3rd Floor, The Boathouse
Bishop Street
Dublin 8
D08 H01F
Ireland
info@binariilabs.com
www.binariilabs.com

**Companies Act 2014**
**Section 19**

# FORM OF CONSTITUTION OF PRIVATE COMPANY LIMITED BY SHARES CONSTITUTION

**of**

# BINARII LABS LIMITED

1. The name of the Company is: **BINARII LABS LIMITED**

2. The Company is a private company limited by shares, registered in **THE REPUBLIC OF IRELAND** under Part 2 of the Companies Act 2014.

3. The liability of the members is limited.

4. The share capital of the Company is Euro (EUR) 500,000 divided into 1,000,000 shares of Euro (EUR) 0.10 each and 400,000 Cumulative Redeemable Convertible Preference Shares of Euro (EUR) 1.00 each.

5. Supplemental Regulations (if any)

## DEFINITIONS

**"Allocation Notice"**, the notice to be given by the Company pursuant to Regulation 4.1.6;

**"Auditors"**, the statutory auditors for the time being of the Company, or, where they are unwilling or unable to act or where the context otherwise so permits, such other appropriate person as they may nominate;

**"Bad Leaver"**, means in relation to any of the Founders, any of them ceasing to be a full time or part time employee of the Company or ceasing to be engaged by the Company in any other capacity, in circumstances where they are not a Good Leaver;

**"Board"**, the board of Directors as constituted from time to time;

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**"Companies Act"**, the Companies Acts 2014 and all Acts of the Oireachtas and statutory instruments which are to be read as one with, or construed or read together as one with, the Companies Acts, and every statutory modification or re-enactment thereof for the time being in force (or, where the context so admits or requires, any one or more of such Acts) and all orders and regulations made thereunder;

**"Company"**, Binarii Labs Limited (company number 703793);

**"Date of Adoption"**, the date of adoption of these Regulations;

**"Directors"**, the directors of the Company from time to time, and **"Director"** shall mean each or any of them as the context may require;

**"EI Shareholder ('s)"**, the holders of the cumulative convertible redeemable preference shares (CCRP shares) whilst they remain as CCRP shares, but not upon their conversion to ordinary shares. Upon their conversion to ordinary shares the EI shareholders shall be deemed as Shareholders within the definition herein for the converted shares ( or whatsoever number of shares have been converted)

**"ESOP"**, any employee share ownership plan adopted by the Board from time to time for the allotment or issue of, or the grant of any right to require the allotment or issue of, up to ten (10) per cent of the issued share capital of the Company;

**"Fair Value"**, the amount certified by the Auditors as being the fair value per share of the Specified Shares at the date on which the Transfer Notice is received or deemed to be received by the Company;

**"Founders"**, Steven Garner, Nigel Carter, Aidan Finn, Ciarán McNamee;

**"Good Leaver"** means a Founder who ceases to be an employee of the Company because their employment contract has been terminated (i) due to their death; (ii) due to an illness of such serious nature that they are incapable of continuing to work on a full-time basis; or (iii) for reasons of redundancy;

**"He"** refers to anyone who identifies as he/she and/or they/them;

**"Spark Nominee"**, means the nominee appointed from time to time for the purpose of acting as nominee in respect of the Spark 2023 Shares or part thereof. ;

**"Ordinary Shares"**, the ordinary shares of €0.10 each in the capital of the Company;

**"Original Issue Price"**, in respect of each Ordinary Share, the amount of nominal value plus premium paid by the original holder of that Ordinary Share to subscribe for that Ordinary Share;

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**"Permitted Transfer"**, a transfer of shares expressly authorised by Regulation 3, and **"Permitted Transferee"** shall be construed accordingly;

**"Purchaser"**, a person to whom some or all of the Specified Shares have been allocated by the Directors;

**"Sale Price"**, except as otherwise provided the Vendor's Price or (in a case where the Directors have required that a Transfer Notice be given, or a Transfer Notice has been deemed to have been given) the Fair Value of the Specified Shares;

**"Shareholder ('s)"** are all holders of any type of shares from time to time. Unless specifically included in Clause 10 to 13 inclusive, this definition of shareholders shall not include EI shareholders.

**"Shares"**, the Ordinary Shares or any other issued shares in the capital of the Company from time to time;

**"Spark Crowdfunding"**, means Slua Ventures Limited, a private company limited by shares, incorporated and registered in Ireland with company number 626553 and with a registered address at 27 William Street South, Dublin 2 that operates the Spark crowdfunding platform;

**"Spark Observer"**, means a nominated person who will be given an entitlement to receive notice of board meetings (together with board documents), and to attend board meetings of their choosing, such that the invitation will permit them to join designated section of certain board meetings at the board's discretion to set that in advance within the agenda. Observers are not entitled, however, to vote on any matters or take part in any decision-making processes.

**"Spark 2023 Shares"**, means the 955 Ordinary Shares subscribed in around 23rd August 2023 and each a **"Spark 2023 Share"**;

**"Specified Shares"**, the shares specified in the Transfer Notice;

**"Transfer Notice"**, the notice given by a member to the Company pursuant to Regulation 4.1.1;

**"Vendor"**, the member giving (or deemed to give) the Transfer Notice;

**"Vendor's Price"**, the amount stipulated in the Transfer Notice as the price at which the Vendor wishes to sell the Specified Shares, expressed as a price per share; and

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1. **Future Share Issues**

1.1.

1.1.1. For the purposes of section 69(1) of the Act, the allotment of shares (including redeemable shares) is authorised generally;

1.1.2. For the purposes of section 69(3) of the Act, the general authorisation for the allotment of shares in the Company is not subject to any stipulation as to a period during which the allotment may occur; and

1.1.3. For the purposes of section 69(12)(a)(i) of the Act, section 69(6) of the Act shall not apply, generally, to any allotment of shares in the Company

1.2. Save for:

1.2.1. any Shares issued pursuant to the ESOP (or any options to subscribe for Shares thereunder); and

1.2.2. all unissued shares in the capital of the Company and all new shares (or loan notes or other instruments or securities convertible into shares but not convertible preference shares issued to any future investor or government organisation responsible for the development and growth of Irish enterprises) shall on issue be offered to the members in proportion as nearly as possible to the numbers of Shares then held by them respectively. Such offers shall be made by notice in writing to each such member stating the total number of shares so offered, the number and class thereof offered to that member, the price per share, the date for subscription, the date (being not less than 14 days after the date upon which the notice is given) by which the offer, if not accepted, will be deemed to have been rejected and stating that any member who accepts in full the offer made to him may elect, in his notification of acceptance, to subscribe on the same terms for such additional number of shares as he (a "Surplus Subscriber") may therein specify, if any other member rejects or is deemed to reject the offer. Any shares not accepted in the said period shall accordingly be issued to any Surplus Subscribers in proportion as nearly as possible to the numbers of Shares then held by them respectively. Subject to the Companies Act any remaining shares thereafter shall be at the disposal of the Directors who may allot, grant options over or otherwise dispose of the same to such persons at such times and on such terms (not being more favourable (including as to price) than the terms offered to those members of the Company mentioned above) as they think proper. Any new shares of the Company

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shall be issued on the basis that with effect from the date of issue they shall rank pari passu with the then existing shares of that class in the capital of the Company and section 69(3) of the Companies Act shall be modified accordingly.

