by the investors for the most favourable class of share issued to them, less the Discount (of at least 20%).

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- (ii) Non-Qualified Financing: at the election of the Lender Majority (such election to be received by the Company in writing no later than 10 Business Days' prior to the Non-Qualified Financing), on a Non-Qualified Financing (provided that it shall be at the election of the Relevant Majority on a Non-Qualified Financing in which the Company raises newly committed capital equal to or less than 25% of the aggregate of the principal amount of the Loans then outstanding), into the most senior class of shares with identical rights and preferences as attached to, and with the same obligations as, the securities issued to the investor(s) in the Non-Qualified Financing (including any warrants, options, bonus shares or other economic rights made available to investor(s) in such Non-Qualified Financing) at the Conversion Price;

SL COMMENT: A Qualified Financing occurs where the Company completes an equity fundraising round after the date of the Agreement of an amount at least equal to the amount of the Loans received under it (but excluding the amount of the Loans, shares issued on conversion of the Loans or the issue of shares under a share option scheme or other option grant). This clause provides for **automatic conversion** in such circumstances into the most favourable class of share that the new investors would be issued with. The price at which the Loan converts will be the lowest price paid by the investors for the most favourable class of share issued to them, less the Discount (of at least 20%).

- (iii) Exit: automatically, in the event that (A) a Lender would receive a greater amount as cash consideration on an Exit for the sale of the shares that are issued to it on conversion of its Loan than it would otherwise receive had it been repaid its Loan with a Redemption Premium pursuant to Section 6(c); or (B) the Lenders would receive any non-cash consideration for the sale of such shares (other than where the Lender Majority (in respect of all Loans other than the Future Fund's Loan) or the Future Fund (in respect of its Loan) has elected, where the Lenders would receive any non-cash consideration, to receive repayment of the Loan and the Redemption Premium in accordance with Sections 6(d) and 6(e)), immediately prior to an Exit, into the most senior class of shares as will be in issue at the date of completion of such Exit at the Conversion Price; or

SL COMMENT: An Exit includes the sale of a controlling interest over the Company's shares, the sale of all or a substantial part of its assets or a listing of the Company's on a recognised stock exchange. This clause is quite confusing in the way it has been written, but appears to provide for **automatic conversion** only where:

- (a) the amount of any cash payment that the Lenders would get if they had converted the Loans into shares would be more than 2x the amount of the Loan; or
- (b) the value of any non-cash amounts that the Lenders would get if they had converted the Loans into shares would be more than 2x the amount of the Loan (unless, instead of seeking conversion, the Lender Majority in respect of the Loans from Other Lenders, or Future Fund, in respect of the Loan from the Future Fund, decided to request repayment instead of conversion).

If the above does not apply, then an Exit would not automatically trigger conversion and the Lenders would either request repayment under Sections 6(d) or (e) or allow the Loan to continue until the Maturity Date.

- (iv) Maturity: automatically, on the Maturity Date, into the most senior class of shares as are in issue at the Maturity Date at the Conversion Price.

SL COMMENT: This clause provides that the Loan will **automatically** convert into the most favourable class of share in issue on the date which is 36 months from the date of the Agreement. The price at which the Loan converts would be the lowest price per share paid on the last equity fundraising either from a funding round that completed between 20 April 2020 and the Maturity Date (where the amount raised is at least 25% of the total capital amount of the Loan outstanding, less then Discount of at least 20%) or, if no such funding round has occurred, the last funding round before 20 April 2020.

- b. If and when a Conversion Event is proposed, other than in respect of conversion on the Maturity Date, the Company shall give each Lender not less than 20 Business Days prior written notice of the proposed Conversion Event specifying (to the best of its knowledge) the terms and prospective date of the Conversion Event, provided that if such notice has been given and it subsequently becomes clear to the Company that such Conversion Event will not after all take effect, the Company shall give each Lender written notice to that effect and any election of the Lender Majority or Future Fund (as relevant) in respect of a Non-Qualified Financing or Exit shall be deemed to have been revoked, without prejudice to the Company giving each Lender further written notice in the event of any subsequent proposed Conversion Event pursuant to this Section 5(b).

SL COMMENT: The Company must give the Lenders at least 20 Business Days' notice of any Conversion Event, summarising the key terms of such event. If for any reason the Conversion Event doesn't go ahead, the Company must notify the Investors and if the a majority by loan value of the Lenders or Future Fund had opted to convert their Loans to shares on a Non-qualified Financing or Exit, that notice will be treated as withdrawn by them.

- c. If and when prior written notice of a proposed Conversion Event has been given pursuant to Section 5(b) above, the Future Fund shall be entitled to request a meeting with the Company in which the Future Fund and the Company shall discuss in good faith the suite of shareholder governance rights that may be afforded to the Future Fund as a shareholder in the Company, commensurate with the proportion of the share capital that the Future Fund shall hold from the Conversion Event and an appropriate mechanism for the expeditious exercise of those rights by the Future Fund. For the avoidance of doubt, the Company shall be under no obligation to agree to provide any specific shareholder rights in those good faith discussions.

SL COMMENT: If the Future Fund is notified of a potential Conversion Event, the Future Fund can request a meeting to discuss the rights which they should be given as a shareholder of the Company, relative to the size of their shareholding and the rights that other shareholders have been given. The Company isn't bound to agree any rights, but it must negotiate with the Future Fund in good faith.

- d. Where an Exit occurs within six months of a Non-Qualified Financing pursuant to which the Lenders have elected to convert the Loans into the most senior class of shares in the Company, each Lender shall be entitled to the consideration (in cash or otherwise) on such Exit which would be the greater of: (i) the amount to be received for the sale of the shares that are issued to it on conversion of its Loan pursuant to Section 5(a)(ii) above; and (ii) the amount that it would otherwise have received had its Loan been repaid with a Redemption Premium on the relevant Conversion Date pursuant to Section 5(a)(ii).

SL COMMENT: If a Non-Qualified Financing has occurred (i.e. where the Company has raised less than or equal to 25% of the capital amount of the Loan outstanding) where the Lenders have decided to convert their Loans into shares, then an Exit occurs within 6 months of the date of such conversion, the Lenders will be entitled to receive a payment equal to the amount of cash they would receive from the sale of their shares or the amount they would have received if 2x the amount of the Loan was repaid (whichever would give them the most cash).

- e. On the Conversion Date arising from a Non-Qualified Financing the Company shall be deemed to have warranted to the Future Fund that the Company is not in breach of any of the provisions contained in Section 8(e) and that it is not aware of any breach of any such provision by the Other Lenders.

SL COMMENT: If the Lenders decided to convert their Loans into shares following a Non-Qualified Financing (i.e. where the Company has raised less than or equal to 25% of the capital amount of the Loan outstanding), the Company will be treated as having made a promise that the Company is not in breach of any covenants listed in Section 8(e).

- f. Shares arising on conversion of the Loans and/or any accrued but unpaid Interest pursuant to Section 5(a) or otherwise pursuant to this Agreement shall be issued and allotted by the Company on the Conversion Date and the certificates for such shares shall be despatched to the persons entitled to them at their own risk. Each share arising on conversion shall be issued for a subscription amount equal to the Conversion Price, which amount shall be satisfied by the release and discharge of the same amount of the Loans and/or accrued but unpaid interest or other amounts payable pursuant to this Agreement. Such shares issued shall be credited as fully paid and rank pari passu with the most senior class of shares as will be in issue with effect from the Conversion Date and shall carry the right to receive all dividends and other distributions declared after the Conversion Date, provided that the issue price or starting price (as the case may be) for any liquidation preference and any anti-dilution rights (if applicable) attaching to the shares that arise on conversion of such Loan will be calculated by reference to the relevant Conversion Price, rather than the price paid by the investor(s) on any Qualified Financing or Non-Qualified Financing. The entitlement of each relevant Lender to a fraction of a share shall be rounded to the nearest whole number of shares which result from the conversion.

