

SHAREHOLDERS AGREEMENT

entered into between

A. <INSERT STARTUP COMPANY NAME>

a private, limited liability company incorporated in accordance with the laws of **<INSERT COUNTRY NAME>** with Registration No. **<INSERT REGISTRATION NO.>** and having its registered physical address at **<INSERT>**, postal address at **<INSERT>** and e-mail address at **<INSERT>**

(the "**Company**");

B. SBC SA 1719 LTD

a private, limited liability company incorporated in accordance with the laws of Mauritius with Registration No. 148439 C1/GBL and License No. C117017242 and having its registered physical address at c/o Griffon Solutions Ltd, C2-401, 4th Floor, Office Block C, Grand Baie La Croisette, Grand Baie, Mauritius, and e-mail address at c/o Philip Kiracofe philip@startupbootcamp.org and c/o Zachariah George zach@startupbootcamp.org

("SBC");

C. <INSERT SHAREHOLDER 1>

[a private, limited liability company incorporated in accordance with the laws of **<INSERT>** with Registration No. **<INSERT REGISTRATION NO.>** and having its registered physical address at **<INSERT>**, postal address at **<INSERT>** and e-mail address at **<INSERT>**] herein represented by **<INSERT NAME>**,] an adult person born on **<INSERT DATE>**, with passport/identity number **<INSERT>** and residing at **<INSERT PHYSICAL ADDRESS>**, and having postal address **<INSERT>** and e-mail address at **<INSERT>**;;

D. <INSERT SHAREHOLDER 2>

[a private, limited liability company incorporated in accordance with the laws of **<INSERT>** with Registration No. **<INSERT REGISTRATION NO.>** and having its registered physical address at **<INSERT>**, postal address at **<INSERT>** and e-mail address at **<INSERT>**] herein represented by **<INSERT NAME>**,] an adult person born on **<INSERT DATE>**, with passport/identity number **<INSERT>** and residing at **<INSERT PHYSICAL ADDRESS>**, and having postal address **<INSERT>** and e-mail address at **<INSERT>** ;

E. <INSERT SHAREHOLDER 3>

[a private, limited liability company incorporated in accordance with the laws of **<INSERT>** with Registration No. **<INSERT REGISTRATION NO.>** and having its registered physical address at **<INSERT>**, postal address at **<INSERT>** and e-mail address at **<INSERT>**] herein represented by **<INSERT NAME>**,] an adult person born on **<INSERT DATE>**, with passport/identity number **<INSERT>** and residing at **<INSERT PHYSICAL ADDRESS>**, and having postal address **<INSERT>** and e-mail address at **<INSERT>**

(collectively, the "**Existing Shareholders**")

1. BACKGROUND

- 1.1. The Company has been selected to participate in an accelerator program, Startupbootcamp Cape Town and described at www.startupbootcamp.org/accelerator/cape-town/ (the "**Program**"). Pursuant to being selected to participate in the Program, the Company and/or the Existing Shareholder/s (on behalf of the Company) entered into a Memorandum of Understanding ("MOU"), the provisions of which shall be incorporated by reference into this agreement. The MOU set out certain conditions upon which the Company is to participate in the Program, and the Company and the Existing Shareholder/s have agreed to be bound by those conditions and any other Program terms and conditions as may reasonable by prescribed by the Program organisers in writing from time to time and communicated to the Company and/or Existing Shareholder/s. It is a requirement that the Company is incorporated as a private, profit, company in South Africa, (or the equivalent in Mauritius, the United States of America, the United Kingdom or any other jurisdiction approved by SBC). Should such an entity not have been formed at the date of signature of this agreement ("**Signature Date**"), the Existing Shareholders will be required to incorporate such entity as a condition to this agreement and their participation in the Program. All references to the "Company" shall be references to this entity to be formed and the Company shall be required to ratify this agreement upon its incorporation.
- 1.2. SBC may, at its discretion, acting reasonably, require the Company to leave the Program at any time. The Program culminates with a "Demo Day", at which the Company will be present, unless SBC believes that the Company does not meet the quality level and standard required for a Program participant to be present and featured at the Demo Day.
- 1.3. The business of the Company is **<INSERT DESCRIPTION>**. A more detailed description of the Company's business as well as the relevant intellectual property rights related thereto are contained in the Company's submission form for the Program.
- 1.4. The Existing Shareholder/s identified on the front page of this agreement currently hold(s), and will hold immediately prior to SBC's investment in the Company, 100% of the issued shares in the Company.
- 1.5. The parties have entered into this agreement in order to provide for the issue of shares to SBC, and to regulate the ongoing relationship of the shareholders in the Company ("**Shareholders**") amongst themselves, in their capacities as Shareholders, as well as the relationship between the Shareholders, in their capacities as Shareholders, on the one hand, and the Company, on the other hand.

2. NATURE OF THIS AGREEMENT

This agreement shall regulate the relationship between the parties and is legally binding on the parties against issue of the SBC Shares to SBC. Notwithstanding this, it is common cause between the parties, including SBC, that this agreement may require amendment, or substitution, if a subsequent investor invests into the Company. Without detracting from the binding obligations of this agreement, the parties all agree to negotiate in good faith regarding the receipt of further investment into the Company, and this includes the amendment of the terms hereof, or the waiver by SBC of certain rights, where a party determines that such an amendment, or waiver, is necessary and desirable, in order for the Company to secure further funding.

