



**DATED**

**2017**

**(1) ACCELERATED DIGITAL VENTURES LIMITED**

**- and -**

**(2) [◆            ]**

**ADVANCE SUBSCRIPTION  
AGREEMENT**

relating to

[insert investee company name]

Note: this draft assumes that the investee company has a suitable shareholders' agreement and articles in place already. ADV can provide a list of its minimum requirements for an SHA and Articles on request.

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**THIS AGREEMENT** is made on

201[7]

**BETWEEN:**

- (1) **ACCELERATED DIGITAL VENTURES LIMITED** of Maybrook House 5th Floor, 27 Grainger Street, Newcastle Upon Tyne, England, NE1 5JE ("**Subscriber**"); and
- (2) [◆ ] a company incorporated and registered in England and Wales with company number [◆ ] and having its registered office at [◆ ] ("**Company**").

**BACKGROUND:**

The Subscriber has agreed to make advance subscription funds available to the Company for the purpose and on the terms more particularly described in this agreement.

**IT IS AGREED:**

**1. DEFINITIONS**

1.1 Unless the context requires otherwise, terms defined in the articles of association adopted by the Company as at the date of this agreement shall have the same meaning in this agreement.

1.2 In this agreement:

**"Advance Subscription Funds"** has the meaning given in clause 2.1;

**["Aggregate Advance Subscriptions"** has the meaning given in clause 2.1;]

**"Change of Control"** means:

- (a) an acquisition of the Company by means of merger, consolidation, share exchange or other transaction or series of related transactions resulting in the exchange of the issued shares of the Company's share capital such that the shareholders of the Company prior to such a transaction do not own, directly or indirectly, at least 50% of the voting power of the surviving entity in the same proportions, relative to other shareholders, as they did prior to such transaction; or
- (b) the disposition by sale, license or otherwise of all or substantially all of the assets of the Company;

**"Conversion Price"** means:

- (a) where conversion takes place pursuant to clause 3.1.1 below, a price per Conversion Share equal to the lower of (i) a discount of [◆ per cent. (◆ %) of the] Subscription Price

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DATED

or (ii) a price per share based on taking a pre-money valuation of £◆ and dividing this by the number of outstanding shares of the Company's share capital calculated on a Fully Diluted Basis, rounded down to the nearest whole share; and

- (b) where conversion takes place pursuant to clause 3.1.2, 3.1.3, 3.1.4 or 3.2 below, a price per Conversion Share [equal to the lower (i) of £◆ [Last round price] or (ii) a price per share based on taking a pre-money valuation of £◆ and dividing this by the number of outstanding shares of the Company's share capital calculated on a Fully Diluted Basis, rounded down to the nearest whole share; and
- (c) where conversion is deemed to have taken place pursuant to clause 4.1.2 prior to the occurrence of a Qualifying Equity Financing, a price per Conversion Share [equal to the lower (i) of £◆ [Last round price] or (ii) a price per share based on taking a pre-money valuation of £◆ and dividing this by the number of outstanding shares of the Company's share capital calculated on a Fully Diluted Basis, rounded down to the nearest whole share;
- (d) where conversion is deemed to have taken place pursuant to clause 4.1.2 at the same time as the occurrence of a Qualifying Equity Financing, a price per Conversion Share equal to the lower of (i) a discount of [◆ per cent. (◆ %) of the] Subscription Price or (ii) a price per share based on taking a pre-money valuation of £◆ and dividing this by the number of outstanding shares of the Company's share capital calculated on a Fully Diluted Basis, rounded down to the nearest whole share

**"Conversion Shares"** means either:

- (a) in the case of shares issued pursuant to clause 3.1.1, the Next Round Shares; or
- (b) in the case of shares issued pursuant to clause 3.1.2, 3.1.3, 3.1.4 or 3.2, [the highest ranking shares in issue/Ordinary Shares];