**2. Spark Nominee Share Transfers:**

2.1. A beneficial owner shall be entitled at any time to transfer the beneficial interest in the Shares held on trust for him or her by the Spark Nominee (being the Nominee at the time of the transfer) without restriction to any person provided that the legal title in such Shares continues to be held by the Spark Nominee and the transferee is (or becomes prior to the completion of the transfer) a member of the Spark Crowdfunding platform.

**3. Permitted Transfers:**

3.1. Except in the case of a Permitted Transfer the right to transfer any shares or to dispose of any shares or any interest in any shares in the capital of the Company or any rights attaching thereto shall be subject to the following restrictions and provisions and section 95(1) of the Companies Act shall not apply.

3.1.1. Every member who desires to dispose of any shares in the capital of the Company shall give to the Company notice in writing specifying the number and class of shares he wishes to sell and the price at which he wishes to sell each of them and the identity of the proposed transferee (if known). The Vendor shall at the same time deposit with the Company the share certificate(s) in respect of the Specified Shares (or in the case of any lost share certificate, an indemnity in respect thereof in a form satisfactory to the Directors). Subject as hereinafter mentioned a Transfer Notice shall constitute the Company the agent of the Vendor for the sale of each of the Specified Shares to the Company itself or to the members (other than the Vendor) at the Sale Price. A Transfer Notice may contain a provision that unless all the shares comprised therein are sold by the Company pursuant to this Regulation none shall be so sold, and any such provision shall be binding on the Company.

3.1.2. Upon the receipt of a Transfer Notice (whether deemed or otherwise), the Directors shall decide whether it is in the best interests of the Company that the Company should purchase the Specified Shares at the Sale Price and shall within 21 days of such receipt (or, if applicable, within 21 days of the determination of the Fair Value) communicate their decision to the Vendor. If their decision is negative, the provisions of Regulation 4.1.3 shall apply with effect from the communication thereof to the Vendor. If their decision is positive, the communication thereof to

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the Vendor shall constitute a contract for the purchase of the Specified Shares by the Company at the Sale Price, conditional upon the compliance by the Company within 60 days with the statutory requirements for such purchase, including in particular the approval of the members by written resolution or at an extraordinary general meeting. Subject to the fulfilment of the said condition, the succeeding provisions of this Regulation, and in particular, Regulation 4.1.7 hereof, shall apply mutatis mutandis to the purchase of the Specified Shares by the Company. If the said condition shall not be fulfilled within 60 days, the contract for the purchase of the Specified Shares by the Company shall lapse, and the provisions of Regulation 4.1.3 shall apply with effect from such lapse.

3.1.3. Forthwith upon this Regulation 4.1.3 having effect, the Directors shall by notice in writing inform all the members of the Company, other than the Vendor, of the number of the Specified Shares and of the Sale Price and invite each such member to apply in writing to the Company within twenty-one days after the date of despatch of the notice (which date shall be specified therein) for such maximum number of the Specified Shares (being all or any thereof) as he shall specify in such application (which may, for the avoidance of doubt, be greater than his proportionate entitlement). Any such application shall be irrevocable.

3.1.4. If the said member or members shall within the said period of twenty-one days apply for all or (except where the Transfer Notice provides otherwise) any of the Specified Shares, the Directors shall allocate the Specified Shares (or so many of them as shall be applied for as aforesaid) to or amongst the applicants and in case of competition pro rata (as nearly as possible) according to the number of Shares of which they are registered as holders or unconditionally entitled to be registered as holders provided that no applicant shall be obliged to take more than the maximum number of Shares specified by him as aforesaid.

3.1.5. If the Vendor shall have specified in the Transfer Notice that unless all the Specified Shares are sold pursuant to this Regulation none should be sold, the Directors shall not proceed with any allocation pursuant to this Regulation unless in pursuance of the applications referred to in Regulation 4.1.4 the Directors shall allocate all the Specified Shares. Subject as aforesaid the Directors shall in accordance with the terms hereof and as soon as practicable after the expiry of the period of the relevant offer(s) allocate so many of the Specified Shares as shall be applied for by the member or members who have made applications in accordance with Regulation 4.1.4.

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3.1.6. Forthwith upon any allocation pursuant to the preceding provisions of this Regulation the Company shall give written notice of such allocation(s) to the Vendor and the persons to whom the Specified Shares (or so many of them as aforesaid) shall have been allocated and shall specify in such notice the place in the State and time (being not earlier than fourteen and not later than twenty-eight days after the date of the notice but in any event not being earlier than twenty-one days after the notice in writing referred to in Regulation 4.1.3 is given) at which the sale of the shares so allocated shall be completed.

3.1.7. The Vendor shall be bound to transfer the shares comprised in an Allocation Notice to the Purchaser named therein at the time and place therein specified and if he shall fail to do so then any Director or some other person appointed by the Directors for the purpose shall be deemed to have been appointed attorney of the Vendor with full power to execute, complete and deliver, in the name and on behalf of the Vendor transfers of such of the Specified Shares as aforesaid to each Purchaser against payment to the Company of the Sale Price in respect of each such share. For the avoidance of doubt however, in the event that the Vendor is EI, the power to appoint an Attorney shall not be given to the Directors, however EI specifically agree to execute such documents as are required under this clause Each Purchaser on payment of such price to the Company in respect of each of the Specified Shares so transferred to him shall be deemed to have obtained a good discharge for such payment and on execution and delivery of the said transfers duly stamped each Purchaser shall be entitled to insist upon his name being entered in the Register as the holder by transfer of such of the Specified Shares as shall have been transferred to him. The Company shall forthwith pay any such amount received by it hereunder into a separate bank account in the name of the Company and shall hold any such amount in trust for the Vendor.