SL COMMENT: This clause deals with the mechanics of converting any amount of the Loans into shares. Share certificates should be issued. The price at which the shares will be recorded as being issued will be the Conversion Price (i.e. the price which applies depending on the circumstances of conversion). The shares will rank equally alongside the most favourable class of share in issue and will be entitled to dividends and other distributions made to shareholders. If the Company's articles of association or shareholders' agreement contains any 'liquidation preference' (where a class of shareholders gets an amount of money first before other classes of shareholders) or anti-dilution rights (where a class of shareholders are entitled to receive a bonus issue of shares to protect them from dilution), the "starting price" for calculating the amounts due to the Lenders would be the Conversion Price established under this agreement.

6. **REPAYMENT.** Each Loan shall be repaid by the Company as follows (each a "**Redemption Date**"):

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- a. in respect of all Loans other than the Future Fund's Loan, at the election of a Lender Majority (such irrevocable election to be received by the Company and the Future Fund in writing no later than 30 Business Days prior to the Maturity Date) and instead of conversion of such Loans under Section 5(a)(iv), on the Maturity Date together with the Redemption Premium;

SL COMMENT: Section 5(a)(iv) provides for automatic conversion in the event that the Maturity Date is reached. However, this clause entitles those Lenders representing a majority of the outstanding amount of the Loan (excluding Future Fund's Loan), to give 30 Business Days' notice prior to the Maturity Date that they want to be repaid the outstanding amount of the Loan and a premium equal to 1x the total amount of the Loan. It's unclear what happens to any Interest which has not been paid, as Section 4(a) doesn't address this.

- b. in respect of the Future Fund's Loan, at the election of the Future Fund (such election to be received by the Company in writing no later than 10 Business Days prior to the Maturity Date) and instead of conversion of such Loan under Section 5(a)(iv), on the Maturity Date together with the Redemption Premium;

SL COMMENT: Section 5(a)(iv) provides for automatic conversion in the event that the Maturity Date is reached. However, this clause entitles the Future Fund to give 10 Business Days' notice prior to the Maturity Date that it wants to be repaid the outstanding amount of the Loan and a premium equal to 1x the total amount of the Loan. It's unclear what happens to any Interest which has not been paid, as Section 4(a) doesn't address this.

- c. automatically, in the event that a Lender would receive a greater amount under this Section 6(c) in respect of its Loan than it would otherwise receive as cash consideration on an Exit in respect of the shares that would have been issued to it on conversion of its Loan, on an Exit together with the Redemption Premium;

SL COMMENT: If an Exit occurs and the Lenders would get less than 2x the amount of the Loan from the sale of any shares that would be issued to them on conversion in return for cash, they would **automatically** be entitled to the outstanding amount of the Loan and a premium equal to 1x the total amount of the Loan. It's unclear what happens to any Interest which has not been paid, as Section 4(a) doesn't address this.

- d. in the event that the Lenders would receive any non-cash consideration on an Exit in respect of the shares that would have been issued to them on conversion of the Loans, instead of conversion under Section 5(a)(iii), in respect of all Loans other than the Future Fund's Loan, at the election of a Lender Majority (such irrevocable election to be received by the Company and the Future Fund in writing no later than 15 Business Days prior to such Exit), on an Exit together with the Redemption Premium;

SL COMMENT: If an Exit occurs and the Lenders would get less than 2x the amount of the Loan from the sale of any shares that would be issued to them on conversion for anything other than cash, those Lenders representing a majority of the outstanding amount of the Loan (excluding Future Fund's Loan) may give not less than 15 Business Days' notice prior to an Exit that they want to be repaid the outstanding amount of the Loan and a premium equal to 1x the total amount of the Loan.

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- e. in the event that the Lenders would receive any non-cash consideration on an Exit in respect of the shares that would have been issued to them on conversion of the Loans, instead of conversion under Section 5(a)(iii), in respect of the Future Fund's Loan, at the election of the Future Fund (such election to be received by the Company in writing no later than 5 Business Days' prior to the Exit) on an Exit together with the Redemption Premium; or

SL COMMENT: If an Exit occurs and the Lenders would get less than 2x the amount of the Loan from the sale of any shares that would be issued to them on conversion for anything other than cash, the Future Fund may give not less than 5 Business Days' notice prior to an Exit that they want to be repaid the outstanding amount of the Loan and a premium equal to 1x the total amount of the Loan.

- f. on an Event of Default together with any accrued but unpaid Interest and the Redemption Premium.

SL COMMENT: If the Company commits an Event of Default the Lenders will be entitled to be repaid the outstanding amount of the Loan and a premium equal to 1x the total amount of the Loan plus any unpaid Interest (the reference to Interest here suggests that Interest would not be payable under Sections 6(a) to 5(e) above, though this is unclear).

Save as set out above, no Loan shall be redeemed or prepaid, in whole or in part, without the prior written consent of each Lender.

SL COMMENT: This suggests that there is scope for the Company to agree early repayment of the Loan in whole or in part with consent. For companies that would find it difficult to repay the Loan plus the Redemption Premium, the Lenders may be willing to consider early repayment; though there would be not upside for them in doing so.

7. EVENT OF DEFAULT.

- a. The Loans and any accrued but unpaid Interest shall be repaid together with the Redemption Premium by the Company on demand by any Lender (in respect of their own Loan) upon occurrence of an Event of Default, provided that only the Future Fund shall be entitled to demand repayment and the Redemption Premium upon occurrence of an Event of Default as a result of a breach by the Company of the covenants contained in Sections 8(a), 8(c), 8(e), 8(g), or 8(i).

SL COMMENT: This clause requires the outstanding amount of the Loan and a premium equal to 1x the total amount of the Loan plus any unpaid Interest to be repaid immediately on request by any Lender (which suggests that a request by a single Lender would trigger payment to all Lenders) if an Event of Default occurs. If the Company breaches the sections listed only Future Fund may demand repayment (these are protections aimed at Future Fund).

- b. The Company shall give written notice to the Lenders immediately upon the Company becoming aware of the occurrence of an Event of Default, containing reasonable details of that Event of Default, and shall provide such other information as is reasonably requested in writing by each Lender in respect of such Event of Default.

SL COMMENT: If an Event of Default occurs, the Company must notify the Lender of it immediately and provide the Lenders with whatever information they reasonably request about it.

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- 8. COVENANTS.** The Company hereby covenants in favour of the Lenders and (where they are expressly stated as having obligations) the Lenders covenant in favour of the Company and each other as follows:

SL COMMENT: Covenants are simply contractual promises to do, or refrain from doing, something . These covenants are given in favour of all Lenders (although, as noted against Section 7(a) above, some of these covenants are aimed towards Future Fund).

- a. for so long as its Loan is outstanding or it holds shares in the capital of the Company, the Company shall: (i) provide the Future Fund information required pursuant to, and in the format set out in, schedule 4 in respect of each quarter from the date of this Agreement within 20 Business Days of the end of such financial quarter; and (ii) to the extent requested in writing by the Future Fund, promptly provide the Future Fund with the same information that is provided to the Company's other lead and/or major investors from time to time under the terms of any shareholders' agreement in place between, amongst others, the Company and such investors, including any accounts, budgets, forecasts, reports, capitalisation tables and/or any right to reasonably request other information, in each case for the purposes of monitoring its investment in the Company, provided that the Board may unanimously decide, acting reasonably, to withhold any such information requested by the Future Fund pursuant to (ii) above for reasons of commercial sensitivity and/or legal privilege, and on such board decision, shall provide prompt written notice to the Future Fund that it is withholding such information;

SL COMMENT: As long as Future Fund has not been repaid its Loan or holds any shares, the Company must provide it with quarterly reports in the form set out in Schedule 1 and any other information requested by Future Fund which the Company's other lead or significant investors are entitled to receive. The Company can withhold or redact information for good reasons such as to protect its commercial or legal interests; but Future Fund would need to be told about this.