**["Enterprise Capital Fund"** means in particular but without limitation a fund created to identify, research, negotiate, make and monitor the progress of and sell, realise, exchange or distribute investments which shall include but shall not be limited to the purchase, subscription, acquisition, sale and disposal of shares, debentures, convertible loan stock and other securities in unquoted companies and the making of loans whether secured or unsecured to such companies in connection with equity or equity related investments, provided that all such Investments shall fall within a certain investment policy (as agreed between the general partner, manager and limited partner(s) of the Subscriber), with the principal objective of providing the partners of the Subscriber with a high overall rate of return.]



respective representatives, any independent firm of auditors, agents or external expert support. ]

**"Next Round Shares"** means, in respect of a Qualifying Equity Financing, the highest or most senior ranking class of share issued in such Qualifying Equity Financing;

**"Non-Qualifying Equity Financing"** means a subscription for equity in the Company by one or more persons raising less than an aggregate of [£◆ ] (excluding the Aggregate Advance Subscriptions), which amount can be raised in one or in a series of fundraisings on or before the Longstop Date;

**"Qualifying Equity Financing"** a subscription for equity in the Company by one or more persons raising an aggregate of at least [£◆ ] (excluding the Aggregate Advance Subscriptions), which amount can be raised in one or in a series of fundraisings on or before the Longstop Date;

**"SEIS"** means the Seed Enterprise Investment Scheme governed in accordance with the SEIS Provisions;]

**"SEIS Provisions"** means the provisions of Part 5A of the Income Tax Act 2007 and the Sections 150E-150G and Schedule 5BB to the Taxation of Chargeable Gains Act 1992 relating to the Seed Enterprise Investment Scheme;]

**"State Aid"** means any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the European Union;]

**"Subscription Price"** means, in respect of a Qualifying Equity Financing, the lowest price paid per Next Round Share issued pursuant to such Qualifying Equity Financing.

### 1.3 References

In this agreement, references to a party include its successors in title, transferees and assignees.

## 2. ADVANCE SUBSCRIPTION

### 2.1 Advance Subscription

Subject to the terms of this agreement, the Subscriber agrees on the date of this agreement to make available to the Company funds in an aggregate amount of £◆ (**"Advance Subscription Funds"**). [The Company may issue similar agreements with other investors for advance subscriptions which, together with the Advance Subscription Funds, aggregate up to a maximum of £◆ (**"Aggregate Advance**

**Subscriptions").]**

## 2.2 Purpose

The Company will apply the Advance Subscription Funds towards [its general working capital purposes], for the raising of additional financing, and for such other purposes as the Company and Subscriber may from time to time agree in writing.

## 2.3 Payment

The Advance Subscription Funds shall be paid to the Company to the following bank account:

Name of Bank:

Address of Bank:

Bank Account Name:

Sort Code:

Swift (BIC) Code:

Account Number:

IBAN Number:

## 2.4 Waiver

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

## 3. CONVERSION

3.1 The Advance Subscription Funds shall automatically convert into Conversion Shares at the Conversion Price, and the Company shall issue and allot to the Subscriber (or as the Subscriber shall direct) the number of fully paid Conversion Shares to which it is entitled:

3.1.1 in the event of a Qualifying Equity Financing, immediately prior to the unconditional completion of such Qualifying Equity Financing; or

3.1.2 in the event of a Change of Control or a Listing, immediately prior to the unconditional completion of such Change of Control or Listing; or

3.1.3 on the Longstop Date (if no Qualifying Equity Financing, Change of Control or Listing has unconditionally completed on or prior to the

Longstop Date); or

- 3.1.4 in the event of an Insolvency occurring before any of the events set out in sub-clauses (a) to (c) above, immediately prior to the occurrence of such Insolvency event,

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

- 3.2 The Advance Subscription Funds shall, at the option of the Subscriber, convert into Conversion Shares at the Conversion Price, and the Company shall issue and allot to the Subscriber (or as the Subscriber shall direct) the number of fully paid Conversion Shares to which it is entitled on the closing of a Non-Qualifying Equity Financing.