3.1.8. If the Purchaser shall fail to complete a transfer of shares, the shares in question shall, without prejudice to any claim the Vendor may have against such Purchaser, be reallocated by the Directors as soon as may be among other holders of Shares willing to acquire same. The procedures set out in the foregoing provisions of this Regulation 4.1 shall apply to any such re-allocation save that the defaulting Purchaser shall not be permitted to participate in any further offer.

3.1.9. If the Directors do not dispose of all the shares comprised in any Transfer Notice in accordance with the foregoing provisions of this Regulation they shall have a period of 60 days to find a person approved by them to purchase the Specified Shares (or part thereof if applicable) in accordance with the foregoing provisions of this Regulation, failing

3rd Floor, The Boathouse
Bishop Street
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D08 H01F
Ireland
info@binariilabs.com
www.binariilabs.com

which they shall so notify the Vendor forthwith and during the period of ninety days next following the despatch of such notice the Vendor shall be at liberty to transfer all or any of the Specified Shares which are not required to be allocated by the Directors in accordance with this Regulation 4.1 to any person on a bona fide sale at any price not being less than the Sale Price (after deducting, where appropriate, any dividend or other distribution declared or made after the date of the Transfer Notice and to be retained by the Vendor) provided that:

(a) if the Transfer Notice shall state that unless all the Specified Shares are sold none of them shall be sold, the Vendor shall not be entitled hereunder to transfer any of the Specified Shares unless in aggregate the whole of such shares are allocated in accordance with the preceding provisions of this Regulation 14.1 or transferred under this Regulation 4.1.9; and

(b) the Directors may require to be satisfied that such shares are being transferred in pursuance of a bona fide sale for the consideration stated in the transfer without any deduction, rebate or allowance whatsoever to the purchaser and if not so satisfied may refuse to register the instrument of transfer.

## 4. Tag Along:

4.1. In the event that the holders of at least 51% of shares (**"Transferors"**) propose to transfer any shares to an unrelated third party (**"Buyer"**), they shall send a written notice (**"Transfer Notice"**) to the Company and to each other Shareholder.

4.2. Each of the Shareholders other than the Transferors shall have the right (the **"Tag-Along Right"**) but not the obligation, to require the Buyer in the proposed transfer to purchase from him, upon the same terms as given to the Transferor, all of his own shares / such number of his own shares as he specifies.

4.3. Within 30 days of receipt of the Transfer Notice, each Shareholder who elects to exercise the Tag Along Right shall deliver a written notice of such election to the Transferor, specifying the number of shares with respect to which it has elected to exercise the Tag Along Right.

4.4. That election notice shall be irrevocable and shall constitute a binding agreement by that Shareholder to transfer such shares on the terms and conditions set out in the Transfer Notice.

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4.5. In order to be entitled to exercise his Tag-Along Right, the electing Shareholder must accept and perform the same terms as the Transferor would have accepted and performed as a result of the transfer to him.

4.6. The electing Shareholder shall not be obliged to accept any liability arising from the representations and warranties severally made by the Shareholder greater than an obligation pro rata with his share of the total consideration paid by the transferee.

4.7. Where a Shareholder has properly elected to exercise his Tag-Along Right and the proposed Buyer fails to purchase shares from him, no transfer shall be made to the Buyer by any other Shareholder, and if purported to be made, such transfer shall be null and void.

## 5. Drag Along:

5.1. If the holders of the Shares holds not less than 65% in nominal value of the Shares then in issue and intends to sell as part of a bona fide arm's length transaction all of their Shares (the **"Selling Shares"** and the transaction for the sale thereof being referred to as the **"Drag Sale"**), the Board shall have the right to give to the Company not less than 10 Business Days' advance notice before the completion of the Drag Sale requiring all (but not some only) of the other Shareholders (the **"Dragged Shareholders"**) to sell all (but not some only) of their Shares in accordance with this Regulation 6.1. The notice given to the Company (the **"Drag Notice"**) shall include:

5.1.1. the identity of the proposed purchaser (the **"Proposed Purchaser"**);

5.1.2. details of the Selling Shares and the price per share for each class of Selling Share which the Proposed Purchaser is proposing to pay;

5.1.3. the manner in which the consideration is to be paid;

5.1.4. the proposed date of completion (the **"Drag Completion Date"**); and

5.1.5. such other particulars of the proposed Drag Sale as the Board considers to be materially relevant to the Dragged Shareholders.

5.2. The Board shall, within 5 Business Days of receipt of a Drag Notice, send a copy of the Drag Notice to each of the Dragged Shareholders.

5.3. Every Dragged Shareholder who has been sent a copy Drag Notice pursuant to Regulation 7.2 shall be required to sell all of its Shares to the Proposed Purchaser on the Drag Completion Date or at such other date and/or period as may be stipulated by the Board (such final date being the "**Drag Deadline Date**") and shall execute the necessary share transfer forms in favour of the Proposed Purchaser provided that:

3rd Floor, The Boathouse
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5.3.1. the terms, including price, of such sale shall, subject as hereinafter provided in this Regulation 6.3, be the same in all respects as those pursuant to the Drag Sale; and

5.3.2. the Proposed Purchaser completes the purchase of all of the Selling Shares simultaneously.

5.4. The price payable to the Dragged Shareholders may be deferred and/or conditional in the same manner and upon the same terms (if any) as are applicable to the Drag Sale, provided that if the Proposed Purchaser intends to acquire the Selling Shares for non-cash consideration, the Board shall use reasonable endeavours, if so requested by the Dragged Shareholders, to negotiate cash consideration for the Dragged Shareholders.