3. ISSUE OF SHARES TO SBC

- 3.1. By participating in the Program, the Company is required to issue to SBC such number of shares as shall constitute 8% of the Company's share capital immediately after issue thereof to SBC.
- 3.2. With effect from the commencement of the Program, the Company hereby issues to SBC, and SBC subscribes for so many ordinary shares in the issued share capital of the Company such that immediately after such issue to SBC, SBC will hold 8% of the Company's issued shares. These shares shall have the same rights as all the other issued shares in the Company.
- 3.3. If, after selection in the Program, for any reason, the Company declines to participate in, or withdraws from the Program, then the Company shall issue as many shares in the share capital of the Company to SBC so that SBC holds 4% of the issued share capital of the Company, in spite of the fact that the Company does not participate in the Program, and no cash award is made to the Company by SBC. The issue of shares to the Company in these circumstances will be in consideration for the Company's participation in and attendance at the final selection days, and the presentation of the Company in the final selection.
- 3.4. The shares issued to SBC in terms of this agreement shall be referred to as the "**SBC Shares**".
- 3.5. The Company and the Existing Shareholder/s will do all such things necessary, at the Company's cost, to issue the SBC Shares in accordance with the regulatory and legal requirements of the Company's jurisdiction of incorporation, including the waiver by the Existing Shareholder/s of any pre-emptive rights they may have to subscribe for the SBC Shares.
- 3.6. In order for the Company's placement in the Program to be confirmed, the Company and the Existing Shareholder/s shall deliver to SBC (i) validly issued share certificate(s) for the SBC Shares, endorsed non-resident by the South African Reserve Bank, if required and (ii) a true copy of the updated Company's share register reflecting SBC's shareholding, and (iii) a copy of the Company's existing articles of association / memorandum of incorporation, together with any written agreements between the Company and/or the Existing Shareholder/s and/or prospective investors. In addition, the Company and the Existing Shareholders shall be required to furnish a written declaration confirming that the Company owns and has valid title to all intellectual property required for the Company to conduct its business and confirming that no other person, or Existing Shareholder has any right, title or interest in and to such intellectual property.
- 3.7. In addition to the right to participate in the Program, the Company shall receive from SBC EUR7 500, which shall be paid by SBC to the Company against issue to SBC of the full 8% SBC Shares, plus a further EUR7 500 upon successful completion of the first 6 weeks of the Program. All cash payments will be made by SBC, by electronic funds transfer, directly into the Company's bank account.
- 3.8. While the Program is designed to support the scalability of the Company, and to provide the Company with access to a wide network of mentors, SBC gives no guarantees as to the success of the Company as a result of its participation in the Program, although we do guarantee to provide an environment which promotes and facilitates the Company's prospects of success.

4. **COMMENCEMENT AND DURATION**

This agreement shall commence on the Signature Date and shall continue thereafter:

- 4.1. until terminated in writing by mutual consent of all the parties; or
- 4.2. until the passing of the requisite resolution for the winding-up or deregistration of the Company, for the entering into of voluntary liquidation or business rescue proceedings; or
- 4.3. until the date upon which the Company ceases to have more than one Shareholder,

whichever date is the earlier. The termination of this agreement is without prejudice to any right, liability or obligations accrued under this agreement but not satisfied or discharged at the date of termination, or to those obligations which must necessarily survive termination of this agreement, including clauses 16, 18 and 21.

5. **STATUS OF THIS AGREEMENT**

- 5.1. With effect from the Signature Date (i) the relationship of the Shareholders amongst themselves, in their capacities as Shareholders, as well as the relationship between the Shareholders, in their capacities as Shareholders, on the one hand, and the Company, on the other hand, shall be governed solely in terms of this agreement as read with the Company's constitutional documents ("**Constitutional Documents**"), and (ii) no party shall have any claim against any other party arising out of any previous shareholders' agreement that may have existed in relation to the Company before the Signature Date.
- 5.2. If there is a conflict or inconsistency between the provisions of this agreement, the Constitutional Documents and/or the laws of the jurisdiction applicable to the Company, the parties shall negotiate in good faith within 7 business days of a written request by any Shareholder, with a view to finding a solution to remove such conflict or inconsistency, with the intent and purpose that the parties are placed, insofar as is reasonably possible, in substantially the same position as they would have been under the provisions of this agreement, but for the provisions of the Constitutional Documents or the applicable laws.
- 5.3. A complete and correct copy of the Constitutional Documents shall be provided to SBC. The Constitutional Documents will not be amended without the prior written consent of SBC, if any such amendment would have the effect of altering any of the terms of this agreement, or otherwise altering or nullifying any rights afforded to SBC in terms of this agreement. SBC shall be provided with a copy of the amended Constitutional Documents, if applicable, as soon as any such amendment becomes applicable.