- b. for so long as the Loans are outstanding, the Company shall not permit the creation of any indebtedness of the Group that is senior to the obligations of the Company under this Agreement without the prior written consent of the Relevant Majority other than in respect of any bona fide senior indebtedness on arms' length terms from any person that is not an existing shareholder (or any connected person of an existing shareholder and 'connected person' shall have the meaning attributed to it at the date of this Agreement by sections 1122 and 1123 of the Corporation Tax Act 2010) or a Lender or pursuant to any bona fide venture debt facilities;

SL COMMENT: Apart from obtaining any loans or other debt facilities from banks or any other persons that are not connected with an existing shareholder, the Company must not create any debt which sits above the debt created under this Agreement.

- c. in the event that it is determined by the Future Fund (in its absolute discretion) that it would be prejudicial to the reputation of the Future Fund and/or the UK Government to continue holding its Loan and/or any shares in the capital of the Company, the Future Fund shall have the option to require the Company to repay its Loan or purchase all of the shares in the capital of the Company held by the Future Fund, in each case for an aggregate price of £1.00 at any time (the “**Put Option**”), provided that: (i) the Put Option shall be exercisable by irrevocable notice in writing from the Future Fund to the Company (the “**Put Option Notice**”); (ii) the terms of the completion of the Put Option have been authorised by a resolution of the Company; and (iii) completion of the Put Option shall take place as soon as reasonably practicable and in any event no later than 20 Business Days following the Company’s receipt of the Put Option Notice; and (iv) each of the Lenders and the Company shall execute, and the Company shall procure so far as it lies within its power to do so the execution of, all such documents and deeds and do all such acts and things as may be reasonably required from time to time to implement the Put Option and repay the Future Fund’s Loan or transfer the legal and beneficial ownership of the relevant shares being sold to the Company under this Section 8(c), including waiving any pre-emption rights relating to such transfer;

SL COMMENT: This clause gives Future Fund a ‘parachute’ if the Company continuing to hold the Loan or Future Fund continuing to hold any shares, would be damaging to the reputation of the Future Fund or UK Government. The ‘parachute’ is an option exercisable by the Future Fund for £1 to require the Company to repay the Loan (without reference to the Redemption Premium or unpaid Interest) or purchase all of Future Fund’s shares.

- d. in the event that: (i) a Loan converts into shares on a Qualified Financing or Non-Qualified Financing pursuant to Section 5(a)(i) or (ii); and (ii) within six months of the date of such conversion, the Company proposes to complete an equity financing round (excluding: (A) any Loans made pursuant to this Agreement; (B) any subscription for shares made on the exercise of any option granted to an employee, officer or consultant of the Company by way of incentive; and (C) any issue of shares on conversion of a Loan under this Agreement) in which shares are issued to investor(s) that rank senior to the shares issued to the Lenders on the Qualified Financing or Non-Qualified Financing (as the case may be), the Company shall provide at least 10 Business Days’ written notice of such event to the Lenders (such notice to include all information concerning the equity financing round that they might reasonably expect to receive to enable them to make an informed assessment as to whether to exercise its following rights in relation thereto) and each Lender shall then have the option to convert the shares that were issued to it on the Qualified Financing or Non-Qualified Financing under Section 5 (as the case may be), into an equal number of shares of the most senior class of shares that were issued on the equity financing round under part (ii) above, with identical rights and preferences and with the same obligations as the securities issued to the investor(s) under that equity financing round, provided that if a Lender fails to respond within the time period given in such notice, it shall be deemed to have elected to so convert such shares. The Company shall not proceed with such an equity financing round unless the Company is capable and authorised to give effect to any such conversion;

SL COMMENT: If the Lenders have converted the Loans into shares following a Qualified Financing or Non-Qualified Financing and another funding round occurs within 6 months of such conversion, where the investors in that round would be issued with a more favourable class of shares than those held by the Lenders, the Company must give the Lenders 10 Business Days’ notice of this and the Lenders will have the option to convert their shares into the more favourable class of share.

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- e. for so long as the Future Fund's Loan is outstanding or it holds shares in the capital of the Company, the Company and the Other Lenders shall at all times:

SL COMMENT: The following covenants apply to both the Company and the Lenders other than Future Fund, for as long as the Future Fund's loan has not been repaid or it holds shares in the Company.

- (i) act in good faith towards the Future Fund with respect to each provision of this Agreement; and

SL COMMENT: The Company and Other Lenders must act in 'good faith' which means not doing, or refraining from doing, something with a view to acting against Future Fund's interests.

- (ii) do all things reasonably within their power (including, in respect of the Other Lenders, exercising or refraining from exercising (as appropriate) their voting rights (if relevant) at shareholder meetings and, through any nominated director, at board meetings and using any and all powers vested in them from time to time as shareholders) which are necessary to give effect to the spirit and intent of this Agreement, including:

SL COMMENT: The Company and Other Lenders must do whatever is necessary to give effect to the terms of this Agreement, including those things listed in sub-sections (A) to (E) below.

- (A) not taking any steps or actions which impair or adversely affect or derogate from, in any manner whatsoever, the enforceability in any respect of this Agreement;
- (B) not agreeing or entering into any side agreement or arrangement with each other or any other investors participating in any convertible loan, advance subscription or similar arrangement which would adversely affect the economic interests of the Future Fund pursuant to this Agreement;
- (C) prior to conversion or repayment of the Future Fund's Loan, not artificially inflating the price per share paid on any equity financing round following the date of this Agreement in a manner which is adverse to the Future Fund;
- (D) procuring that the Future Fund is not treated in a manner which is disproportionate to the manner in which other Lenders and other shareholders are treated (having regard to their respective class and holdings of Loans and/or shares in the capital of the Company); and
- (E) procuring that any covenants in this Agreement relating to the shares in the capital of the Company are given enforceable effect after termination of this Agreement, whether by way of incorporation into a shareholders' agreement relating to the Company or otherwise;

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- f. upon conversion of a Loan: (i) each Lender shall be supplied with such documentation as may be reasonably required to satisfy it that the Company has authority to allot the relevant shares being issued to that Lender; (ii) each Lender shall be provided with a copy of all of the executed and dated documents in connection with the subject matter of this Agreement, including this Agreement and any executed Subscription Deeds from time to time; (iii) the issue price or starting price (as the case may be) for any liquidation preference and any anti-dilution rights (if applicable) attaching to the shares that arise on conversion of such Loan will be calculated by reference to the relevant Conversion Price, rather than the price paid by the investor(s) on any Qualified Financing or Non-Qualified Financing;

SL COMMENT: The Company must provide the Lenders with evidence that the directors have the right to issue shares to them upon conversion and be provided with copies of all other signed and dated documents relating to this Agreement.