5.5. If any of the Shareholders (other than Enterprise Ireland) (the **"Defaulting Shareholder(s)"**) fail to comply with any of the terms of this Regulation 6.5 by the Drag Deadline Date, any Director or some other person nominated by the Board for that purpose shall be constituted the agent of each Defaulting Shareholder for the sale of his Shares in accordance with the Drag Notice (together with all rights then attached thereto) and the Board may authorise such person as it may determine to execute and deliver on behalf of each Defaulting Shareholder the necessary transfer(s) and the Company may receive the purchase money in trust for each of the Defaulting Shareholders and cause the Proposed Purchaser to be registered as the holder of such Shares. With effect from the day after the Drag Deadline Date, the voting and other rights attaching to those Shares may not be exercised by such Defaulting Shareholder and payment of any dividends declared on such Shares shall be withheld and held in trust for such Defaulting Shareholder until such time as the requisite transfer is effected. The receipt by the Company of the purchase money, pursuant to such transfers, shall constitute a good and valid discharge to the Proposed Purchaser (who shall not be bound to see to the application thereof) and after the Proposed Purchaser has been registered in purported exercise of the aforesaid powers the validity of the proceedings shall not be questioned by any person. The Company shall not pay the purchase money to a Defaulting Shareholder until he shall, in respect of the Shares being the subject of the Drag Notice, have delivered his share certificates or a suitable indemnity and the necessary transfers to the Company. The Company shall, subject to the relevant share transfer forms of the Shares being duly stamped, register the name of the transferee of such Shares in the Register of Shareholders of the Company.

3rd Floor, The Boathouse
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Dublin 8
D08 H01F
Ireland
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5.6. Notwithstanding the foregoing, if the Proposed Purchaser fails to complete the Drag Sale, the Drag Notice shall no longer be binding and cease to have effect.

**6. Right to appoint an Observer:**

6.1. For so long as the Spark Nominee holds any Shares, it shall be entitled to (but not obliged and only acting upon the instruction of the beneficial owners of such Shares) from time to time appoint one Observer (the **"Spark Observer"**) to the Board.

**7. Information Rights:**

7.1. The Company will provide to each holder of at least 5% of Ordinaries, (i) unaudited annual financial statements and (ii) unaudited quarterly financial statements and an annual business plan. This right will terminate immediately prior to the Company's IPO or completion of a Sale Transaction (as defined below).

**8. Sale Transaction:**

8.1. A **"Sale Transaction"** shall mean (i) any merger, amalgamation, reorganisation, consolidation or other transaction involving the Company and any other Company or other entity or person in which the persons who were the shareholders of the Company immediately prior to such merger, amalgamation, reorganisation, consolidation or other transaction own less than fifty percent (50%) of the outstanding voting shares of the surviving or continuing entity after such merger, amalgamation, reorganisation, consolidation or other transaction; (ii) the sale, exchange or transfer by the Company's shareholders, in a single transaction or series of related transactions, of all of the voting shares of the Company; or (iii) the sale of all or substantially all of the assets of the Company.

**9. Reverse Vesting:**

9.1. It is not any Binarii Labs Founder's intention to dispose of any of their original founder shares for 24 months from the date of completion of the first Spark Crowdfunding equity crowdfunding campaign.

9.1.1. For avoidance of doubt original founder shares shall be deemed as those specified in the first schedule of the SHA only. It will not include any additional shares or options that the founders may have purchased from other shareholders.

3rd Floor, The Boathouse
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9.2. If any of the founders do leave the company during the 24-month agreed period referenced above and are assessed by the Board as being "Bad Leavers" they will be required to dispose of some or all of their original founder shares on the basis of terms set out in clause 9.2.1.

9.2.1. If there is an unexpected reason for any of the Founders to cease operational involvement during the same time period of 24 months as outlined above, they shall be required and permitted to make a submission to the board to have them declared as a "Good Leaver". In the event of them being declared a "Good Leaver" they are entitled to receive full market value for the value of their shares.

9.2.2. The board may only declare a founder as a "Good Leaver" within the context of the above definition outlined at 9.2.1. and on a case-by-case basis.

9.2.3. A "Good Leaver" will be treated in line with the standard terms of clause 3 herein.

9.3. In the event that any of the Founders of Binarii Labs do leave as "Bad Leavers" anytime during the above agreed 24-month period from the date of completion of the first Spark Crowdfunding equity crowdfunding campaign, the shareholders have the right to purchase some of the founders shares on a pro rata basis at the cost paid by the Founders.

9.3.1. This will be done on the following basis: 30% of the "Bad Leaver" founder's shares to revert in being offered at cost to all shareholders pro rata, including all remaining founders in months 0-12, and 10% of the "Bad Leaver founder's shares to revert in being offered at cost to all shareholders pro rata, also including all remaining founders in months 13-24. In the event of them being declared a "Bad Leaver" that or those Founders are entitled to receive full market value for the value of their remaining shares, that being 70% of their founder's shares in months 0-12 and 90% of their founder's shares in months 13-24.

9.3.2. In the instance of a founder deemed to be a "Bad Leaver", then clause 9.3.1 shall prevail.

9.4. In the event that of the death of a Founder shareholder or of them committing an offence, as described in the Shareholders Agreement, the terms of Clause 23 of the Shareholders Agreement shall prevail.

10. The following **"Definitions"** and **"Rights attaching to Shares"** apply solely to the Enterprise Ireland Convertible Shares that shall be issued to Enterprise Ireland in the event of Enterprise Ireland extending an investment offer that is agreeable to the

3rd Floor, The Boathouse
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Company and that agreement becomes mutually executed to the satisfaction of both parties.

**DEFINITIONS:**

**"3% Dividend"**, a fixed cumulative preferential dividend at the rate of 3% per annum on the amount paid up on each Convertible Share (including share premium, if any);

**"8% Dividend"**, a fixed cumulative preferential dividend at the rate of 8% per annum on the amount paid up on each Convertible Share (including premium, if any);

**"Agreement"**, the share subscription and shareholders' agreement dated 23 May 2024 between (1) the parties named in the First Schedule thereto, (2) the Company and (3) Enterprise Ireland;

**"Asset Sale"**, the completion of any transaction whereby any person or group of persons purchases(s) the whole or a majority of the business and assets of the Company;

**"Business Day"**, a day (other than a Saturday or Sunday) on which clearing banks in Ireland are open for business;

**"Business Plan"**, the business plan of the Company, the key elements of which are included in the application form received by Enterprise Ireland on 10th October 2023;

**"Companies Act"**, the Companies Act 2014 and every statutory modification, consolidation or re-enactment thereof for the time being in force;

**"Company Redemption Notice"**, has the meaning given to it in paragraph 11.9.1;

**"Compliance Statement"**, a statement in a format prescribed by Enterprise Ireland and signed by the Managing Director of the Company (or if there is no managing Director, by any Director) detailing how the Subscription Monies have been spent by the Company during the period commencing on 10th October 2023 and ending on the Milestones Completion Date;

