**FOUNDERS’ AGREEMENT**

This Founders’ Agreement (“**Agreement**”) has been entered into on [*date*] (“**Signing Date**”) between:

1. [*full name of founder 1*], personal identification code [\*], address [\*], e-mail address [\*];
2. [*full name of founder 2*], personal identification code [\*], address [\*], e-mail address [\*];
3. [*full name of founder 3*], personal identification code [\*], address [\*], e-mail address [\*];
4. [*name of the company*], registry code [\*], address [\*], e-mail address [\*] (“**Company**”), represented by a management board member;

(persons specified in sections (1)-(3) hereinafter separately also **Founder** and collectively **Founders**; persons specified in sections (1)-(4) hereinafter separately also **Party** and collectively **Parties**),

**WHEREAS:**

1. the Company is engaged in [*description of the business*] (“**Business**”);
2. by this Agreement the Founders wish to agree upon the main principles for the management of the Company, transfer of the Company’s shares and their mutual rights and obligations as shareholders of the Company;

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. **OWNERSHIP STRUCTURE AND FOUNDERS’ MAIN DUTIES**
   1. The share capital and distribution of shares between the Founders at the Signing Date are as follows:

|  |  |  |
| --- | --- | --- |
| **Shareholder** | **Nominal value** | **Ownership %** |
| [*full name of founder 1*] | [\*] | [\*] % |
| [*full name of founder 1*] | [\*] | [\*] % |
| [*full name of founder 1*] | [\*] | [\*] % |
| **Total** | [\*] | **100,00%** |

* 1. The main duties and responsibilities of the Founders are as follows:

|  |  |  |
| --- | --- | --- |
| **Founder** | **Area / Position** | **Main Duties and Responsibilities** |
| [*full name of founder 1*] | [\*] | [\*] |
| [*full name of founder 1*] | [\*] | [\*] |
| [*full name of founder 1*] | [\*] | [\*] |

* 1. The Founders shall perform the above duties free of charge unless otherwise is agreed in writing by all Founders.

1. **MANAGING PRINCIPLES**
   1. Any action on the matters set out below require at least 3/4 of the votes of all Founders:
      * 1. amendment of the articles of association of the Company (“**Articles**”);
        2. increase or decrease the share capital of the Company;
        3. merger, division, transformation, liquidation or dissolution of the Company;
        4. election or removal of any member of the management board of the Company;
        5. any transfer or granting into use or other encumbrance of material assets of the Company (including any intellectual property), including any enterprise or the organizationally independent part thereof, other than entering into non-exclusive licenses in the ordinary course of business;
        6. granting or taking any loan or credit or providing any collateral for securing any obligations other than collateral for securing the Company’s own obligations in the ordinary course of business;
        7. entry into, or amendment of terms, of any transaction with a Founder, or any of his or her related parties.
2. **TRANSFER OF SHARES**
   1. Each Founder undertakes to all other Parties (a) to transfer any share or part share of the Company only by way of sale for consideration payable in cash and (b) not to encumber his or her share with a security interest of any kind, including any pledge, financial collateral arrangement, any claim or right belonging to a third party or other encumbrance or restriction of any kind, except in case all Founders have jointly approved such encumbrance in advance.
   2. Upon transfer of a share of the Company to a third person by a Founder, the other Founders may exercise the right of pre-emption in accordance with the terms and conditions set out in the law.
   3. None of the Founders shall have the right to transfer or encumber any share or part share of the Company, nor shall the Company issue any new share, to a third person until such person signs a deed of adherence by which it undertakes to be bound by the terms of this Agreement.
3. **CONFIDENTIALITY** **AND NON-COMPETITION**
   1. Each Founder shall keep confidential and will not disclose, divulge, or use for any purpose other than for exercising his or her rights under the terms of this Agreement any trade secrets of the Company and any other information (in whatever form) relating to the Company’s business, finances, services, products, personnel, customers, processes, technology, intellectual property, testing procedures, manufacturing processes, technical specifications, research and development plans, business plans, product and market descriptions, sales, cost and marketing data, personal data of customers, projections and contracts, regarding which the Company has an apparent or reasonably identifiable interest in keeping from third parties. If required by law, the disclosing Founder shall exercise his or her best efforts to notify and coordinate the disclosure with the other Founders. This confidentiality undertaking shall apply to a Founder as long as he or she is a shareholder of the Company, and for three (3) years after he or she ceases to be a shareholder of the Company.
   2. Each Founder agrees that, while he/she is a shareholder of the Company, and for twelve (12) months after the date he/she ceases to be a shareholder of the Company he/she will not, without the prior written consent of the majority of the Founders, either directly or indirectly, engage in any business competing with the Business.
   3. Should a Founder breach any of his or her obligations set forth in sections 4.1 or 4.2, the Company shall have the right to request such Founder to immediately terminate such breach and pay to the Company a contractual penalty in the amount of EUR 20 000 for each breach. The Company has the right to claim compensation for damages caused to the Company by such breach to the extent they exceed the above penalty.
4. **INTELLECTUAL PROPERTY RIGHTS**
   1. Each Founder hereby irrevocably, exclusively, unconditionally and to the maximum extent possible under applicable law transfers to the Company, free from all encumbrances and third party rights, all intellectual property rights (including copyrights and related rights, design rights, patents, utility models, inventions, trademarks, database rights, trade secrets, knowhow, confidential information, and all other legal rights) with respect to the works and objects that have been created in the past or will be created in the future for the Business and/or for the Company (“**Rights**”). The Founders and the Company hereby agree that all such Rights are deemed automatically transferred to the Company as of the moment of their creation without any separate consideration or remuneration payable and for the whole period of validity of the respective Rights. Each Founder hereby warrants that it shall not register or attempt to register any Rights created for the Business and/or for the Company or used by the Company.
   2. If, and to the extent, it is impossible as a matter of law to transfer ownership to the Rights from the Founders to the Company (including but not limited to all moral rights of the Founders), each of the Founders hereby grants to the Company to the maximum extent and term possible under applicable law an exclusive, irrevocable, transferable, sub-licensable, fully paid-up, world-wide, unconditional and unlimited right to use, exploit and exercise such Rights for the whole period of their validity in any manner now known or in the future discovered.
   3. Each Founder hereby irrevocably and unconditionally waives any and all of his/its current and future rights and claims to receive any income, compensation or other payment in connection with any Rights, including, without limitation, in connection with any invention or utility model being part of the Company products and services.
   4. The termination of this Agreement (irrespective of the reason) shall not in any way affect the validity of transfers made and licensed given hereunder.
5. **REVERSE VESTING[[1]](#footnote-1)** 
   1. The shares of Founders are subject to reverse vesting and shall vest in equal monthly instalments over the period of three (3) years starting from the Signing Date (“**Vesting Period**”).
   2. If during the Vesting Period a Founder:
      * + 1. leaves the Company and/or continuously fails to perform most of his or her duties set out in section 1.2 of this Agreement for any reason other than (a) any material breach by the Company of its obligations towards such Founder or (b) his or her permanent inability to perform his or her duties due to health reasons; and/or
          2. breaches the non-competition or confidentiality obligations set out in this Agreement and/or causes damage to the Company and fails to compensate such damage within thirty (30) days after receiving a written notice from the Company,