- g. following conversion of the Future Fund's Loan, the Future Fund shall at any time be entitled to transfer any shares in the capital of the Company that are held by the Future Fund, without restriction as to price or otherwise and free of pre-emption rights howsoever expressed, in connection with any sale to an Institutional Investor that is acquiring the whole or part (being not fewer than 10 companies, including the Company) of the Future Fund's interest in a portfolio of investments which comprise or result from the conversion of unsecured convertible loans substantially on the same terms as this Agreement, provided always that such transaction(s) is bona fide in all respects and in such event the Company and the Lenders shall procure such modification to the Company's articles of association as shall be necessary in order to give full legal and practical effect to this Section 8(g);

SL COMMENT: The Future Fund is entitled to transfer any shares held by it following conversion to any Institutional Investor (e.g. private equity fund) as part of the purchase of a portfolio of at least 10 investments. The Company and the Lenders agree to amend the Company's articles of association to allow for this.

- h. for so long as a Lender's Loan is outstanding (and without prejudice to the provisions of Section 8(i)), it shall at any time be entitled to transfer its Loan as if the Loan were subject to the same transfer restrictions and permitted transfer provisions as set out in the articles of association and shareholders' agreement of the Company from time to time as the most senior class of shares in the Company would be subject to;

SL COMMENT: If any Lender would be entitled to transfer shares obtained by them on version without transfer restrictions under the Company's articles of association or shareholders' agreement, this principle will also apply to their Loans.

- i. for so long as the Future Fund's Loan is outstanding or it holds shares in the capital of the Company, the Future Fund shall at any time be entitled to transfer its Loan or any shares in the capital of the Company that are held by the Future Fund, without restriction as to price or otherwise and free of pre-emption rights howsoever expressed, to any Associated Government Entities;

SL COMMENT: The Future Fund may transfer its Loan or shares in the Company to any Associated Government Entities without restriction.

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- j. the Company shall comply with all applicable laws and regulations including all applicable laws and regulations relating to anti-bribery, anti-corruption or sanctions and shall carry out a review of the Company's operations to identify bribery and corruption risks and introduce, maintain and implement a suitable anti-bribery and corruption policy which applies to the Company;

SL COMMENT: The Company must comply with its legal and regulatory obligations.

- k. the Company shall at all times perform and comply in all material respects with its obligations set out in this Agreement (including procuring any third party and/or regulatory approvals required in order to issue the shares on conversion to the Lenders or any particular Lender);

SL COMMENT: The Company must comply with the terms of this Agreement and obtain any approvals necessary to issue shares on conversion.

- l. each of the Company and the Lenders shall procure (including through exercise of voting rights) that sufficient authorities and/or waivers are maintained at all times to permit issue and allotment of all shares that may be required to be issued and allotted upon conversion of any or all of the Loans, free from any pre-emption rights;

SL COMMENT: The Company and each Lender must do whatever is necessary to issue shares on conversion, without any existing shareholders or lenders having the right to participate at the same time.

- m. no application has been or is intended to be made to any listing authority, stock exchange or other market for the Loans to be listed or otherwise traded;

SL COMMENT: The Company has not taken steps to list its shares on any stock exchange or other market and doesn't plan on doing so.

- n. in the event that, prior to the repayment or conversion of the Loans, the Company issues any other unsecured loan notes or advance subscriptions to any other lender or subscriber (as the case may be) on terms relating to the subject matter of Sections 2, 4, 5, 6 and/or 7 that are more favourable than those contained herein: (i) the Company shall promptly provide written notice of the same to the Lenders; (ii) the Company shall provide such information and documents as are reasonably required by the Lenders to consider the preferential terms of such other unsecured convertible loan notes; and (iii) any such favourable terms shall be automatically deemed to apply to the outstanding Loans and this Agreement shall be amended so that each Lender also benefits from such improved terms (and the parties shall procure the same); and

SL COMMENT: If the Company raises any other money under convertible loans, advance subscriptions or similar type arrangements on terms that are more favourable than those in this Agreement, it must apply those terms to the Lenders under this Agreement.

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- o. each of the Company and the Lenders agree to procure, to the extent that each is able, that: (i) the Loans shall not be considered as a financing round (whether a qualified financing round or non-qualified financing round, however defined) for the purposes of any Existing Convertible Securities; (ii) this Agreement shall not trigger any most favoured nation clause or similar under any Existing Convertible Securities held by Other Lenders; (iii) the value of the Loans then outstanding shall not be included in any valuation cap in connection with determining the price per share applicable on conversion of any Existing Convertible Securities; (iv) the Conversion Price applicable to the Loans under Section 5 shall not be used as the referral price for the purposes of determining the lowest price per share applicable on conversion of any Existing Convertible Securities; and (v) any relevant documents pertaining to such Existing Convertible Securities shall be modified to the extent necessary to give effect to the provisions of this Section 8(o).

SL COMMENT: The Company and the Lenders must do whatever is necessary to: ensure that entering into this Agreement doesn't trigger conversion of any existing convertible loans, advance subscriptions or similar arrangement or trigger any "most favoured nation" clauses under those arrangements which give parties to those arrangements enhanced terms; the value of the Loans will not be included in any valuation cap under those existing arrangements; the Conversion Price will be the base price for any liquidation preferences or anti-dilution terms.

9. **WARRANTIES.** The Company hereby warrants to the Lenders that, as at the date of this Agreement:

SL COMMENT: Warranties are another form of promise which, if proved untrue or misleading, would entitle the party given them to claim damages as a result of breach of warranty.

- a. the Company satisfies in full the Eligibility Criteria;

SL COMMENT: The eligibility criteria are published here: <https://www.uk-futurefund.co.uk/s/>

- b. the Company is a company duly formed, validly existing and in good standing under the laws of England and Wales, Scotland or Northern Ireland and the Company has full power and authority to enter into and perform its obligations under this Agreement;

SL COMMENT: The Company must be a UK company and not be subject to any restrictions that would prevent it from entering into this Agreement.

- c. the execution and performance of this Agreement by the Company has been duly authorised by all necessary actions and no other consents, authorisations or approvals of any kind or of any governmental authority or other third party are required in connection with the execution or performance of this Agreement by the Company and this Agreement has been duly executed and delivered by the Company and is valid and binding upon the Company and enforceable in accordance with its terms;

SL COMMENT: All authorities and consents required to enter into his Agreement have been obtained by the Company. The Agreement will be legally binding on the Company.

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- d. the consummation of the transactions contemplated hereunder and the performance of this Agreement by the Company do not violate the provisions of the articles of association of the Company, or any applicable law, and do not result in any breach of, or constitute a default under, any agreement, indenture or other instrument to which the Company is a party or by which it is bound;

SL COMMENT: In performing the Company's obligations under this Agreement, it will not be in breach of the Company's articles of association, the terms of any agreement or any laws.

- e. the Group has conducted its business and dealt with its assets in all material respects in accordance with applicable legal and administrative requirements and there is no action, suit, proceeding or investigation commenced, pending or, to the knowledge of the Company, threatened against the Company likely to have a material adverse effect on the business of the Company; and

SL COMMENT: The Company assures the Lenders that it has complied with the law and is not subject to any legal claims, or threats of legal claims, which would significantly damage the Company's and therefore impair its ability to repay the Loans.

- f. no Event of Default is outstanding or is likely to result from the making of the Loans.

SL COMMENT: None of the events described in the definition of "Event of Default" apply at the time of entering into this Agreement nor are they likely apply by entering into this Agreement.

10. LENDER WARRANTIES.

SL COMMENT: These promises are made by the Other Lenders to the Future Fund.