**"Control of Exports Act"**, Control of Exports Act 2023 and every statutory modification, consolidation or re-enactment thereof for the time being in force;

**"Conversion Price"**, means (as applicable):

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a) In respect of a Conversion Notice issued pursuant to paragraph 11.12 in connection with a Share Sale, the value of an Ordinary Share as determined by the relevant Share Sale; or

b) In respect of a Conversion Notice issued pursuant to paragraph 11.12 in connection with an Asset Sale, the value of an Ordinary Share:
    i. Immediately prior to completion of the relevant Asset Sale and assuming completion of such Asset Sale; and

    ii. On the basis of an open market price on a going concern basis as between a willing seller and a willing buyer;

    such value to be either
    i. agreed between the holder(s) of Convertible Shares and a duly authorised representative of the Shareholders within 10 Business Days of the issue of the Conversion Notice pursuant to paragraph 11.12; or

    ii. certified by an independent third party nominated by the board of directors of the Company and satisfactory to the holder(s) of the Convertible Shares;

c) in respect of a Conversion Notice issued pursuant to paragraph 11.15, the value of an Ordinary Share:
    i. as at the date on which a Conversion Notice is issued to the Company pursuant to paragraph 11.15; and

    ii. on the basis of an open market price in a going concern basis as between a willing seller and a willing buyer;

    such value to be either:

    iii. agreed between the holder(s) of Convertible Shares and a duly authorised representative of the Shareholders within 10 Business Days of the issue of the Conversion Notice pursuant to paragraph 11.15; or

    iv. certified by an independent third party nominated by the board of directors of the Company and satisfactory to the holder(s) of the Convertible Shares(s);

**"Conversion Notice"**, a notice in writing from the holder(s) of Convertible Shares to the Company requiring the conversion of some or all of the Convertible Shares;

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**"Convertible Shares"**, 8% Cumulative Redeemable Convertible Preference Shares of €1 each in the capital of the Company and **"Convertible Share"** shall mean any one of them;

"**Deemed Issue Date**", 23 May 2024;

**"Dividends"**, the 8% Dividend or the 3% Dividend (as applies at that time);

**"Excess Amount"**, a sum equal to the aggregate subscription price (including share premium if any) of the Convertible Shares in issue (if any) following the First Conversion Event;

**"First Conversion Event"**, the earlier of:

a) the first Qualifying Investment to occur following the Deemed Issue Date; or

b) a Listing;

**"First Conversion Event Notice"**, has the meaning given to it in paragraph 11.13

**"Holder Redemption Notice"**, has the meaning given to it in paragraph 11.8;

**"Investment Round"**,

a) an investment for Shares; or

b) a series of investments for Shares on identical or substantially similar terms;

**"Listing"**, the admission of any Shares to trading on the official list or other market of the Irish Stock Exchange plc or the London Stock Exchange plc or on any other recognised stock exchange;

**"Listing Shares"**, the class of Shares to be admitted to a stock exchange pursuant to a Listing;

**"Milestones Completion Date"**, the second anniversary of the Deemed Issue Date;

**"New Shares"**, the class of Shares to be allotted and issued by the Company to a Qualifying Investor pursuant to the first Qualifying Investment to occur after the date of the Agreement;

**"Option Breach"**, a breach by the Company of any of the clauses 4.1.1, 4.1.2, 4.1.4, or 4.1.6 of the Agreement by virtue of having carried out the actions contemplated by such clause without having first obtained the prior written consent of Enterprise Ireland or any activity by the Company that is in breach of the Control of Exports Act 2023;

3rd Floor, The Boathouse
Bishop Street
Dublin 8
D08 H01F
Ireland
info@binariilabs.com
www.binariilabs.com

**"Option Breach Date"**, the date on which an Option Breach occurs;

**"Option Breach Dividend Notice"**, a written notice from Enterprise Ireland to the company requiring the re-instatement of the 8% Dividend on the Convertible Shares with effect from the Option Breach Date;

**"Option Breach Redemption Notice"**, a written notice from Enterprise Ireland to the Company requiring the Company to redeem some or all of the Convertible Shares in accordance with paragraph 2.10 of the Third Schedule of the Agreement;

**"Ordinary Shares"**, the ordinary shares of **€ 0.10** each in the capital of the Company and **"Ordinary Share"** shall mean any one of them;

**"Qualifying Investment"**,

a) an Investment Round of at least €400,000 made by a Qualifying Investor or Qualifying Investors prior to the actual date of redemption of the Convertible Shares that places a defined valuation on the Company; or

b) the conversion of loan notes held by a Qualifying Investor or Qualifying Investors with a value of at least €400,000 into Shares prior to the actual date of redemption of the Convertible Shares;

**"Qualifying Investor"**, such venture capital, trade or other investor as Enterprise Ireland shall, at its sole discretion, deem to be an applicable investor;

**"Realisation Notice"**, has the meaning given to it in paragraph 11.12;

**"Redemption Date"**, the fifth anniversary of the Deemed Issue Date (or if that day is not a Business Day, the next succeeding Business Day);

**"Redemption Price"**, a sum equal to the aggregate of:

i. the amount paid up (including share premium, if any) on the Convertible Shares to be redeemed and;

ii. the amount of Dividends accrued on the Convertible Shares (without the need to be declared) up to the date of redemption;

**"Second Conversion Event"**, the first Investment Round to occur after completion of the Qualifying Investment which is:

a) made by a Qualifying Investor; and

3rd Floor, The Boathouse
Bishop Street
Dublin 8
D08 H01F
Ireland
info@binariilabs.com
www.binariilabs.com

b) for a sum exceeding the Excess Amount;

**"Shares"**, the Ordinary Shares, Convertible Shares and any other shares in the capital of the Company from time to time;

**"Share Sale"**, the completion of any transaction whereby any person or group of persons Acting in Concert (as defined in the Irish Takeover Panel Act 1997 as amended) purchase(s) the whole or a majority of the issued equity share capital of the Company;

**"Subscription Monies"**, the monies subscribed by Enterprise Ireland pursuant to clause 2.2.1 of the Agreement; and

**"Validation Exercise"**, an investigation to be undertaken by Enterprise Ireland to establish to its reasonable satisfaction that:

a) the Subscription Monies have been used to implement the Business Plan; and

b) the expenditure referred to in the Compliance Statement has been properly vouched.