#### 4. MAJOR INVESTOR RIGHTS

- 4.1 The Subscriber (together with its affiliates) upon making the Advance Subscription Funds available to the Company pursuant to clause 2.1 shall be granted certain rights in the Company and thereby be a major investor (a "**Major Investor**") and therefore, in consideration of such, the Company shall provide the Major Investor with the following rights:

- 4.1.1 **Information Rights:** To the extent that the Company prepares financial statements, the Company shall deliver to the Major Investor such financial statements upon request, as soon as practicable, but in any event within thirty (30) days after the end of each of the first three (3) quarters of each financial year of the Company and within ninety (90) days after the end of each financial year of the Company. Such financial statements shall be in reasonable detail and prepared on a consistent basis. Additionally, regardless of whether the Company prepares financial statements, the Company shall deliver to the Major Investor such information relating to the financial condition, business or affairs of the Company as such Major Investor may from time to time reasonably request. Notwithstanding anything to the contrary in this Section 4.1(a), the Company shall not be obligated under this Section 4.1:

4.1.1.1 to provide information that

- (a) it deems in good faith to be a trade secret or highly confidential information or;
- (b) the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel; and
- (c) the Major Investor agrees to maintain the

confidentiality of all of the information provided to the Major Investor under this Section 4.1.1(a) and agrees not to use such information other than for a purpose reasonably related to the Major Investor's investment in the Company.

- 4.1.2 **Participation Rights.** Each time the Company proposes to offer a subscription for equity in the Company at any time prior to and including the closing of a Qualifying Equity Financing (any such offering referred to as a "**Financing**") the Company shall provide the Major Investor with at least ten (10) business days prior written notice of such offering, including the price and terms thereof. The Major Investor shall have a pro rata right, but not an obligation, to participate in each such Financing, on the same terms and for the same price as all other investors in such Financing, by subscribing to equity in the Company (whether in one offering or across multiple offerings) The pro rata rights of the Major Investor shall be calculated on an 'as converted' basis on the assumption that the Major Investor had converted its Advanced Subscription Funds at the Conversion Price prior to the Financing. The Major Investor's participation right as set forth in this Section 4.1.2 shall be subject to compliance with applicable securities laws.
- 4.1.3 **"Major Investor" Rights.** The Company shall ensure that the Major Investor shall be deemed to be a "**Major Investor**" (or such similar term) for all purposes, including, without limitation, rights of first offer and information rights, in relevant financing documents related to all subsequent equity and/or debt fundraising of the Company, to the extent such concept exists.

## 5. REPRESENTATIONS AND WARRANTIES

The Company hereby represents and warrants to the Subscriber that: (a) The Company is a company duly formed, validly existing and in good standing under the laws of [England and Wales]/[Scotland], with full corporate power and authority to enter into and perform its obligations under this agreement; (b) the Company has full power and authority to consummate the transactions contemplated hereunder; (c) No consents, authorisations or approvals of any kind of any governmental authority or other third party are required in connection with the execution or performance of this agreement by the Company; (d) The consummation of the transactions contemplated hereunder and the performance of this agreement by the Company do not violate the provisions of the Articles of Association of the Company, or any applicable law, and will not result in any breach of, or constitute a default under, any note or instrument to which the Company is a party or by which it is bound; (e) The execution and performance of this agreement by the Company has been duly authorised by all necessary actions, and this agreement has been duly executed and delivered by the Company; (f) The Company owns or possesses or believes it can acquire on commercially reasonable terms sufficient legal rights to all patents, patent

applications, trademarks, trademark applications, service marks, tradenames, copyrights, trade secrets, licenses, domain names, mask works, information and proprietary rights and processes as are necessary to the conduct of its business as now conducted and as presently proposed to be conducted without any known conflict with, or infringement of, the rights of others; [(g) The Company has not received any communications alleging that the Company has violated or, by conducting its business, would violate any of the patents, trademarks, service marks, tradenames, copyrights, trade secrets, mask works or other proprietary rights or processes of any other person;] [(h) There is no private or governmental action, suit, proceeding, claim, arbitration or investigation pending before any agency, court or tribunal, foreign or domestic, or threatened against the Company or any of its properties or any of its officers or managers (in their capacities as such);] [(i) There is no judgment or order against the Company, or, to the knowledge of the Company, any of its directors or managers (in their capacities as such), that could prevent, enjoin, or materially alter or delay any of the transactions contemplated by this agreement, or that could reasonably be expected to have a material adverse effect on the Company;] (f) This agreement is valid and binding upon the Company and enforceable in accordance with its terms.

