
INVESTMENT AND SHAREHOLDERS' AGREEMENT

between

[...]

("Founder 1")

[...]

("Founder 2")

([Founder 1] and [Founder 2] jointly the "Founders")

and

[...]

("Investor 1")

([Investor 1] and [Investor 2] jointly the "Investors")¹

SBC Digital Health 2016-2018 Ltd,

c/o The Rainmaking Loft, International House, 1 St Katherine's Way, London E1W 1UN

("SBC")

and

[...]

(the "Company")

(the Founders, [the Investors,] SBC and every subsequently joining shareholder shall hereinafter be referred to as the "Shareholders" or individual as a "Shareholder", the Company and the Shareholders shall hereinafter be referred to as the "Parties" or individual as a "Party")

¹ Comment: Reference to Investor only required if investors are already on board.

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Recitals

- A. The Founders [and the Investors] are the sole shareholders of the Company and hold the shares in the Company [in accordance with the most recent list of shareholders incorporated in the files of the Commercial Register]² as follows:

Shareholders	Number of Shares of EUR 1.00 Each	Consecutive Nos. of Shares	Percentage Shareholding
[Founder 1]			
[Founder 2]			

- B. The Company's business and field of activities is [•]³ ("**Company's Business**").
- C. SBC organizes a "startup accelerator program" taking place between September 4 and November 30, 2017 in Berlin under which business founders get mentored and receive business contacts and contacts to investors (the "**SBC-Program**"). The Company has become eligible to participate in the SBC-Program.
- D. The Founders [and the Investors] intend to increase the capital of the Company against contribution in cash. In the course of the capital increase SBC shall be exclusively entitled to subscribe for 6% of the shares in the Company against contribution in cash of these shares' nominal value.
- E. Furthermore, SBC intends to let the Company participate in the SBC-Program and to provide the Company with additional funds by contribution in the Company's capital reserves in the total amount [EUR 15,000.00 minus nominal amount].

NOW, THEREFORE, the Parties hereby conclude the following investment and shareholders' agreement (this "**Agreement**"):

§ 1

Definitions

A "**Disposal of Shares**" shall mean any type of disposal of shares and any granting, modification, rescission or transfer of subparticipations, silent partnerships, trusteeships, profit shares, legal relations binding the exercise of Shareholder rights to the approval of a third party, and similar

² Comment: Only applicable to German GmbH.

³ Comment: Please add description of field of activities and business to be developed.

legal relations and transfers within the framework of transformation procedures in accordance with the German Act on the Transformation of Companies (*UmwG*).

"Affiliated Companies" are those in the terms of Sec. 15 et seq. of the German Stock Corporation Act (*AktG*).

"Articles of Association" means those of the Company, unless express reference is made to another company.

"Civil Code" means the German Civil Code (*BGB*).

"Intellectual Property" means algorithms, application programming interfaces (APIs), databases, data collections, diagrams, formulae, inventions (whether or not patentable), know-how, logos, designs, marks (including brand names, product names, logos, worktitles and slogans), methods, network configurations and architectures, processes, proprietary information, protocols, schematics, specifications, software, software code (in any form, including source code and executable or object code), subroutines, techniques, user interfaces, URLs, websites, works of authorship (including written, audio and visual materials) and other forms of technology (whether or not embodied in any tangible form and including all tangible embodiments of the foregoing).

"IP Rights" means all rights of the following types, which may exist or be created under the laws of any jurisdiction: (i) rights associated with works of authorship, including exclusive exploitation rights, copyrights, and moral rights (*Urheberpersönlichkeitsrechte*); (ii) trademark, business name, domain name and trade name rights, work titles, and similar rights (whether registered or not) (iii) trade secret rights; (iv) patent and industrial design (utility model) property rights; (v) design rights (whether registered or not); (vi) other proprietary rights in Intellectual Property (including any licenses (*Nutzungsrechte*)), also including all economic rights in software as set forth in Sec. 69b German Copyright Act (*UrhG*) and all sui-generis rights as author of a database; and (vii) rights in or relating to applications, registrations, renewals, extensions, combinations, divisions, continuations and reissues of, and applications for, any of the rights referred to in clauses (i) through (vi) above.

"Shares" mean the shares in the Company, unless express reference is made to another company.

"Subsidiary" means any entity in which the Company holds more than fifty per cent (50 %) of the voting rights or equity interest.

"Taxes" mean all kinds of taxes (*Steuern*) and similar charges, duties or contributions, including, but not limited to, any federal, state, local, municipal and governmental duties, corporate income tax, trade tax, stamp duty, transfer tax, custom duty, registration tax, wealth tax, wage tax, value added tax, social security charges (including, but not limited to, the employee share thereof) and any other form of taxation, levy, duty, charge, contribution, withholding or impost of whatever nature, and any related fine, penalty, surcharge charges, costs or interest or similar charges, including, but not limited to, all accessory charges imposed by any taxing authority.

"Working Day" means each weekday, not including Saturdays and Sundays, on which the banks in Frankfurt am Main are open for ordinary business.