6. **SHAREHOLDING**

After issue of the SBC Shares, the issued shares in the Company will be held as follows, provided that in the circumstances contemplated in clause 3.3, SBC's shareholding shall be 4% only and the remaining Shareholders' interest in the Company shall be amended accordingly:

Shareholder	Percentage
<INSERT>	<INSERT> %
<INSERT>	<INSERT> %
<INSERT>	<INSERT> %
SBC	8%

Total	100%
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7. **WARRANTIES**

The Company and the Existing Shareholder/s warrant, jointly and severally, in favour of SBC, that, as at the Signature Date:

- 7.1. it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this agreement;
- 7.2. this agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;
- 7.3. the execution of this agreement and the performance of its obligations hereunder does not and shall not:
 - 7.3.1. contravene any law or regulation to which that party is subject;
 - 7.3.2. contravene any provision of that party's constitutional documents; or
 - 7.3.3. conflict with or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it;
- 7.4. the Company is duly incorporated, or shall be incorporated, as a company with limited liability, and no steps have been taken in respect of the deregistration or winding up of the Company;
- 7.5. after the issue of the SBC Shares, the shares in the Company will be held as set out in clause 6;
- 7.6. the Company is entitled and able to issue the SBC Shares to SBC and to give free and unencumbered title in the SBC Shares to SBC;
- 7.7. all the issued shares in the share capital of the Company are fully paid up;
- 7.8. no person has any right whatsoever (whether pursuant to any option, right of first refusal or otherwise) to subscribe for any unissued shares in the Company or to acquire any issued shares in the Company;
- 7.9. the Company has not issued any debt, or other negotiable instrument to any person which may be outstanding, and no shares in the capital of the company have been pledged, or ceded, to any other person, nor are any shares held beneficially for any third party or the subject of a usufruct;
- 7.10. the SBC Shares rank equally in all respects to the other issued shares in the Company;
- 7.11. the Company is not a party to any current or pending litigation or similar legal proceedings (including arbitration, criminal proceedings or administrative proceedings) and the Existing Shareholder/s are not aware of any facts or circumstances which may lead to any such proceedings against the Company;
- 7.12. all taxes for which the Company has been assessed or which shall become due has either been paid in full, or has been fully provided for the Company's financial statements or otherwise disclosed to SBC in writing;
- 7.13. all proper returns that may have become due by the Company from time to time under any law administered by a revenue authority have been duly made;

- 7.14. the Company is not engaged in nor party to any dispute, objection or appeal regarding any tax nor, as far as the Existing Shareholder/s are aware, are any such proceedings threatened against or likely to be instituted by or against the Company. The Existing Shareholder(s) are not aware of any fact, matter or circumstance which might give rise to the institution of any such proceedings;
- 7.15. all information disclosed to SBC is true and accurate in all respects and there are no other facts or matters which would render any such facts misleading;
- 7.16. the Company and the Existing Shareholder/s have made a full and complete disclosure to SBC of the affairs of the Company and all material information of whatsoever nature or kind has been fairly disclosed to SBC which would have been material in the decision of SBC to enter into this agreement, either at all or on the terms and conditions set out herein.
- 7.17. The Company and the Existing Shareholder/s jointly and severally agree to indemnify and hold SBC harmless from and against any loss which SBC, directly and/or indirectly, may suffer resulting from a failure of any of the above warranties to be true and correct.

8. SHARE TRANSFERS

- 8.1. No Shareholder may transfer its shares to any person (including to another Shareholder), or if a juristic person, undergo a change in control, without the prior written consent of SBC.
- 8.2. However, it is hereby recorded and agreed that SBC may freely, without restriction, at any time, transfer such number of its SBC Shares as shall equal 1% of the issued shares in the Company to SBC Global Limited (a company incorporated in the United Kingdom under file number 7547667) ("**SBC Global**"). SBC Global shall be required to sign a deed of adherence to this agreement as contemplated in clause 9. For ease of reference where this agreement refers to SBC, this shall be deemed to include SBC Global, once SBC Global is a shareholder.
- 8.3. If a Shareholder is owed any amounts by the Company on loan account, if he sells any of his shares, he shall be also obliged to dispose of a proportionate share of such loan account.

9. DEED OF ADHERENCE

A Shareholder shall not transfer any shares to any person, nor may the Company issue any shares to any person, unless the transferee, if not already a Shareholder, has executed a deed of adherence to this agreement, in the form of Annexure A ("**Deed of Adherence**") and has delivered it to the Company. The Company may agree to a variation of the Deed of Adherence if it is in the best interest of the Company and the amendments do not prejudice SBC, as determined by SBC, acting reasonably. Once the transfer or issue of those shares has been registered and the Deed of Adherence executed and delivered, the transferee shall be bound to this agreement and thereafter this agreement and such Deed of Adherence shall constitute one agreement.