## **6. [MOST FAVOURED NATION**

In the event the Company proposes to offer either an advance subscription for equity in the Company or a convertible note at any time prior to a Qualifying Equity Financing, the Company shall provide the Subscriber with written notice of such subscription or convertible note no later than five (5) days after the closing date thereof, including the price and terms of such subscription or note ("**Subsequent Convertible Subscription**"). In the event the Subscriber determines, in its sole and absolute discretion, that any Subsequent Convertible Subscription contains terms more favourable to the subscribers thereof than the terms set forth in this agreement, the Subscriber may elect to either exchange this agreement for an agreement issued pursuant to the Subsequent Convertible Subscription or to require the Company to amend the terms of this agreement to reflect any such more favourable terms.]

## **7. [SEIS**

The Company is seeking advance assurance from HM Revenue & Customs that the Company will be SEIS qualifying and will keep the Subscriber informed in relation to the progress thereof and provide such information as the Subscriber shall reasonably request in connection with such advance assurance.]

## **8. [ENTERPRISE CAPITAL FUND REQUIREMENTS**

8.1 The Company hereby warrants to the Subscriber that each and every warranty set out in SCHEDULE 1: Part 1 is true, accurate and not misleading at the date of this agreement.

8.2 The Company hereby undertakes to and covenants with the Subscriber that

any and all monies paid to the Company by or on behalf of the Subscriber as set out in this agreement:

- 8.2.1 will not be applied by the Company towards any of the matters or activities listed at SCHEDULE 1: Part 2; and
- 8.2.2 will be applied by the Company solely and exclusively on the development and expansion of the business of the Company in accordance with any business plan provided to, or as may be requested by the Subscriber in conjunction with this Agreement.
- 8.3 The Company further undertakes to provide the Subscriber with the information at schedule SCHEDULE 1: Part 3 as soon as practicable, but no later than 15 Business Days' from the date of this agreement.
- 8.4 The Company understands and acknowledges that:
  - 8.4.1 the Subscriber [ADV ECF 1 L.P.] is a limited partnership registered in, and governed by the laws of England and Wales;
  - 8.4.2 the Subscriber [ADV ECF 1 L.P.] is an Enterprise Capital Fund;
  - 8.4.3 there is a cumulative limit within any 12 month period of £5 million of investment in the Company by the Subscriber or any other Enterprise Capital Fund; and
  - 8.4.4 an Investment from an Enterprise Capital Fund is State Aid and may impact the Company's eligibility for further support and investment from other state-supported investors;
  - 8.4.5 the Subscriber is subject to Freedom of Information Legislation and that the Subscriber may be required to disclose information regarding the Company pursuant to the obligations of such legislation and the Company consents to such onward transmission;
  - 8.4.6 pursuant to the Subscriber's status as an Enterprise Capital Fund, any of the Monitoring Bodies to which the Subscriber owes obligations to, may, from time to time and at their absolute discretion, request to inspect the books and records of the Company and the Company consents to such inspection with or without prior notice;
  - 8.4.7 the Subscriber may be required by its investors (and any related Governmental Authority) to disclose to them the information supplied by the Company pursuant to this clause 7 and the Company consents to such onward transmission.
- 8.5 The Company understands and agrees that the Subscriber is subject to market and public relations principles and guidelines in connection with its investors which restrict certain public announcements in relation to the Subscriber's portfolio of investee companies. The Subscriber has appended to

this Agreement at APPENDIX 1 such principles and guidelines which the Company agrees to adhere to and comply with.