- a. Each Other Lender hereby warrants to the Future Fund in respect of itself only that it is either (i) an "investment professional" within the meaning given to that term in article 19 of the FPO; (ii) capable of being classified as a "professional client" within the meaning given in the Glossary to the FCA Rules; (iii) a high net worth company, unincorporated associated or high value trust falling within article 49(2) of the FPO; (iv) a "certified sophisticated investor" or a "self-certified sophisticated investor" within the meaning given in articles 50 and 50A respectively of the FPO; (v) a "certified high net worth individual" within the meaning of article 48 of the FPO; (vi) an association of high net-worth or sophisticated investors within the meaning of article 51 of the FPO; or (vii) an equivalent professional, high net worth, institutional or sophisticated investor in accordance with applicable law and regulation in such Other Lender's home jurisdiction. Each Other Lender falling within the categories of "certified sophisticated investor", "self-certified sophisticated investor" or "certified high net worth individual" warrants in respect of itself only that it has the necessary signed statements and/or certificates as required under the FPO.

SL COMMENT: This warranty assures the Future Fund that the Company will not be in breach of its obligations under the Financial Services and Markets Act 2000 by communicating an invitation or inducement to engage in investment activity, unless it has been made to certain types of persons which fall under the exemptions in the Financial Promotions Order 2005. If any of the Other Lenders are "new" to the Company (i.e. they are not existing investors which have previously signed or provided certificates under the FPO), it would be sensible to ask those Other Lenders to sign or provide the relevant certificates for the Company's protection.

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- b. Each Other Lender hereby warrants to the Company and the Future Fund that it has the capacity and authority to enter into and perform its obligations under the Agreement and no other consents, authorisations or approvals of any kind are required in connection with the execution or performance of this Agreement by it.

SL COMMENT: This warranty assures the Future Fund that the Other Lenders have the capacity and authority to enter into this Agreement.

11. **CURRENCY.** The Loans are denominated in Pounds Sterling. Where conversion of any Loan occurs by reference to a Conversion Price which is denominated in a currency other than Pounds Sterling, the principal amount of such Loan and the Interest (where relevant) shall be converted utilising the five day average closing mid-point spot rate for conversion of Pounds Sterling to that currency as published in the London edition of the Financial Times published on the Business Day prior to the Conversion Date (or such earlier date within the previous 5 Business Days as may be agreed for convenience by the Company and a Lender Majority).

SL COMMENT: The amount of the Loans in this Agreement must be expressed in GBP. If the Loan monies are transferred from any other currency, the exchange rate formula in this clause applies.

12. **WAIVER.** The waiver, express or implied, by a Lender of any right it holds under this Agreement or any failure to perform or breach by the Company shall not constitute or be deemed a waiver of any other right under this Agreement. No failure to exercise or delay in exercising any right or remedy or under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise operate to preclude any other right or remedy. No specific remedy hereunder shall be construed as excluding remedies at law.

SL COMMENT: Just because a Lender fails or delays to exercise any rights, or waives any of its rights, this does not mean that it will be treated as doing so in the future (i.e. the rights of the Lenders will not be varied based on their conduct alone).

13. **AMENDMENT.** All and any of the provisions of this Agreement may be deleted, varied, supplemented, restated or otherwise changed in any way at any time with the prior written consent of the Company and the Relevant Majority, provided that any such change shall not, without the prior written consent of a Lender: (i) vary or remove the express contractual right of that Lender as set out in Section 8 and this Section 13 (as the case may be); (ii) impose any new obligation(s) on that Lender; or (iii) change the rights of that Lender or increase an existing obligation of that Lender in a manner which, in the reasonable opinion of the Company, is disproportionate to the manner in which it treats the other Lenders (having regard to their respective rights under this Agreement and the Loans).

SL COMMENT: The Agreement may be amended by agreement between the Company, the Future Fund and those Other Investors together representing more than 50% of the total amount from the Other Investors.

14. **CONFIDENTIALITY AND NO ANNOUNCEMENTS.** No party shall distribute or disclose or make any public announcement or issue a press release or respond to any enquiry from the press or other media concerning or relating to the amounts of the Loans and the addresses and email addresses of the Lenders as set out in paragraph 1 and the terms of paragraphs 5, 6, 7, 9 and 10 of this Agreement except:
- a. with the prior written consent of the Company and the Relevant Majority;

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- b. to the extent required to do so by law or by any regulatory or government authority of competent jurisdiction to which that party is subject, including any listing authority or stock exchange on which any shares of the disclosing party are listed or traded; or
 - c. to the extent required to do so by a court of competent jurisdiction,

provided that, in each case the recipient is subject to an obligation to keep the disclosure confidential on the same basis as is required of the disclosing party under this Agreement and such disclosing party shall procure the same, so far as it lies within its power to do so.

Notwithstanding the above, nothing in this Agreement shall prevent the Future Fund from disclosing any information whether or not relating to the Company and its affairs to Associated Government Entities or which the Future Fund, in its absolute discretion, considers that it is required to disclose in order to comply with any statutory or parliamentary requirements, whether or not existing at the date of this Agreement.

SL COMMENT: No public announcements may be made about entering into this Agreement unless required by law, court order or with the prior written consent of the Future Fund and those Other Investors together representing more than 50% of the total amount from the Other Investors. The Future Fund may disclose any information to Associated Government Entities or as necessary to comply with its obligations as Government-related entity.

- 15. COSTS.** Each party shall bear its own costs and disbursements incurred in connection with the provision, execution and enforcement of this Agreement and of matters incidental to this Agreement.

SL COMMENT: Each party must pay its own costs of entering in and enforcing this Agreement. It should be noted that the amount of the Loan raised from Future Fund cannot be used to pay advisory or other fees to any service provider; the Company will need to ensure (and confirm with its solicitors) that any fees will be deducted from the Company's cash at bank *before* entering into this Agreement or from the amount of the Loan raised from the Other Investors.

- 16. ASSIGNMENT.** No party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other parties, provided that a Lender may assign the whole or part of any of its rights in this Agreement to any person who has received a transfer of its Loan or of any shares arising from conversion of the Loan from such Lender in accordance with this Agreement or the Company's articles of association respectively and has executed a deed of adherence to this Agreement adhering to the terms of this Agreement as a Lender in a form provided by the Company.

SL COMMENT: Except as set out in this Agreement, no party can transfer or deal with its rights or obligations under this Agreement to any other person.

- 17. RIGHTS OF THIRD PARTIES.** This Agreement does not confer any rights on any person or party (other than the parties to this Agreement that have executed this Agreement or any Subscription Deed) pursuant to the Contracts (Rights of Third Parties) Act 1999.

SL COMMENT: No person, other than the parties to this Agreement and any Other Lenders which enter into a Subscription Deed during the 90 day Headroom Period, have any right to enforce its terms.

18. COUNTERPARTS; NO ORIGINALS. This Agreement may be executed in any number of counterparts (whether signed in physical, electronic or other means), each of which shall constitute an original, and all the counterparts shall together constitute one and the same agreement. The exchange of a fully executed version of this Agreement (in counterparts or otherwise) by electronic transmission in PDF format or other agreed format shall be sufficient to bind the parties to the terms and conditions of this Agreement and no exchange of originals is necessary.

SL COMMENT: Signed counterparts of this Agreement (but not just signature pages) can be exchanged by email, without originals needing to be exchanged.

19. NOTICES.

- a. Any communication and/or information to be given in connection with this Agreement shall be in writing in English and shall be delivered email to each relevant party at the email address shown in this Agreement or such other email address as the recipient may notify to the other parties for such purpose.
- b. A communication sent in accordance with this Section shall be deemed to have been received at the time of completion of transmission by the sender, except that if a communication is received between 5.30pm on a Business Day and 9.30am on the next Business Day, it shall be deemed to have been received at 9:30am on the second of such Business Days.

SL COMMENT: If any notice needs to be given under this Agreement, they must be sent by email to addresses specified in the Agreement or otherwise notified.