the other Founders (“**Acquiring Founders**”) shall have the right to acquire the unvested part of the share (“**Unvested Share**”) held by such Founder (“**Leaver**”) for the price equal to the nominal value of the Unvested Share.

* 1. In order to exercise the above right, the Acquiring Founder(s) shall send a respective written notice to the Leaver within two (2) months as of the occurrence of the event set out in section 6.2 above. If more than one Acquiring Founder exercises this right, then the Unvested Share shall be divided among such Acquiring Founders in proportion to the nominal value of their existing shareholdings in the Company.
  2. The Leaver shall take all actions on his or her part to complete the transfer of the Unvested Share to the Acquiring Founder(s) within thirty (30) days as of receipt of the notice referred to in section 6.3 above. Should the Leaver delay with taking any such actions, it shall pay to the Company, at the request of the majority of the Founders, a penalty of EUR 500 for each day of delay.

1. **FINAL PROVISIONS**
   1. This Agreement shall enter into force upon its signing by all Parties and shall remain in force until its termination in accordance with section 7.2.
   2. Any amendment or termination of this Agreement shall be valid if it is agreed to and signed by all Parties. Regardless of the above, this Agreement shall terminate in regard to a Founder who ceases to be a shareholder of the Company in accordance with this Agreement, provided that any obligations contained in section 4 shall continue to apply as provided therein.
   3. All notices and other communication shall be given to the addresses listed in the preamble of this Agreement.
   4. In the event of any conflict between this Agreement and the Articles, the terms of this Agreement shall prevail in relations between the Parties.
   5. The Founders have agreed to exclude the application of §§ 580-618 of the Estonian Law of Obligations Act to their relationship of created under this Agreement.
   6. No Party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other Parties.
   7. The Agreement contains the entire understanding between the Parties hereto and supersedes any arrangements, understandings or agreements made or existing between the Parties prior to the Agreement.
   8. Should any of the provisions contained in this Agreement prove to be inconsistent with law or invalid the Parties shall make their best efforts to replace such invalid provision with a valid one closest in the meaning to the original provision.
   9. This Agreement shall be governed by and construed in accordance with the laws of Estonia, except the conflict of laws rule.The Parties shall attempt to settle all disputes arising under or in connection with this Agreement by way of negotiations. If negotiations fail then any dispute shall be settled in Harju County Court in Tallinn, Estonia.

**SIGNATURES:**

*/digital signature*/ /*digital signature*/ /*digital signature*/

[*full name of founder 1*] [*full name of founder 2*] [*full name of founder 3*]

/*digital signature*/

[*full name of the management board member*]

Member of the management board

[*name of the Company*]

1. One of the most important elements to regulate with a Founders’ agreement is the procedure that follows if one of the Founders leaves the Company. The clause below sets forth the most simplistic clause for such instances in Estonian start-up practice, whereby 1/36 of the shares vests each month.NOTE: If the Company is not registered in the Estonian Central Registry of Securities, then the Agreement must be notarised in order for this section to be legally enforceable.

   (NB! This footnote should be deleted before using the template.) [↑](#footnote-ref-1)