**11. The following provisions shall apply to the Convertible Shares:**

*Attendance at General Meetings:*

11.1. The holder(s) of Convertible Shares shall be entitled to receive notice of, and to attend at all general meetings of the Company but not to vote on any resolution proposed thereat.

*Dividends:*

11.2. Subject to paragraph 11.3, the holder(s) of Convertible Shares shall be entitled in priority to any payment of dividend on any other class of shares in the capital of the Company to be paid the 8% Dividend in respect of such Convertible Shares without the need for any declaration by the directors of the Company or by the Company in general meeting.

11.3. If, following receipt of the Compliance Statement and completion of the Validation Exercise, Enterprise Ireland determines that the Validation Exercise has been successful, the entitlement of the holder(s) of the Convertible Shares to receive the 8% Dividend shall be replaced with an entitlement to receive the 3% Dividend (such reduction to take effect from the Deemed Issue Date). If an Option Breach occurs prior to completion of the Validation Exercise and such breach is not remedied in accordance with clause 5.4.1 of the Agreement, the entitlement to receive the 8% Dividend shall not be replaced by the entitlement to receive the 3% Dividend.

3rd Floor, The Boathouse
Bishop Street
Dublin 8
D08 H01F
Ireland
info@binariilabs.com
www.binariilabs.com

11.4. The Dividends shall be deemed to accrue on a daily basis (assuming a 365 day year) from the Deemed Issue Date and shall be paid to the holder(s) of Convertible Shares on the earlier of: 11.4.1. the redemption of the Convertible Shares; or 11.4.2. the repayment of capital to members of the Company in accordance with paragraph 11.7; without the need for any declaration by the directors of the Company or by the Company in general meeting.

11.5. If the Company fails to redeem the Convertible Shares in accordance with paragraph 11.8, 11.9 or 11.10, the holder(s) of the Convertible Shares shall have the right (by serving a written notice on the Company) to require in priority to any payment of dividend on any other class of share in the capital of the Company to be paid the 8% Dividend as and from the proposed date of redemption (as set out in the Holder Redemption Notice, Company Redemption Notice or Option Breach Redemption Notice, as applicable) to the date of actual redemption of such Convertible Shares. Upon receipt of the written notice, the Company shall accrue the 8% Dividend as and from the proposed date of redemption (as set out in the Holder Redemption Notice, Company Redemption Notice or Option Breach Redemption Notice, as applicable) and shall pay the 8% Dividend upon redemption of the Convertible Shares.

11.6. If an Option Breach occurs and such breach is not remedied in accordance with the terms of the Agreement, the holder(s) of the Convertible Shares shall be entitled to issue an Option Breach Dividend Notice. Upon receipt of the Option Breach Dividend Notice, the Company shall accrue the 8% Dividend as and from the Option Breach Date and shall pay the 8% Dividend upon redemption of the Convertible Shares. For the avoidance of doubt, the holder(s) of Convertible Shares shall at no time be entitled to receive dividends on the Convertible Shares in excess of the 8% Dividend.

*Repayment of Capital:*

11.7. The holder(s) of Convertible Shares shall have the right on the winding up of the Company to repayment of the capital paid up thereon (including share premium, if any) together with payment of all arrears of Dividends to the date of repayment in priority to payment of any dividends or repayment of capital to the holder(s) of any other shares in the capital of the Company. Upon receipt by the holder(s) of Convertible Shares of all amounts required to be paid pursuant to this paragraph 11.7, the holder(s) of the Convertible Shares shall not be entitled to participate in the distribution of the remaining assets of the Company on a winding up.

3rd Floor, The Boathouse
Bishop Street
Dublin 8
D08 H01F
Ireland
info@binariilabs.com
www.binariilabs.com

*Redemption:*

11.8. Any holder(s) of Convertible Shares shall be entitled at any time on or after the Redemption Date to require the Company to redeem all the Convertible Shares held by it at the Redemption Price upon a written notice being served by such holder on the Company ("Holder Redemption Notice"). Redemption shall take effect on such date(s) (being not less than 21 days after the date of the Holder Redemption Notice unless otherwise agreed in writing between such holder(s) and the Company) as shall be notified by such holder to the Company in the Holder Redemption Notice (subject to the provisions of the Companies Act).

11.9. The Company shall be entitled at any time on or after the Redemption Date to redeem all Convertible Shares then in issue at the Redemption Price provided that:

11.9.1. three months' prior written notice has been served by the Company on the holder(s) of such Convertible Shares (or by such earlier date as may be agreed in writing between the Company and such holder(s)) ("Company Redemption Notice"). Any Company Redemption Notice shall be accompanied by evidence satisfactory to the holder(s) of Convertible Shares that the Company can lawfully carry out such redemption, failing which it shall have no effect; and

11.9.2. the Company has provided all such other information as such holder(s) may reasonably require in order to decide whether or not to convert such Convertible Shares pursuant to paragraphs 11.12 to 11.15 (as applicable) instead. The Company shall provide any information so required within 5 Business Days of each and every request by such holder(s), and for avoidance of doubt, the Company shall not be entitled to carry out any redemption pursuant to this paragraph 11.9 until all outstanding requests for information have been complied with to the satisfaction of such holder(s).

11.10. If an Option Breach occurs and such breach is not remedied in accordance with the terms of the Agreement, the holder(s) of the Convertible Shares shall be entitled to issue an Option Breach Redemption Notice and the Company shall (subject to the provisions of the Companies Act), redeem such number of Convertible Shares as have been set out in the Option Breach Redemption Notice at the Redemption Price.

3rd Floor, The Boathouse
Bishop Street
Dublin 8
D08 H01F
Ireland
info@binariilabs.com
www.binariilabs.com

11.11. If the Company fails to redeem the Convertible Shares when so required pursuant to paragraphs 11.8, 11.9, 11.17 or 11.19 or on receipt of an Option Breach Redemption Notice, then until such Shares are redeemed:

11.11.1. the Company shall not pay any dividends on any class of shares in the capital of the Company other than the Convertible Shares; and

11.11.2. the Company shall not redeem any other shares in the capital of the Company.