20. ENTIRE AGREEMENT. This Agreement and the documents referred to in it constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and supersedes and extinguishes any prior drafts, agreements, undertakings, understandings, promises, representations or conditions whether oral or written, express or implied between the parties relating to such subject matter (other than any representations or statements given in the Application by the Company and an Other Lender in respect of itself only, which shall not be extinguished pursuant to this Section 20 and on which the Future Fund has relied on in entering into this Agreement).

SL COMMENT: This Agreement is the only agreement that relates to the Loans made under it. Except for statements made by the Company or an Other Lender in the application submitted to Future Fund, no party can rely on any other statements not contained in this Agreement.

21. EQUITABLE REMEDIES. Without prejudice to any other rights or remedies that the parties may have, the parties acknowledge and agree that damages alone may not be an adequate remedy for any breach by them of this Agreement and that the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement by any party may be more appropriate remedies.

SL COMMENT: This clause is intended to reflect the parties' intention that if they have any other rights or remedies under the law, they are not excluded by the terms of this Agreement.

22. GOVERNING LAW AND JURISDICTION. This Agreement (and any dispute or claim relating to it or its subject matter (including non-contractual claims)) is governed by and is to be construed in accordance with English law. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any claim, dispute or issue (including non-contractual claims) which may arise out of or in connection with this Agreement.

SL COMMENT: If any kind of dispute arises out of this Agreement, English law will apply to its interpretation and any dispute must be brought in the courts of England and Wales.

SCHEDULE 2 DEFINITIONS

SL COMMENT: We have only commented on some of the more complex and important definitions used in this Agreement.

In this Agreement, except where a different interpretation is necessary in the context, the words and expressions set out below shall have the following meanings:

“Agreement” means this convertible loan agreement, including its schedules, and any Subscription Deed entered into following the date of this agreement;

“Application” means the application required in respect of the Future Fund Scheme containing the requisite details of the Company and the Other Lenders and the headline terms requested in respect of the Loans (as set out in paragraphs 1 and 6 to 10), as submitted by the Lead Lender;

“Associated Government Entities” means:

- a. any UK Government departments, including their executive agencies, other subsidiary bodies and other parts of UK Government;
- b. companies wholly or partly owned by UK Government departments and their subsidiaries;
- c. non-departmental public bodies, other public bodies, public corporations and their subsidiary bodies sponsored by UK Government departments; and/or
- d. any successors to any of the entities set out in (a), (b) and (c) above or any new bodies which fall within the same criteria;

“Base Date” means the 20 April 2020;

SL COMMENT: To be eligible for the Future Fund, companies must have raised a minimum of £250,000 in equity investment from private third-party investors during the period 1 April 2015 to 19 April 2020 (inclusive). This date is used in the definition of “Conversion Price” below.

“Board” means the board of directors of the Company from time to time;

“Business Day” means a day on which the English clearing banks are ordinarily open for the transaction of normal banking business in the City of London (other than a Saturday or Sunday);

“Conversion Date” has the meaning given in Section 5;

“Conversion Event” means all or any of the events listed in Section 5(a)(i) to (iv) inclusive;

“Conversion Price” means:

- a. in respect of a Qualified Financing pursuant to Section 5(a)(i), a price per share equal to the lowest price per share paid by investor(s) for such senior class of shares on the Qualified Financing after reducing such price per share by the Discount;

SL COMMENT: The price per share on a Qualified Financing will be the lowest price paid by investors for the most favourable class of share issued to them on that funding round, subject to the Discount of at least 20%. So if investors subscribed for ‘A Shares’ at £5/share, the Conversion Price would be £4/share based on a 20% discount.

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- b. in respect of a Non-Qualified Financing pursuant to Section 5(a)(ii), a price per share equal to the lowest price per share paid by investor(s) for such senior class of shares on such Non-Qualified Financing after reducing such price per share by the Discount;

SL COMMENT: The price per share on a Non-Qualified Financing will be the lowest price paid by investors for the most favourable class of share issued to them on that funding round, subject to the Discount of at least 20%. So, if investors subscribed for 'A Shares' at £5/share, the Conversion Price would be £4/share based on a 20% discount.

- c. in respect of an Exit pursuant to Section 5(a)(iii), a price per share equal to the lowest price per share paid by investor(s) for such class of shares in the then most recent bona fide equity financing in which the Company either: (i) raises newly committed capital after the Base Date and prior to the Maturity Date equal to an amount which is greater than 25% of the aggregate of the principal amount of the Loans then outstanding, after reducing such price per share by the Discount; or (ii) raised committed capital prior to the Base Date, from one or a series of related transactions involving the issue by the Company of shares to investor(s) (excluding (A) any Loans made pursuant to this Agreement; (B) any shares issued on the exercise of any option granted to an employee, officer or consultant of the Company by way of incentive; and (C) any issue of shares on conversion of a Loan under this Agreement);

SL COMMENT: The price per share on an Exit will be:

- (a) the lowest price per share paid by investors, less a Discount of at least 20%, where the Company raised any new money after 20 April 2020 (excluding the Loans and any shares issued following exercise of share options) but before the Maturity Date, but only if the amount of that investment was more than 25% of the total amount of the Loan balance outstanding or
- (b) if the Company has not raised any new money after 20 April 2020, the lowest price per share established on the Company's last funding round (but without any discount being applied).

- d. in respect of the Maturity Date pursuant to Section 5(a)(iv), a price per share equal to the lowest price per share paid by investor(s) for such class of shares in the then most recent bona fide equity financing in which the Company either: (i) raises newly committed capital after the Base Date and prior to the Maturity Date equal to an amount which is greater than 25% of the aggregate of the principal amount of the Loans then outstanding, after reducing such price per share by the Discount; or (ii) raised committed capital prior to the Base Date, from one or a series of related transactions involving the issue by the Company of shares to investor(s) (excluding (A) any Loans made pursuant to this Agreement; (B) any shares issued on the exercise of any option granted to an employee, officer or consultant of the Company by way of incentive; and (C) any issue of shares on conversion of a Loan under this Agreement),

SL COMMENT: The price per share on the Maturity Date being reached is the same as on an Exit above.

provided that, (A) only the principal amount converting shall be reduced by the Discount and not any Interest; and (B) where a Valuation Cap has been agreed and included in this Agreement, in each of (a) - (d) (inclusive) above, if the price per share which results from dividing the Valuation Cap by the number of shares comprised in the Fully Diluted Share Capital is lower than the price per share that would otherwise apply under part (a), (b), (c) or (d) (as the case may be), the Conversion Price shall be equal to such lower price; “Discount” has the meaning given to it in paragraph 6;

SL COMMENT: This paragraph applies to all of the conversion scenarios described above, and provides that:

- (a) only the principal amount of the Loans will be subject to the Discount of at least 20% (i.e. any interest which has not been repaid in cash will convert without any discount being applied);
- (b) if any Valuation Cap was agreed in paragraph 9 at the front of the Agreement, you will divide the amount of that Valuation Cap by the Fully Diluted Share Capital (see explanation below) to give a price per share and if that price is lower than any of the other prices set out above, that is the price that will apply.

“**Eligibility Criteria**” means the eligibility criteria set out on the Portal for ‘the company’ (as such term is defined thereon) as at the date of final submission of the Application to the Portal by the Lead Lender;

“**Event of Default**” means any of the following events:

SL COMMENT: These are the events that would trigger repayment of the outstanding amount of the Loan plus a premium equal to 1x the total amount of the Loan plus interest under Section 6f.