10. FURTHER SHARE ISSUES AND ANTI-DILUTION

- 10.1. For the purpose of this clause, "dilution" means "dilution in voting rights and/or entitlements to profit".
- 10.2. The Shareholders may admit additional investors into the Company ("**Additional Investors**") by issuing shares in the capital of the Company in exchange for a cash (or as non-cash, by means of convertible loan, or otherwise) investment in the Company ("**Investments**"). Additional Investors includes any Existing Shareholder and any Shareholder who, in any round, invests or reinvests in the Company.
- 10.3. If the Investments, at a pre-money valuation for 100% of the Company's share capital equates to **less than** EUR4 000 000.00, the Existing Shareholder(s) will dilute in proportion to their shareholding in the Company, but SBC shall under no circumstances be required to dilute, as a result of the Investment ("**SBC Anti-Dilution Right**"). If the Investment is not denominated

in Euros, the Investment pre-money valuation shall be determined by SBC with reference to the official exchange rate as published by the reserve bank of the country in which the Company is incorporated as at midnight on the day a binding offer to Invest is made.

- 10.4. Pursuant to the SBC Anti-Dilution Right, when shares (or other securities) in the Company's share capital are issued to the Additional Investors, the Company shall issue to SBC as many shares in its share capital, at no consideration to SBC, in order for SBC to maintain its 8% shareholding held by SBC in the capital of the Company. Alternatively, in the sole discretion of SBC, each of the Existing Shareholder/s shall proportionately transfer as many of the shares they hold in the share capital of the Company to SBC in order to ensure that SBC maintains its 8% shareholding.
- 10.5. If an Additional Investor has expressed interest in the Company, and wishes to make an Investment, the board of directors of the Company ("**Board**") will immediately notify each Shareholder in writing of the expression of interest, and the details of any proposed Investment. SBC shall be entitled (but not obliged) to negotiate directly with the potential Additional Investor and, if it chooses, offer all or part of the SBC Shares to the potential Additional Investor first, before any other Shareholder is entitled to offer any of its shares, and/or before the Company is entitled to issue any shares, to the Additional Investor. If SBC does sell any of the SBC Shares to an Additional Investor, the SBC Anti-Dilution Right will be applicable to the remaining percentage shares held by SBC.
- 10.6. If the Investments, at a pre-money valuation for 100% of the Company's share capital, equates to, or exceeds EUR4 000 000.00:
 - 10.6.1. each Shareholder has a right, before any other person who is not a Shareholder, to be offered, and within a reasonable time, to subscribe for a percentage of the shares to be issued equal to the voting power of that Shareholder's general voting rights immediately before the offer of Investment was made, on the same terms and conditions;
 - 10.6.2. if such pre-emptive right is not exercised in respect of the entire Investment amount, SBC shall, together with the Existing Shareholder/s dilute proportionately.
- 10.7. All Investments are subject to SBC's prior written approval.
- 10.8. There is no obligation on SBC to make additional Investments into the Company.
- 10.9. If the Constitutional Documents, or company laws of the country in which the Company is incorporated, provide for Shareholders to have a pre-emptive right in respect of the issue of any shares in the Company, such pre-emptive right shall be negated and the provisions of this clause shall instead apply, to the extent legally possible.

11. DRAG ALONG

- 11.1. If any Shareholders collectively holding 51% or more of the total issued shares in the Company (the "**Disposing Shareholders**") wish to dispose of all of their shares to a bona fide purchaser, then the Disposing Shareholders shall be entitled to give notice to the other Shareholders (the "**Remaining Shareholders**"), in which they require the Remaining Shareholders, simultaneously with the disposal by the Disposing Shareholders of their shares, to dispose of all their shares to such purchaser on the same terms and conditions as those on which the Disposing Shareholders will dispose of their shares.
- 11.2. Clause 11.1 only applies if the consideration being offered by the purchaser for the shares is at or more than fair market value, which fair market value is to be determined by an independent auditor ("**Minimum Exit Value**"), appointed by agreement between the Shareholders, and failing agreement, determined in terms of the mediation procedure contemplated in clause 18.

12. **TAG ALONG**

If a *bona fide* purchaser offers to purchase shares constituting 51% or more of the issued share capital in the Company, the Disposing Shareholder(s) will not be entitled to sell his shareholding to such third party unless the same proportionate offer is made by the purchaser to acquire the shares of the Remaining Shareholders.