*Conversion:*

11.12. In the event of any **Asset Sale or Share Sale** at any time after the date of the Agreement then, prior to completing such Asset Sale or Share Sale (as applicable) (and in any event, not later than 30 days before the proposed completion of such Asset Sale or Share Sale (as applicable)), the Company shall notify the holder(s) of Convertible Shares in writing that it is proposed to complete an Asset Sale or Share Sale (as applicable) (the **"Realisation Notice"**). The holder(s) of the Convertible Share(s) shall have the right, exercisable at any time up to completion of such Asset Sale or Share Sale, to issue a Conversion Notice requiring the Company to convert some or all of the Convertible Shares held by that holder into such number of Ordinary Shares, with the number of Ordinary Shares to be issued on conversion of such Convertible Shares pursuant to this paragraph 11.12 to be calculated using the following formula:

$$A = \frac{B}{C \times D}$$

where:

A = the number of Ordinary Shares into which the relevant Convertible Shares will be converted;

B = the aggregate subscription price paid (including share premium, if any) of the Convertible Shares which are to be converted;

C = an amount equal to the relevant Conversion Price; and

D = 0.45 (being the discount factor to be applied).

11.13. Prior to completing the First Conversion Event (and in any event, not later than 30 days before the proposed completion of the First Conversion Event),

3rd Floor, The Boathouse
Bishop Street
Dublin 8
D08 H01F
Ireland
info@binariilabs.com
www.binariilabs.com

the Company shall notify the holder(s) of Convertible Shares in writing that it is proposed to complete a First Conversion Event ("First Conversion Event Notice"). The holder(s) of the Convertible Share(s) shall have the right, exercisable for a period of:

11.13.1. 60 days from the date of the First Conversion Event;

11.13.2. if the First Conversion Event Notice is received after the date of the First Conversion Event, 60 days from the date of receipt of the First Conversion Event Notice; or

11.13.3. if the Company fails to issue a First Conversion Event Notice, 60 days from the date such holder(s) become(s) aware of the First Conversion Event,

to issue a Conversion Notice requiring the Company to convert such number of Convertible Shares held by that holder (as is required) into such number of New Shares or Listing Shares (as appropriate) in the capital of the Company as shall immediately following such conversion represent up to (but not more than) 10% of the entire issued voting share capital of the Company. The number of New Shares or Listing Shares (as appropriate) to be issued on conversion of the Convertible Shares pursuant to this paragraph 11.13 shall be calculated using the following formula:

$$A = \frac{B}{C \times D}$$

where:

A = the number of New Shares or Listing Shares (as appropriate) into which the relevant Convertible Shares will be converted;

B = the aggregate subscription price paid (including share premium, if any) on the Convertible Shares which are to be converted;

C = either (i) the lowest subscription price paid per New Share or (ii) the listing price per Listing Share (as applicable); and

D = discount to be applied in accordance with the table below:

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Bishop Street
Dublin 8
D08 H01F
Ireland
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www.binariilabs.com

| The period which has elapsed since the date of issue of the Convertible Shares | D: Discount Factor |
|---|---|
| 0-12 months (0 – 365 days) | 0.85 |
| 13-24 months (366 – 730 days) | 0.75 |
| 25-36 months (731 – 1,095 days) | 0.65 |
| 37-48 months (1,096 – 1,460 days) | 0.55 |
| 49 or more months (1,461 or more days) | 0.45 |

11.14.

11.14.1. If any member of the Company continues to hold Convertible Shares following a conversion pursuant to paragraph 11.13, the terms of this paragraph 11.14 shall apply to all such Convertible Shares.

11.14.2. Prior to completing the Second Conversion Event (and in any event, not later than 30 days before the proposed completion of the Second Conversion Event), the Company shall notify the holder(s) of Convertible Shares in writing that it is proposed to complete the Second Conversion Event (the "Second Conversion Event Notice"). The holder(s) of the Convertible Share(s) shall have the right, exercisable for a period of:

a) 60 days from the date of the Second Conversion Event;

b) if the Second Conversion Event Notice is received after the date of the Second Conversion Event, 60 days from the date of receipt of the Second Conversion Event Notice; or

c) if the Company fails to issue a Second Conversion Event Notice, 60 days from the date such holder(s) become(s) aware of the Second Conversion Event;

to issue a Conversion Notice requiring the Company to convert such number of Convertible Shares (as is required) into such number of New Shares in the capital of the Company as shall immediately following such conversion and when aggregated with the New Shares issued and allotted to Enterprise Ireland pursuant to paragraph 11.13 represent up to (but not more than) 10% of the entire issued voting share capital of the Company.

The number of New Shares to be issued on conversion of the Convertible Shares pursuant to this paragraph 11.14 shall be calculated as follows:

$$A = \frac{B}{C}$$

3rd Floor, The Boathouse
Bishop Street
Dublin 8
D08 H01F
Ireland
info@binariilabs.com
www.binariilabs.com

where:

A = the number of New Shares into which the relevant Convertible Shares will be converted;

B = an amount equal to the Excess Amount; and

C = the lowest subscription price paid per New Share pursuant to the Second Conversion Event

11.15. At any time on or after the date which is one month prior to the Redemption Date, the holder(s) of Convertible Shares shall have the right, exercisable at any time up to the actual date of redemption of the Convertible Shares to issue to the Company a Conversion Notice requiring the Company to convert such number of the Convertible Shares into Ordinary Shares as shall immediately following such conversion represent up to (but not more than) 10% of the entire issued voting share capital of the Company.

The number of Ordinary Shares to be issued on conversion of the Convertible Shares pursuant to this paragraph 11.15 shall be calculated using the following formula:

$$A = \frac{B}{C \times D}$$

where:

A = the number of Ordinary Shares to be issued to the holder(s) of Convertible Shares;

B = the subscription price paid (including share premium, if any) on the Convertible Shares which are to be converted;

C = an amount equal to the relevant Conversion Price; and

D = 0.45 (being the discount factor to be applied in respect of a conversion occurring on or after 59 months from the date of issue of the Convertible Shares which are to be converted).