§ 2 Capital Increase

2.1 Within [] Working Days from signing of this Agreement, the Founders [and the Investors] shall hold an extraordinary shareholders' meeting (the "SHM") and resolve on an ordinary share capital increase of the Company from currently EUR [...] by EUR [...] to EUR [...] by issuance of [...] new shares ("New Shares") in the nominal amount of EUR [...] each against cash contribution (the "Capital Increase"). The statutory subscriptions rights shall be excluded and SBC shall be admitted to subscription of all New Shares at the price of the nominal value per New Share.

2.2 SBC shall be entitled to subscribe for the New Shares within five (5) Working Days from the date of the SHM and shall pay the issue price within another five (5) Working Days thereafter to the following bank account:

IBAN: _____
BIC: _____

2.3 After completion of the Capital Increase [by registration of the increased share capital in the Commercial Register of the Company]⁴, the Shareholders will hold the shares as follows:

Shareholders	Number of Shares of EUR 1.00 Each	Consecutive Nos. of Shares	Percentage Shareholding
[A]			%
[B]			%
[...]			%
SBC			6%

§ 3 Additional Payment Obligation; SBC-Program

3.1 SBC undertakes vis-à-vis the Founders (and without a Company's right to claim) to make a voluntary payment of EUR [EUR 15,000.00 minus nominal amount] to the free capital reserve of the Company pursuant to Sec. 272 (2) no. 4 of the German Commercial Code (HGB) (the "Additional Payment"). 50% of the Additional Payment is due within ten (10)

⁴ Comment: Only if German GmbH.

Working Days after signing of this Agreement. The remaining 50% of the Additional Payment is due within ten (10) Working Days after [registration/execution]⁵ of the Capital Increase in the Commercial Register of the Company. The Additional Payment provided by SBC shall be used for the further development of the Company and its business model.

- 3.2 The Additional Payment shall be made to the bank account under § 2.2.
- 3.3 SBC hereby agrees to let the Company and the Founders participate in the SBC-Program.

§ 4

Corporate Governance

- 4.1 The following matters shall require the prior approval of SBC:
- a) Any material change in the business purpose of the Company.
 - b) Any amendment to the Articles of Association of the Company.
 - c) Any reorganization, merger, sale or transfer of all or substantially all of the Company's assets or business.
 - d) The passing of any resolution to wind up the Company or to enter into any arrangement with its creditors.
- 4.2 [The Company's Articles of Association shall be amended accordingly.]

§ 5

Reporting Obligations

To the extent not in violation of the provisions of the German Law on Limited Liability Companies (*GmbHG*), the Company shall – upon request via email by SBC – report to SBC via email on all information which is of relevance for a judgment of the business and financial situation of the Company and its Affiliated Companies.

§ 6

Restrictions on Disposal

- 6.1 Any Disposal of Shares shall only be permitted with the approval of all Shareholders. The Company's Articles of Association shall provide for the corresponding transferability restriction. The Shareholder desiring to dispose of Shares shall be entitled to vote in the decision on the disposal.

⁵ Comment: If German GmbH, registration is the relevant point of time.

6.2 All Shareholders shall issue their approval in the event of any sale of Shares to an Affiliated Company of the selling Shareholder. The selling Shareholder shall be jointly and severally liable for the fulfilment of the obligations from this Agreement by the relevant Affiliated Company. If the transferee classes to be an Affiliated Company of the respective Shareholder, the respective Shareholder and the transferee shall be obliged to retransfer the Shares to the respective Shareholder.

§ 7

Participation in future financing rounds

SBC shall be entitled to participate in future financing rounds on the same terms and conditions as set out in such financing round to maintain its 6 % shareholding in the Company.

§ 8

Warranties

The Founders [and the Investors] hereby represent as joint and several debtors to SBC in the form of an independent guarantee pursuant to Sec. 311 (1) of the Civil Code that the following statements are true and complete at the date of this Agreement and at the time of the execution of the Capital Increase (each a “**Guarantee**” and collectively the “**Guarantees**”). The Parties explicitly agree that the Guarantees set forth in this § 8 are not granted and shall not be qualified as guarantees as to quality (*Beschaffenheit einer Sache*) within the meaning of Sec. 443 and 444 Civil Code or as a warranted feature agreement (*Beschaffenheitsvereinbarung*) within the meaning of Sec. 434 (1) Civil Code:

8.1 Status of the Company; Shares

- a) The Company has been duly incorporated and validly exists under the laws of its jurisdiction;
- b) No silent partnerships, loans with profit participation, profit participation rights or other right exist which entitle any third party to participate in profits, turnover or liquidation proceeds of the Company;
- c) the Founders [and the Investors] are the legal and beneficial owners of the Shares set opposite their respective names in Recital A and such Shares are held by them free from all encumbrances, liens or other third party rights, in particular no third parties are entitled to exercise any preemptive rights, rights of first refusal, options or other rights to acquire any Share of the respective Founder [or Investor];
- d) all of the shares set opposite their respective names in Recital A are validly issued and fully paid and comprise the entire issued share capital of the Company; and
- e) no authorized capital (*genehmigtes Kapital*) is existing.