13. **SBC RIGHTS**

- 13.1. The Board shall no later than the 10th business day of each month furnish SBC with such information and reports and containing such information, as SBC may reasonably require regarding the Company, including its business operations, financial affairs, budgets, forecast and marketing strategies. The monthly report shall be entered on the platform provided by SBC (<http://incmind.com/>) in the format attached hereto as Annexure B, or in such other format as SBC may require.
- 13.2. Subject to all applicable laws, if the Company fails to comply with clause 13.1, after the third written warning from SBC, SBC shall be entitled to impose a charge against the Company, for each time the Company fails to comply, in the amount of EUR1 500.00, which is immediately due and payable by the Company to SBC on demand.
- 13.3. While SBC shall not be entitled to appoint a director to the Board, SBC shall be entitled to nominate a person (“**Advisory Board Member**”) to advise the Company on request and at Board meetings. The Advisory Board Member must be given reasonable advance notice of all Board meetings and accompanied by a written agenda specifying the business to be discussed at the meeting along with all relevant documentation.
- 13.4. SBC shall be entitled to require the Company to undergo an annual audit of its financial statements, for the cost of the Company. SBC shall facilitate this process and the Company will send to SBC any information deemed necessary by SBC for the audit upon first written request, with a 10-day written notice period.
- 13.5. The Existing Shareholder/s and the Company shall inform SBC in writing of any events or risks that may have a material adverse effect on the Company or the Existing Shareholders' ability to develop the Company and its business and in this regard, without limiting the generality of the foregoing, the Company shall supply SBC with:
- 13.5.1. copies of all documents despatched by the Company to its creditors generally or any class of them at the same time as they are despatched;
- 13.5.2. promptly upon becoming aware of them, details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Company and which have a monetary value of more than 10% of the Company's net profit after tax for the most recently completed financial year, or which might, if adversely determined, otherwise have a material adverse impact on the Company or its business.
- 13.6. Upon written request by SBC, the Existing Shareholder/s and the Company shall take such actions as necessary in order for the statutory directors of the Company to take out directors' and officers' liability insurance.
- 13.7. The acts or matters below will require the prior written consent of SBC:
- 13.7.1. any material change in the nature of the Company's business;
- 13.7.2. any action which results in any amalgamation or merger, corporate reorganisation, scheme of arrangement, consolidation of shares and/or any sale of all or the greater part of the Company's assets or business;

- 13.7.3. any amendment to the Constitutional Documents;
- 13.7.4. any allotment, issue or repurchase by the Company of any of its securities and any modification of any rights, preferences or privileges attaching to any class of Shares in the Company, or amending the authorisation and classification of shares (including determining rights and preferences);
- 13.7.5. the incurring of any borrowing or other financial indebtedness (other than trade debt in the ordinary course of business).

14. OWNERSHIP OF INTELLECTUAL PROPERTY

- 14.1. **"Intellectual Property"** means all written materials and other work which may be subject to copyright and all patentable and non-patentable inventions, designs, discoveries, registered and unregistered trade-marks, production methods, know-how, plans, ideas and any other form of intellectual property, any moral rights, any renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world that can in any way be related to the Company and to what is described in the application to the Program and which is developed during the Program and what is in the future developed by the Company and/or by third parties working for the Company.
- 14.2. **"Works"** means the documents, products, processes, materials, designs, brands and images created prior to the Signature Date by the Existing Shareholder/s relating to what is described in the application to the Program and which is developed during the Program and which is in future developed or enhanced by the Company.
- 14.3. The Shareholders agree that any and all Intellectual Property rights in and to the current and future operation of the business of the Company shall always vest in the Company.
- 14.4. The Existing Shareholder/s hereby unconditionally and irrevocably assign all Intellectual Property and Works, and the Company hereby accepts assignment of such Intellectual Property and the Works. This assignment includes any moral rights and all current and future forms of exploitation of the Intellectual Property and the Works.
- 14.5. Pursuant to the assignment in clause 14.4, the Existing Shareholder/s unconditionally and irrevocably waives all rights, including moral rights, which they may have in connection with the Intellectual Property and the Works.
- 14.6. The Existing Shareholder/s hereby assign to the Company the total right, title and interest in and to any Intellectual Property and Works, as may be conferred now or in the future that they, or any of their members or employees, individually or jointly with any other person(s), have made or create or will make or will create whilst being Shareholder and during the course and scope of fulfilling any obligations under any employment or consultancy agreement.
- 14.7. All Intellectual Property and Works which are created, compiled or devised or brought into being by the Shareholder or come into the Shareholder's possession whilst a Shareholder and during the course and scope of fulfilling its obligations under any employment or consultancy agreement and all copies thereof shall be the property of the Company.
- 14.8. Upon a Shareholder ceasing to hold any shares in the Company he will deliver to the Company all such Intellectual Property and Works which he holds in a tangible form or which is in his possession.
- 14.9. The Company shall procure that all employees and consultants of the Company sign similar undertakings in order to ensure that all Intellectual Property and Works produced by or acquired by or used by the Company in any manner whatsoever or in the operation of its business will be the sole and exclusive property of the Company.

Transfer restrictions

- 14.10. The Company undertakes that, other than in the ordinary course of its business, it will not assign, transfer, sell, (sub)licence or otherwise dispose of or encumber any of the Intellectual Property rights or Works of the Company unless it is at market value and the price is equal to or higher than the Minimum Exit Value as defined in clause 11.2.
- 14.11. The above clause 14.10 shall not apply if pursuant to a transaction with an Additional Investor the Company is required to transfer the Intellectual Property or Works into a subsidiary, directed and controlled by the Company. In this case the Company undertakes that, other than in the ordinary course of its business, this subsidiary will not assign, transfer, sell, (sub)licence or otherwise dispose of or encumber any of the Intellectual Property rights or Works at a price below the Minimum Exit Value. Such a transfer of the Intellectual Property rights or Works may only be to independent third parties and on fair market terms. In this case, the Existing Shareholders are not entitled to own shares directly in any subsidiary Company, but only indirectly through their shareholding in the Company.