3rd Floor, The Boathouse
Bishop Street
Dublin 8
D08 H01F
Ireland
info@binariilabs.com
www.binariilabs.com

11.16. For the avoidance of doubt:

11.16.1. any conversion of Convertible Shares by the Company under paragraphs 11.12, 11.13, 11.14 and/or 11.15 shall be subject to the holder(s) of Convertible Shares being satisfied with the terms and conditions of such conversion;

11.16.2. If any of the Convertible Shares are not converted following a conversion in accordance with paragraph 11.15, any remaining Convertible Shares shall be redeemed at the Redemption Price in accordance with paragraph 11.8 or dealt with in accordance with paragraph 11.11;

11.16.3. the provisions of paragraphs 11.17 to 11.20 shall continue to apply to all remaining Convertible Shares in issue following any conversion pursuant to paragraphs 11.12, 11.13 and/or 11.14;

11.16.4. where, at any time, the holder(s) of Convertible Shares is entitled to issue a Conversion Notice pursuant to more than one of paragraphs 11.12, 11.13, 11.14 or 11.15, it shall be at the sole discretion of such holder(s) as to which paragraph the Conversion Notice is issued under, and the conversion shall take place in accordance with such paragraph;

11.16.5. any conversion pursuant to paragraph 11.12 will be deemed to have taken place immediately prior to the Asset Sale or Share Sale (as applicable); and

11.16.6. any Conversion Notice served by a holder of Convertible Shares pursuant to paragraph 11.12 may be expressed to be conditional on the completion of the Asset Sale or Share Sale (as applicable);

11.16.7. no Asset Sale or Share Sale in respect of which the holder of Convertible Shares has issued a Conversion Notice pursuant to paragraph 11.12 shall be completed until the Conversion Price has been determined;

11.16.8. the provisions of paragraph 11.12 shall apply to each and every Asset Sale and Share Sale (as applicable) for so long as any Convertible Shares remain in issue, regardless of whether a holder of Convertible Shares has previously converted some of the Convertible Shares held by it pursuant to the provisions of the Third Schedule to the Agreement;

11.16.9. Dividends will cease to accrue on any Convertible Shares converted pursuant to paragraphs 11.12 to 11.15 on the date of conversion of such Convertible Shares, and any accrued but unpaid Dividends on such Convertible Shares so converted shall be waived with effect from conversion.

3rd Floor, The Boathouse
Bishop Street
Dublin 8
D08 H01F
Ireland
info@binariilabs.com
www.binariilabs.com

*Share Sale:*

11.17. If all of the Convertible Shares have not already been redeemed or converted in accordance with paragraphs 11.12 to 11.15 and provided that no Conversion Notice has been issued pursuant to paragraphs 11.12 to 11.15, the Company shall redeem the Convertible Shares in full immediately prior to a Share Sale at the Redemption Price together with an additional premium equivalent to:

11.17.1. the amount paid up on the Convertible Shares (including share premium, if any);

or

11.17.2. an amount equivalent to the value of 10% of the entire issued voting share capital of the Company as at the date of the Share Sale;

whichever is the lesser (the **"Sale Redemption Price"**).

11.18. If the Company cannot redeem all of the Convertible Shares prior to completion of a Share Sale, it shall be a condition of the Share Sale that the purchaser of the shares shall also purchase the Convertible Shares at the Sale Redemption Price.

*Asset Sale:*

11.19. If all of the Convertible Shares have not already been redeemed or converted in accordance with paragraphs 11.12 to 11.15 and provided that no Conversion Notice has been issued pursuant to paragraphs 11.12 to 11.15, the Company shall redeem the Convertible Shares in full immediately upon completion of an Asset Sale at the Redemption Price together with an additional premium equivalent to:

11.19.1. the amount paid up on the Convertible Shares (including share premium, if any); or

11.19.2. an amount equivalent to the value of 10% of the total purchase consideration for the assets to be purchased pursuant to the Asset Sale; whichever is the lesser (the "Asset Sale Redemption Price").

11.20. If the Company fails to redeem the Convertible Shares upon completion of an Asset Sale in accordance with paragraph 11.19, the Company shall not declare or pay any dividends or otherwise distribute any assets (including cash) of the Company to any holder of shares in the capital of the Company until such time as all of the Convertible Shares have been fully redeemed.

3rd Floor, The Boathouse
Bishop Street
Dublin 8
D08 H01F
Ireland
info@binariilabs.com
www.binariilabs.com

**12. Pre-emption on transfers by Enterprise Ireland:**

12.1. If Enterprise Ireland (the "Offeror") wishes to transfer any of its Shares, it shall give a notice in writing (the "Transfer Notice") to the Company, specifying in the Transfer Notice the number and class of Shares (the "Sale Shares") which it wishes to transfer and the price offered for the Shares to be transferred (the "Specified Price") (the "Offer").

12.2. The Company shall as soon as practicable following receipt of a Transfer Notice either:

12.2.1. determine whether or not the Company will acquire or redeem some or all of the Sale Shares; or

12.2.2. issue a notice to the members of the Company (the "Offerees"), inviting each Offeree to state, in writing within 30 days from the date of such notice, whether he/it is willing to acquire any and, if so, how many of the Sale Shares.

12.3. If an Offeree or Offerees shall apply for some or all of the Sale Shares (the "Accepting Offeree"), the directors of the Company shall allocate the Sale Shares (or so many of them as shall be applied for as aforesaid) to or amongst the Accepting Offerees and in case of competition pro rata (as nearly as possible) according to the number of Shares of which they are registered as holders, provided that no applicant shall be obliged to take more than the maximum number of Sale Shares specified by him as aforesaid.

12.4. If any Sale Shares are not applied for by the Offerees in accordance with paragraph 12.3, the directors of the Company may allocate the Sale Shares or the balance thereof (as the case may be) to any other person or persons who the directors of the Company may decide to admit to membership and who is or are willing to purchase the same at the Specified Price.

12.5. If the Company and/or the Offerees fails to unconditionally and irrevocably accept the Offer in respect of all of the Sale Shares within 60 days from the date of issue of the Transfer Notice, the Offeror shall be entitled to transfer such number of Sale Shares which have not been unconditionally and irrevocably agreed to be (a) acquired or redeemed by the Company and/or (b) acquired by the Offerees, to any person or persons at a price being not less than the Specified Price and the directors of the Company shall be obliged to register any duly executed transfers of shares made pursuant to this paragraph 3.

3rd Floor, The Boathouse
Bishop Street
Dublin 8
D08 H01F
Ireland
info@binariilabs.com
www.binariilabs.com

## 13. Pre-emption on issue of Shares:

For so long as Enterprise Ireland holds any Shares which carry rights to vote at general meetings of the Company (the "Voting Shares"), all unissued Shares and all new Shares of whatever kind except for: Shares issued in connection with a share split, dividend, recapitalisation (provided that this is done on a pro rata basis and has no effect on the respective proportionate shareholdings in the Company), shall on issue be offered to all the members of the Company holding Voting Shares in proportion as nearly as possible to the number of Voting Shares then held by them respectively.