- 8.6 The Company acknowledges and agrees with the Subscriber that in the event that the Subscriber's subscription in the Company is found to constitute or contain any element of unlawful State Aid, the Subscriber shall be entitled to recover any sums which the Subscriber is required to repay pursuant to a decision of the Commission of European Communities, European Court of Justice or any other competent authority including for the avoidance of doubt any interest at the rate set by such authority.
- 8.7 Subject to clause 8.6, if the Subscriber's subscription in the Company under this Agreement is found to constitute or contain any element of unlawful State Aid which arises directly from the Subscriber's demonstrable and negligent failure to identify that its subscription in the Company constitutes or contains any element of unlawful State Aid and which does not arise from information provided (or not provided) by, or actions or omissions of, the Company, the Subscriber shall indemnify the Company for any such direct loss, damage, cost or expense resulting from the operation of clause 8.6 up to an amount equal to the lower of: (i) the amount paid by the Company under clause 8.6; and (ii) the Subscriber's investment under this Agreement.]

## 9. **[STATUS OF SUBSCRIBER]**

9.1 [In entering into this agreement to acquire the Conversion Shares on the terms of this letter, the Subscriber undertakes that:

9.1.1 he/she is resident in the United Kingdom;

9.1.2 he/she falls into one or more of the following categories of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 as amended ("**Order**"):

9.1.2.1 a "certified high net worth individual" within the meaning of Article 48(2) of the Order, and accordingly he/she has signed a certificate in the form set out in Part I of Schedule 5 of the Order within a period of 12 months prior to the date of this letter; or

9.1.2.2 a "self-certified sophisticated investor" in Article 50(A)(1) of the Order, and accordingly he/she has signed a certificate in the form set out in Part II of Schedule 5 of the Order within a period of 12 months prior to the date of this letter, or

9.1.2.3 he/she is a person to whom an invitation or inducement to engage in investment activity (within the meaning of section 21 of the Financial Services and Markets Act 2000) in connection with the issue or sale of any securities may otherwise lawfully be communicated or caused to be communicated;

- 9.1.3 he/she has received sufficient information from the Company with respect to all matters he/she considers material to his/her investment decision, he/she has had the opportunity to ask questions of the management of the Company in relation to his/her investment decision and all such questions have been answered to his/her satisfaction; and
- 9.1.4 he/she has sufficient knowledge and expertise in business, tax and financial matters to be able to evaluate the risk and merits of an investment in the Company, or he/she has sought such advice as he/she considers necessary from a professional adviser with such knowledge and expertise.]

## **10. COMMUNICATIONS**

### **10.1 In writing**

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

### **10.2 Address**

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

### **10.3 Delivery**

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

- 10.3.1 when received, in the case of a facsimile or an email;
- 10.3.2 when left at the relevant address, in the case of a personally delivered letter; or
- 10.3.3 two Business Days after dispatch, in the case of a letter sent by prepaid first class post in an envelope addressed to the relevant address.

## **11. GENERAL**

### **11.1 Status of funds**

For the avoidance of doubt, no interest is payable on the Advance Subscription Funds in any circumstance. No amount of the Advance

Subscription Funds is repayable by the Company in any circumstance but such amount may be converted into shares in the Company as set out in clause 3.

#### **11.2 Termination and Variation**

This agreement shall automatically terminate in accordance with clause 3 and otherwise shall only be terminated or varied in a writing signed by the Subscriber and the Company.