- a. any Group Company stops payment of its debts generally or ceases to carry on all or a substantial part of its business;
- b. any Group Company is deemed to be unable to pay its debts as they fall due or compounds or proposes or enters into any reorganisation or special arrangement with its creditors generally;
- c. a moratorium is declared in respect of any indebtedness of any Group Company;
- d. any petition is advertised by any person for the winding-up of any Group Company or an order is made or a resolution is passed with respect to the liquidation, winding-up, administration or dissolution of a Group Company which is not discharged within 10 Business Days of presentation;
- e. an encumbrancer takes possession or a liquidator, receiver, administrative receiver, administrator or court-appointed receiver or other similar officer is appointed over the whole or the major part of the assets or undertaking of any Group Company or if distress, execution or other legal process is levied or enforced upon or against the whole or the major part of the assets of any Group Company and is not discharged, paid out, withdrawn or removed within 10 Business Days; or
- f. any Group Company fails, in any material respect, to comply with any of the covenants, conditions or provisions contained in this Agreement or breaches, in any material respect, any provisions of this Agreement and which breach, if capable of cure, is not cured within 20 Business Days in the reasonable opinion of the Lender Majority;

“Existing Convertible Securities” means any securities convertible into, or carrying the right to subscribe for, shares in the Company that are outstanding as at the date of this Agreement (including any existing convertible loan notes, advance subscriptions, simple agreements for future equity, promissory notes or similar);

SL COMMENT: This definition is only relevant to the covenant in Section 8(o). It is somewhat unclear whether the amount of any loan which a lender converts an existing convertible loan agreement would be treated as “newly committed capital” for determining whether a Non-Qualified Financing or Qualified Financing has occurred. However, as those definitions both refer to monies being used under an “equity financing round” occurring “after the date of this Agreement”, this would appear unlikely.

“Exit” means either:

SL COMMENT: These definitions of “Exit” are quite standard.

- a. the arms' length sale of (or the grant of a right to acquire or to dispose 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 (or grantee of that right) and any persons Acting in Concert (as defined in The City Code on Takeovers and Mergers published by the Panel on Takeovers and Mergers (as amended from time to time)) together acquiring an interest in such shares giving control of the Company (within the meaning of section 1124 of the Corporation Tax Act 2010), except where following completion of the sale the shareholders and the proportion of shares held by each of them are the same or substantially the same as the shareholders and their shareholdings in the Company immediately prior to such sale and the rights and obligations of the Company under this Agreement have been novated to such new holding company on completion of such sale;
- b. a sale of all or substantially all of the Group's undertakings and assets (including the grant of an exclusive licence of intellectual property not entered into in the ordinary course of business); or
- c. the admission of all or any of the Company's shares or securities representing those shares on the Official List of the United Kingdom Listing Authority, the AIM Market operated by the London Stock Exchange Plc, the New York Stock Exchange, the NASDAQ Stock Market of the NASDAQ OMX Group Inc. or any other recognised investment exchange (as defined in section 285 of FSMA);

“FCA” means the Financial Conduct Authority;

“FCA Rules” means the FCA's handbook of rules and guidance;

“Financial Year” means each accounting reference period of the Company determined from time to time in accordance with Chapter 3 of Part 15 of the Companies Act 2006;

“FPO” means the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005;

“FSMA” means the Financial Services and Markets Act 2000;

“Fully Diluted Share Capital” means the aggregate at the time of: (i) the issued share capital of the Company; (ii) in respect of Section 5(a)(i) and (ii) only, all shares capable of being issued by the Company upon the exercise of any additional options authorised pursuant to the terms of such Qualified Financing or Non-Qualified Financing; and (iii) all shares capable of being issued by the Company pursuant to any outstanding rights to subscribe for, or convert any security into, shares as if all those outstanding rights had been exercised in full (including all outstanding warrants, convertible loan notes, advance subscriptions and all other convertible or exercisable securities then outstanding) but excluding: (A) the shares to be issued under this Agreement; and (B) in respect of Section 5(a)(iii) only, all shares capable of being issued by the Company in respect of unallocated and/or unvested options;

SL COMMENT: This definition is used for the purpose of calculating the Conversion Price where a Valuation Cap has been agreed under paragraph 9 of this Agreement. To calculate the total number of shares for this purpose, you add all shares currently in issue to the number of shares that would be issued following a Non-Qualified Financing or Qualified Financing (if appropriate at the time), and all shares that the Company is capable issuing to satisfy existing options, convertible loans, warrants or other entitlements to shares. This excludes shares to be issued under this Agreement and, in the case where this definition is relevant to an Exit, any unallocated or unvested options (i.e. options which haven't been granted out of any share option pool or, where they have been granted, have not become capable exercise).

“Future Fund Scheme” means the UK Government scheme to issue convertible loans to companies which are facing financing difficulties due to the 2020 Covid-19 pandemic;

“Group Companies” means from time to time the Company and each and any of its subsidiaries, **“Group Company”** means any one of them and **“Group”** means, together, the Company and its subsidiaries;

“Headroom Amount” has the meaning given to it in paragraph 10;

“Institutional Investor” means any fund, partnership, body corporate, trust or other person or entity whose principal business is to make investments or a person whose business is to make, manage or advise upon investments for any of the foregoing, other than an Institutional Investor who the Board determines in its reasonable discretion is a competitor with the business of the Company;

“Interest” has the meaning given to it in Section 4(a);

“Interest Rate” has the meaning given to it in paragraph 7;

“Lead Lender” means the Other Lender which submitted the Application in respect of the Future Fund Scheme;

“Lender Majority” means the holder(s) of in excess of 50% of the total Loans that remain outstanding from time to time under this Agreement, excluding those held by the Future Fund;

“Lenders” means the Future Fund and the Other Lenders and any lenders that have agreed to make available to the Company an unsecured convertible loan pursuant to a Subscription Deed;

“Loans” means the unsecured convertible loans to be provided by the Lenders pursuant to the terms of this Agreement and **“Loan”** means any one such convertible loan provided by a particular Lender;

“Maturity Date” has the meaning given to it in paragraph 8;

“Non-Qualified Financing” means any bona fide equity financing round, other than a Qualified Financing, occurring after the date of this Agreement in which the Company raises newly committed capital prior to the Maturity Date from one or a series of related transactions involving the issue by the Company of shares to investor(s) (excluding (i) any Loans made pursuant to this Agreement; (ii) any shares issued on the exercise of any option granted to an employee, officer or consultant of the Company by way of incentive; and (iii) any issue of shares on conversion of a Loan under this Agreement);

SL COMMENT: This refers to any investment round which doesn't represent a Qualified Financing Round, regardless of the amount that has been raised (although note that conversion under Section 5(a)(ii) is only triggered where the amount raised is less than or equal to 20% of the of the total amount of the Loans outstanding.

“Portal” means the Future Fund Scheme's web portal at www.uk-futurefund.co.uk;

“Qualified Financing” means any bona fide equity financing round occurring after the date of this Agreement in which the Company raises an amount equal to at least the aggregate amount of the Loans received by the Company at the time of such financing round, in newly committed capital prior to the Maturity Date from one or a series of related transactions involving the issue by the Company of shares to investor(s) (excluding (i) any Loans made pursuant to this Agreement; (ii) any shares issued on the exercise of any option granted to an employee, officer or consultant of the Company by way of incentive; and (iii) any issue of shares on conversion of a Loan under this Agreement);

SL COMMENT: This refers to any investment round of an amount which at least equal to the total amount of the Loans received (i.e. not the outstanding amount of the Loans) under this Agreement at the time of the round.