15. **WAIVER**

The Existing Shareholder/s and the Company will from time to time receive advice, business coaching and similar services from SBC and the mentors, consultants and advisors participating in the Program. These services are advisory in nature and, as such, the final decision as to whether to follow such advice rests with the Company and/or the Existing Shareholder/s. Therefore, the Company and the Existing Shareholder/s agree to waive any claims they may have against SBC, or the Program, or any mentor, consultant or advisor connected therewith, in contract, tort/delict (including negligence) or otherwise arising at any time in relation to the services provided by SBC and/or the Program and/or any mentor, consultant or advisor connected therewith, unless otherwise expressly agreed. This clause is subject to the law of the Company's country of incorporation and this indemnity and waiver shall apply to the fullest extent legally possible in such jurisdiction.

16. **CONFIDENTIALITY AND NON-COMPETE**

16.1. For the purpose of this clause 16:

- 16.1.1. "**Business Customer**" means any person who is or was a customer of the Company as at the Departure Date or during the period of 12 months preceding the Departure Date and/or to whom services were rendered by the Company during the period of 12 months preceding the Departure Date and/or who purchased products from the Company during the period of 12 months preceding the Departure Date and/or with whom the Company was in negotiations to do business as at the Departure Date or at any time within the period of 12 months preceding the Departure Date
- 16.1.2. "**Business Employee**" means any employee of the Company as at the Departure Date and any person who was an employee of the Company during the period of 3 months preceding the Departure Date;
- 16.1.3. "**Business Supplier**" means any person who is a supplier of the Company at the Departure Date or was a supplier of the Company during the period of 12 months preceding the Departure Date or is or was a potential supplier of the Company at the Departure Date and with whom the Company was in negotiations to do business as at the Departure Date or at any time within the period of 12 months preceding the Departure Date;
- 16.1.4. "**Confidential Information**" means all information of and relating to the Company that is reasonably regarded as confidential, being information not in the public domain, whether such information is oral or written, including but without being limited to the Intellectual Property, marketing plans, strategies and forecasts, product development plans, financial statements, budgets, prices, costs and

financial projections, accounting procedures or financial information, names and details of consumers, clients and agents, employee details, and like information;

- 16.1.5. **"Departure Date"** means, in relation to an Existing Shareholder, the date upon which such Existing Shareholder ceases to be a Shareholder;
 - 16.1.6. **"Restraint Period"** means the period up to the Departure Date and the period of 12 months thereafter;
 - 16.1.7. **"Restricted Business"** means any business activity which directly or indirectly involves the marketing and/or selling or rendering of goods or products or services which are substantially similar to or are sold in competition with the business conducted by the Company as at the Departure Date;
 - 16.1.8. **"Territory"** means each of the territories where the Company actually conducts business at any time during the Restraint Period or where the Company is investigating the possible establishment of business or the Board has resolved to establish business.
- 16.2. Each Existing Shareholder acknowledges that the Confidential Information is a valuable, special and unique asset of the Company and the Company and its Shareholders may suffer irreparable harm or substantial economic and other loss in the event of such Confidential Information being disclosed or used by an Existing Shareholder.
- 16.3. Each Existing Shareholder agrees that it shall:
- 16.3.1. not use the Confidential Information, whether directly or indirectly for its own benefit or for the benefit of any person other than the Company;
 - 16.3.2. treat and safeguard the Confidential Information as strictly private and confidential and shall not use, disclose or divulge, directly or indirectly, the Confidential Information in any manner to any third party for any reason or purpose whatsoever without the prior written consent of the Board, save for employees, agents, advisors, consultants or service providers of the Company, on a need-to-know basis, provided such third parties are bound by similar obligations of confidentiality in respect of the Confidential Information.
- 16.4. The undertakings given by the Existing Shareholder/s in clause 16.3 shall not apply to any Confidential Information which:
- 16.4.1. is or becomes generally available to the public other than by the negligence or default of any Existing Shareholder or by the breach of this clause by any Existing Shareholder;
 - 16.4.2. has been supplied to the party to whom it is disclosed by a third party who is under no obligation to maintain such information in confidence; or
 - 16.4.3. is disclosed pursuant to a requirement or request by operation of law, to the extent of compliance with such requirement or request only and not for any other purpose.
- 16.5. Each Existing Shareholder, in order to protect the goodwill and the proprietary interests of the Company and the business of the Company, undertakes and warrants that it shall not during the Restraint Period:
- 16.5.1. in any capacity whatsoever (including that of principal, proprietor, agent, broker, partner, representative, assistant, trustee or beneficiary of a trust, manager, member of a close corporation, member of a voluntary association, shareholder, director, employee, consultant, contractor, advisor, financier or demonstrator)