#### **12. COUNTERPARTS**

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

#### **13. LAW**

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

## **SCHEDULE 1: [ENTERPRISE CAPITAL FUND PROVISIONS]**

### **Part 1:**

1. The Company does not operate in any of the sectors referred to below and is not expected to operate in any of such restricted sectors in the future:
  - 1.1 synthetic fibres and yarns;
  - 1.2 motor vehicles;
  - 1.3 ship building;
  - 1.4 steel (European Community) products;
  - 1.5 steel (nonEuropean Community) products;
  - 1.6 coal;
  - 1.7 transport; and
  - 1.8 the production (including the relevant means of productions in fisheries and aquaculture sectors), processing or marketing of products listed in Annex I referred to in Article 32 of the EC Treaty.
1. The Company's principal place of business is in the United Kingdom, or is predominantly related to, or demonstrably for the benefit of, the economy of the United Kingdom at the date of this agreement.
2. The Company is an SME within the meaning of the EU Commission Recommendation 2003/361 concerning the definition of micro, small and medium-sized enterprises and is not listed on any public market or stock exchange;
3. The Company has not been operating or trading in any market prior to the date of this Agreement or has not been operating or trading in a market for more than three (3) years since their first commercial sale in that market.

### **Part 2:**

4. The Company does not and will not operate in any of the restricted sectors referred to below:
  - 4.1 synthetic fibres and yarns;
  - 4.2 motor vehicles;
  - 4.3 ship building;
  - 4.4 steel (European Community) products;
  - 4.5 steel (nonEuropean Community) products;

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- 4.6 coal;
- 4.7 transport; and
- 4.8 the production (including the relevant means of productions in fisheries and aquaculture sectors), processing or marketing of products listed in Annex I referred to in Article 32 of the EC Treaty.
- 5. The Company's principal place of business will remain in the United Kingdom, or the Company will predominantly be related to, or demonstrably for the benefit of, the economy of the United Kingdom.

**Part 3:**

- 6. Within 15 Business Days' of the date of this Agreement, the Company shall provide to the Subscriber [(insofar as it has not already provided such information)] the following information:
  - 6.1 [the name, registered address, company registration number, VAT registration number and postcode and other relevant particulars of the Company];
  - 6.2 the names of all the management team, listing name, years in sector and previous business ownership;
  - 6.3 Product/service description and four digit Standard Industrial Classification (SIC) codes(s);
  - 6.4 date of inception/start-up;
  - 6.5 current revenues (dated);
  - 6.6 number of full time staff at time of application;
  - 6.7 brief company plans for the new capital;
  - 6.8 written confirmation that the Company that British Business Finance Ltd, the Government or its agent may contact the Company as required for any future evaluation of the Enterprise Capital Fund programme; and
  - 6.9 agreement that a non-confidential Business Plan may be used for any future British Business Finance Ltd or Government evaluation of the Enterprise Capital Fund programme.
- 7. On request from the Subscriber the Company shall provide details of:
  - 7.1 the number of directors of the Company who are from an ethnic minority; and
  - 7.2 the number of directors of the Company who are female.

## **APPENDIX 1: [PUBLICITY PRINCIPLES AND GUIDELINES]**

The following guidelines apply to any marketing and public relations activities by the Company which refer to the investment by ADV ECF 1 L.P. in the Company and the participation in British Business Bank plc's "Enterprise Capital Fund Programme":

Any references to the relationship between ADV ECF 1 L.P. and British Business Bank plc must refer to the "Enterprise Capital Fund Programme" and must also include with reasonable prominence the following wording (or such other simplified version that may be communicated to the Company in advance as an alternative, including hypertext links to a website of the British Business Bank group):

"Supported by British Business Finance Ltd, a wholly owned subsidiary of British Business Bank plc, British Business Bank plc is a development bank wholly owned by HM Government. Neither British Business Finance Ltd nor British Business Bank plc are authorised or regulated by the Prudential Regulation Authority (PRA) or the Financial Conduct Authority (FCA)."

There should be no sense, either directly or implied, that the investment by ADV ECF 1 L.P. in the Company reflects any endorsement, guarantee or warranty from British Business Finance Ltd or British Business Bank plc.

Marketing and public relations activity should not lead with or be built on the foundation of British Business Bank plc investment or participation.

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

**ACCELERATED DIGITAL VENTURES**

By: \_\_\_\_\_  
[DIRECTOR/AUTHORISED SIGNATORY]

[◆ ] LIMITED

By: \_\_\_\_\_  
, Director