“Redemption Date” has the meaning given to it in Section 6;

“Redemption Premium” means, in respect of a Loan, a premium equal to 100% of the principal amount of such Loan;

SL COMMENT: This is amount which is equal to 100% of the amount of the Loans, which the Company would have to pay in addition to the outstanding principal amount of the Loans and any unpaid interest in the circumstances set out in the Agreement.

“Relevant Majority” means the Lender Majority and the Future Fund for so long as it holds any Loan and/or shares in the capital of the Company;

“Subscription Deed” means a subscription deed substantially in the form set out in schedule 3 to this Agreement;

“Tax Deduction” means a deduction or withholding for or on account of any present or future taxes, duties, assessments or governmental charges of whatever nature; and

“Valuation Cap” has the meaning given to it in paragraph 9.

In this Agreement, unless otherwise specified:

SL COMMENT: These are provisions which are used to interpret the terms of the Agreement.

- a. references to redemption includes repayment and vice versa and the words "redemption" and "redeemed" shall be construed accordingly;

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- b. a “group undertaking” or an “undertaking” is to be construed in accordance with section 1161 of the Companies Act 2006, a “subsidiary undertaking” is to be construed in accordance with section 1162 of that act and a “subsidiary” or “holding company” is to be construed in accordance with section 1159 of that act;
 - c. references to paragraphs and schedules are references to paragraphs of and schedules to this Agreement;
 - d. references to Sections are to sections of schedule 1 to this Agreement ;
 - e. the schedules form part of and are incorporated into this Agreement;
 - f. headings are included for ease of reference only and shall not affect the interpretation of this Agreement;
 - g. “includes” and “including” shall mean including without limitation;
 - h. a “person” includes any person, individual, company, firm, corporation, government, state or agency of a state or any undertaking (whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists);
 - i. “writing” means typed text or legible manuscript text;
 - j. reference to a legal or regulatory provision or standard is to be construed as a reference to that legal or regulatory provision or standard as the same may have been amended or re-enacted before the date of this Agreement;
 - k. the singular shall include the plural and vice versa and references to any gender shall include references to the other genders; and
 - l. reference to the time of day is reference to the time in London, England.

**SCHEDULE 3
SUBSCRIPTION DEED**

SL COMMENT: This is the form of deed which must be signed by any additional persons who lend money to the Company within the Headroom Period of 90 days from the date of the Agreement. It must be signed in the presence of a witness. Any Additional Lenders' money must be paid into the Company's Solicitor's Bank Account.

DATED

2020

BY AND BETWEEN:

[COMPANY NAME] (company number [Number]) whose registered office is at [address] (the "Company");

[ADDITIONAL LENDER NAME] (company number [number]) whose registered office is at [address] (the "Additional Lender").

INTRODUCTION

- (1) The Additional Lender has agreed to make available to the Company an unsecured convertible loan in the aggregate amount of £[number] (the "**Additional Loan**") pursuant to the terms of this subscription deed (this "**Deed**") and the convertible loan agreement dated [] 2020 between (1) the Company, (2) the Future Fund (as defined therein) and (3) the Other Lenders (as defined therein) (the "**Agreement**").
- (2) This deed (the "**Deed**") is entered into in compliance with the terms of Section 1 of the Agreement.

AGREED TERMS

1. Words and expressions used in this Deed shall have the same meaning as is given to them in the Agreement unless defined herein or the context otherwise expressly requires.
2. The Additional Lender shall, no later than five Business Days after the date of this Deed, pay the Additional Loan to the Company's Solicitors Bank Account and the Company shall accept such Additional Loan and shall owe and promise to pay to the Additional Lender or its successors the principal amount of the Additional Loan, together with any Redemption Premium and/or any accrued but unpaid Interest, as the case may be, in accordance with the terms of the Agreement.
3. Unconditional release of the Additional Loan to the Company's Solicitors shall be a good and valid discharge of the obligation of the Additional Lender to pay such amount to the Company and the Additional Lender shall not be concerned to see the application of the monies so paid.
4. The Additional Lender hereby agrees to:
 - a. assume the benefit of the rights under the Agreement in respect of the Additional Loan;
 - b. assume the burden of the obligations under the Agreement to be performed after the date hereof in respect of the Additional Loan; and
 - c. be bound by the Agreement in all respects,

in each case as if it was a party to the Agreement as one of the “Lenders” and shall perform all the obligations expressed to be imposed on such a party to the Agreement, to be performed on or after the date hereof, provided that the Additional Lender shall take the benefit of the warranties set out in Section 9 but without any repetition thereof such that those warranties are true and accurate as at the date of the Agreement and not as at the date of this Deed.

5. This Deed is made for the benefit of:
- a. the parties to the Agreement; and
 - b. any other person(s) who may after the date of the Agreement (and whether or not prior to or after the date hereof) assume any rights or obligations under the Agreement and be permitted to do so by the terms thereof,

and this Deed shall be irrevocable without the consent of the Company acting on their behalf in each case only for so long as they hold any unsecured convertible loan and/or shares in the capital of the Company.

6. This Deed shall be governed by and construed in accordance with the laws of England and Wales.

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

EXECUTED AS A DEED on behalf of)
THE COMPANY)
acting by a director)

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

EXECUTED AS A DEED on behalf of)
THE ADDITIONAL LENDER)
acting by)

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

SCHEDULE 4

QUARTERLY REPORTING INFORMATION

SL COMMENT: This schedule lists the information which must be sent to Future Fund within 90 days' of the date of the Agreement (paragraph 1) and within 20 Business Days from the end of each quarter (paragraph 2) (Note, Section 8(a) refers to a quarter being calculated from the date of the Agreement and it also refers to a financial quarter – but this likely means each period of three months from the date of the Agreement).

The reporting information on the Group required to be provided by the Company to the Future Fund via the Portal pursuant to Section 8(a) of schedule 1 is as set out below:

1. within the first 90 days following the date of this Agreement, calculated in accordance with the Company's normal accounting policies;
 - a. revenue for the last two Financial Years;
 - b. earnings before interest, taxation, depreciation and amortisation (“**EBITDA**”) for the last two Financial Years; and
 - c. net cash flow for the last two Financial Years,

provided that where any such information is not available in respect of the last two Financial Years as the Company was incorporated within the current Financial Year or the last Financial Year, the Company shall provide the same information for the period since incorporation of the Company;
2. on a quarterly basis following the date of this Agreement (including in respect of the first quarter following the date of this Agreement):
 - a. calculated in accordance with the Company's normal accounting policies and the most recent management accounts of the Group:
 - (i) revenue for the relevant quarter and current Financial Year;
 - (ii) current monthly recurring revenue for the relevant quarter and current Financial Year, if applicable to the Company;
 - (iii) EBITDA for the relevant quarter and current Financial Year;
 - (iv) net cash flow for the relevant quarter and current Financial Year;
 - (v) current monthly cash burn rate; and
 - (vi) current cash balance;
 - b. post-money valuation of the Company in the most recent funding round;
 - c. performance of the Group against the current budget of the Group:
 - (i) revenue (achieved vs budget); and
 - (ii) net cash flow (achieved vs budget);
 - d. the Company's management team's reasonable assessment of the likely timing, amount and form of the Group's next financing activity and its estimated valuation of the Company (on a pre-money basis) at such financing;

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- e. the Company's management team's reasonable and supportable estimated forecast for the Group's revenue and net cash flow for the current Financial Year and the next two Financial Years;
 - f. where a Conversion Event has occurred, provided that the monthly net cash flow of the Group is negative:
 - (i) current performance of the Group against non-financial key performance indicators;
 - (ii) key intellectual property and knowhow developed, if applicable to the Group; and
 - (iii) "Technology Readiness Level" milestones achieved (TRL 1-9), if applicable to the Group.