- directly or indirectly be associated or concerned with or interested or engaged in any Restricted Business or any entity carrying on any Restricted Business, in the Territory;
- 16.5.2. persuade, induce, solicit, encourage or cause any Business Employee to terminate his employment with the Company and/or become employed by or interested in any manner whatever in any Restricted Business, or attempt to do so;
 - 16.5.3. communicate with or furnish any information or advice to any Business Customer or Business Supplier for the direct or indirect purpose of inducing or causing a Business Customer or Business Supplier to cease being a customer or supplier of the Company and/or to become a customer or supplier of a Restricted Business; or
 - 16.5.4. solicit, interfere with or entice or endeavour to entice away from the Company any Business Customer or Business Supplier or persuade, induce, encourage or procure any Business Customer or Business Supplier to become a customer or supplier of any Restricted Business.
- 16.6. Each Existing Shareholder, after due consideration, agrees and acknowledges that:
- 16.6.1. in order to protect the value of the Company and the Confidential Information which is proprietary to the Company, it is necessary that upon it ceasing to be a Shareholder it be restrained from carrying on certain activities which would be harmful to the Company and/or the business of the Company, and that such restraint must be for a period which will adequately serve to protect the Company from the considerable economic prejudice and substantial and irreversible damage which would potentially be suffered by the Company were such Shareholder not to be so restrained;
 - 16.6.2. notwithstanding the manner in which the restraints in this clause, and the areas comprising the Territory, have been grouped together or described geographically, each of them constitutes a separate and independent restraint, divisible and severable from each of the other restraints and separately enforceable, in regard to all aspects thereof.
- 16.7. Each Existing Shareholder has given the restraint undertakings herein contained notwithstanding that such Existing Shareholder acknowledges that those restraints may limit the employment opportunities or other economic activities available to it, thereby potentially limiting its income earning capacity.
- 16.8. Each Existing Shareholder agrees that should it at any time dispute the reasonableness of any of the restraint or confidentiality undertakings herein contained, then the onus of proving such unreasonableness shall be on such Existing Shareholder.
- 16.9. The provisions of this clause shall not preclude a Existing Shareholder from holding or acquiring, for investment purposes only, not more than 5% of the shares or other securities of any company which are listed on a recognised stock exchange, notwithstanding that a business or activity of such company is a business or activity restricted in terms of clause 16.5, provided that at no time during such investment the Existing Shareholder becomes actively involved, whether directly or indirectly, in the business, interests or affairs of such company (whether as a director, employee, agent, broker, representative, consultant, adviser, funder, contractor, financier or otherwise).

17. **GENERAL COMPANY AFFAIRS**

- 17.1. The Shareholders shall exercise their powers in relation to the Company to procure, to their reasonable ability, that the Company:
- 17.1.1. carries on its business and conducts its affairs in a proper and efficient manner and for its own benefit;
 - 17.1.2. does not enter into any agreement or arrangement restricting its competitive freedom within the field of its business; and
 - 17.1.3. carries on its business acting honestly and fairly, with due skill, care and diligence and in accordance with all applicable laws and regulations.
- 17.2. Each Shareholder shall:
- 17.2.1. use all reasonable and proper means in its power to maintain, improve and extend the business and to further the reputation and interests of the Company; and
 - 17.2.2. make available to the Company the benefit of their standing and goodwill locally and internationally.

18. **DISPUTE RESOLUTION**

- 18.1. If a dispute arises out of or in connection with this agreement:
- 18.1.1. the parties shall use their best efforts to settle the dispute by mediation; and
 - 18.1.2. upon written notice from any party to the other (the "**Dispute Notice**") the dispute shall be referred to a suitably qualified independent mediator, whose identity shall be agreed between the parties in writing, within 7 days of receipt of the Dispute Notice, and failing agreement as aforesaid, to a suitably qualified independent mediator appointed by the Centre for Effective Dispute Resolution ("CEDR"). The mediator shall be a CEDR accredited mediator; and
 - 18.1.3. the parties shall agree on the mediation procedure and failing agreement within 14 days of receipt of the Dispute Notice or such longer period of time as may be agreed to in writing, then, the mediation shall take place in accordance with the United Nations Commission on International Trade Law ("UNCITRAL") Model Conciliation Rules in force at the time of the dispute;
 - 18.1.4. the mediation shall be held in Cape Town, South Africa, unless the parties to the dispute unanimously agree on another jurisdiction.
- 18.2. If for any reason, including lack of co-operation by the parties, a dispute is not settled by mediation within 30 days of receipt of the Dispute Notice or such longer period of time as may be agreed to in writing, then the dispute shall be settled by arbitration in accordance with the following provisions:
- 18.2.1. the arbitrator shall, if the dispute is agreed in writing by the parties to be:
 - 18.2.2. primarily an accounting matter, be an independent practising accountant of not less than 10 years' standing as such;
 - 18.2.3. primarily a legal matter, be an attorney or solicitor of not less than 10 years' standing as such or a practising senior counsel or barrister;

18.2.4. any other matter, be a suitably qualified independent person agreed upon in writing by the parties; provided that if the parties do not, within 14 days of the 30-day period contemplated in clause 18.2, agree in writing as to the identity of the arbitrator, the arbitrator shall, irrespective of the nature of the dispute, be appointed by UNCITRAL upon request by any party to make such appointment;

18.2.5. the arbitration shall be held at a venue in Cape Town, South Africa and shall be conducted in accordance with the UNCITRAL Arbitration rules in force at the time.

18.3. Nothing in this clause 18 shall preclude any party from seeking interim and/or urgent relief from a court of competent jurisdiction.

19. **NOTICES**

19.1. Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if it is in writing and in English and delivered by hand, registered mail, courier, or e-mail to one of a party's chosen addresses set out on the front page of this agreement.

19.2. Any notice to a party:

19.2.1. sent by registered mail in a correctly addressed envelope to it at its designated postal address shall be deemed to have been received on the 7th business day after posting (unless the contrary is proved);

19.2.2. delivered by hand to a responsible person during ordinary business hours at its designated physical address shall be deemed to have been received on the day of delivery; or

19.2.3. sent by e-mail to its chosen e-mail address shall be deemed to have been received on the date of despatch (unless the contrary is proved).

20. **GOVERNING LAW**

This agreement shall be governed and interpreted in accordance with the laws of the South Africa, subject to any overriding statutory provisions applicable to the Company in the jurisdiction of its incorporation.

21. **GENERAL PROVISIONS**

21.1. Whole Agreement

21.1.1. No addition to, variation or agreed cancellation of this agreement, shall be of any force or effect unless reduced to a written document and signed by or on behalf of all the shareholders in the Company, and by the Company itself.

21.1.2. This agreement constitutes the whole agreement between the parties relating to the subject matter hereof and supersedes any other discussions, agreements and/or understandings regarding the subject matter hereof.

21.1.3. No extension of time, waiver or relaxation or suspension of, or agreement not to enforce, or to suspend or postpone the enforcement of, any of the provisions or terms of this agreement given or made by either party shall be binding unless recorded in a written document signed by the party granting an extension, waiver, relaxation or suspension, or by the parties between whom agreement was reached not to enforce, or to suspend or postpone the enforcement of, any of the provisions or terms of this agreement, as the case may be.

21.1.4. To the extent permissible by law no party shall be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

21.2. Costs

Each party shall pay its own fees and expenses in connection with this agreement.

21.3. No Assignment

No party may assign any of its rights or obligations in terms of this agreement, either in whole or in part, to any other person without the prior written consent of the other parties to this agreement.

21.4. Interpretation

In this agreement and all annexures and schedules, unless specifically provided otherwise:

- 21.4.1. words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include created entities (corporate or unincorporated) and the state and vice versa;
- 21.4.2. references to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 21.4.3. the expiration or termination of this agreement shall not affect such of the provisions of this agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 21.4.4. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply;
- 21.4.5. the words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s;
- 21.4.6. any provision in this agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written and severed from the balance of this agreement, without invalidating the remaining provisions of this agreement or affecting the validity or enforceability of such provision in any other jurisdiction;
- 21.4.7. any reference in this agreement to a party shall include a reference to that party's assigns expressly permitted under this agreement and, if such party is liquidated or sequestrated, be applicable also to and binding upon that party's liquidator or trustee.

22. COUNTERPARTS

This agreement:

- 22.1. may be signed in one or more counterparts all of which shall be considered one and the same agreement; and
- 22.2. shall become effective when a counterpart has been signed by each of the parties.

SIGNED by the parties on the following dates and at the following places respectively:

For **<INSERT COMPANY NAME>**

Signature:

 who warrants that he / she is duly authorised thereto

Name:

Date:

Place:

For **SBC**

Signature:

 who warrants that he / she is duly authorised thereto

Name:

Date:

Place:

For **<INSERT EXISTING SHAREHOLDER NAME>**

Signature:

 who warrants that he / she is duly authorised thereto

Name:

Date:

Place:

ANNEXURE A

DEED OF ADHERENCE

THIS DEED OF ADHERENCE is made on <INSERT DATE>.

<INSERT NEW SHAREHOLDER NAME AND REGISTRATION/IDENTIFICATION NUMBER> (“**New Shareholder**”), intending to become the holder of shares in <INSERT NAME OF STARTUP COMPANY> (“**Startup**”), refer to the written shareholders' agreement (the “**Agreement**”), a copy of which is attached to this Deed of Adherence (this “**Deed**”), binding on the Startup and its existing shareholders. Expressions defined in the Agreement shall bear the same meaning when used in this Deed. By signing this Deed, the New Shareholder agrees, with effect from the date of acquisition by the New Shareholder of Shares in the Startup, to be treated as a party to the Agreement and to observe, comply and be bound by the provisions of the Agreement. The New Shareholder hereby nominates the following addresses for the purposes of giving any notice, the serving of any process and for any other purpose in terms of this Deed and the Agreement:

Physical Address: **[INSERT]**

Postal Address: **[INSERT]**

E-mail Address: **[INSERT]**

For THE NEW SHAREHOLDER

Signature: _____

who warrants that he / she is duly authorised thereto

Name: _____

Date: _____

Place: _____

ANNEXURE B

AGREED FORM OF FINANCIAL REPORT (www.incmind.com)

Monthly Reports ?

2014-08-01 Startup Bootcamp Report

Revenue	Expenses
EUR 45,000	EUR 0
Cash	Number of FTE
EUR 0	0 People
Daily Active Users	Monthly Active Users
0 Users	0 Users
New Registrations	Paying Customers
0 Users	0 Customers

Most Important Achievements This month

Sales Pipeline

Answers here

General Remarks

We need help with