8.2 No Insolvency

The Company is not over-indebted, unable to pay its debts when they fall due (*zahlungsunfähig*), insolvent or subject to any insolvency proceedings in any jurisdiction. No circumstances exist that would require or justify the opening of, or an application for the opening of, such proceedings in respect of the Company, or the assets of the Company in any jurisdiction.

8.3 Liabilities

The Company has not taken out or granted any loans (including convertible loans) or any similar financial instruments, nor is the Company party to any lease or financial lease agreements.

8.4 Subsidiary Interests

The Company does not hold any share or other participation in a Subsidiary.

8.5 Virtual Option Programs, etc.

The Company has not concluded any agreements on exit and/or dividend participations (e.g. virtual stock option programs) and is not obliged to do so;

8.6 Litigation

The Company (and/or its Affiliated Companies) is not engaged in any litigation, arbitration or other legal proceedings and there are no written claims threatened against the Company (and/or its Affiliated Companies).

8.7 Tax

- a) All returns of Taxes of the Company relating to periods prior to and including today were duly (above all, completely and correctly) prepared in accordance with all applicable legal requirements and were duly and timely filed or will be duly and timely filed. All information required to be provided to tax authorities relating to past fiscal years or periods was duly and timely provided or will be duly and timely provided to such tax authorities.
- b) The Company has duly paid all Taxes relating to periods prior to and including today.

8.8 Intellectual Property

- a) the Company owns or holds (which shall include valid licenses of sufficient scope) all IP Rights with respect to Intellectual Property that are necessary to conduct (and continue to conduct) its business, without infringing or violating any third party's Intellectual Property and IP Rights; and

- b) the Company has not used, modified, or distributed any open source software in a manner that: (i) could or does require (or could or does condition the use or distribution of such software on) the disclosure, licensing or distribution of any of the company's source code; (ii) could or does require the licensing or disclosure of any Intellectual Property or IP Rights, or any portion of any Intellectual Property or IP Rights other than such open source software, for the purpose of making derivative works; (iii) could or does otherwise impose any limitation, restriction or condition on the right or ability of the Company to commercially use, distribute, exploit, modify or use in any other manner the Company's Source Code and any Intellectual Property or IP Rights; (iv) creates obligations for the Company with respect to Intellectual Property or IP Rights or grants to any third party any rights or immunities under Intellectual Property or IP Rights; or (v) imposes any other limitation, restriction or condition on the right of the Company or to use or distribute any Intellectual Property or IP Rights.

§ 9

Remedies for Breach of Guarantees

- 9.1 In the event of a Guarantee pursuant to § 8 not being correct and/or complete (hereinafter referred to as a "**Breach**"), the Founders [and the Investors] (hereinafter referred to as a "**Guarantee Obligor(s)**") shall put the Company in the position it would have been in if the respective Guarantee had not been breached (*Naturalrestitution*).
- 9.2 SBC shall, as soon as reasonably practical but at the latest three (3) weeks after having knowledge of the Breach, notify the respective Guarantee Obligor(s) of such alleged Breach in writing, describing the potential claim in reasonable detail and, to the extent practical, state the estimated amount of such claim and give the respective Guarantee Obligor(s) the opportunity to remedy the Breach (*Naturalrestitution*) within the time period stipulated in § 9.3 (hereinafter "**Claim Notice**").
- 9.3 If the Guarantee Obligors are unable to remedy the Breach within thirty (30) days after having been notified by SBC of the Breach in accordance with § 9.2 above, the Guarantee Obligors shall at SBC's election
- a) pay monetary damages (*Schadenersatz in Geld*) to the Company in the full amount of the damage caused;
 - b) pay monetary damages (*Schadenersatz in Geld*) to SBC, whereas SBC shall be entitled to an amount corresponding to a percentage of the Company's total damage which equals the percentage of the shareholding of SBC in the Company; or
 - c) compensate the damage amount pursuant to lit. a) above in kind instead of in cash by transfer of shares held by the Guarantee Obligors to SBC, whereas one share with a nominal value of EUR 1.00 shall be deemed having the post-money value assigned to a share with a nominal value of EUR 1.00 in the then most recent

financing round.

- 9.4 The liability of the Guarantee Obligor under the Guarantees pursuant to §§ 8.3 through 8.8 together as debtors (*als Gesamtschuldner*) to pay monetary damages (*Schadensersatz in Geld*) shall be limited to a total maximum amount (*Haftungshöchstbetrag*) of EUR 15,000.00.
- 9.5 SBC shall be obliged to mitigate damages. Section 254 Civil Code shall apply accordingly. Section 442 Civil Code shall not apply.
- 9.6 All claims for a Breach shall become time-barred (*verjähren*) twenty four (24) months after the date of this Agreement except for claims relating to a Breach pursuant to § 8.1 and § 8.2, which shall only become time-barred four (4) years after date of this Agreement. Section 203 Civil Code shall not apply.
- 9.7 The Parties agree that the rights and remedies which SBC may have with respect to (i) a Breach of any Guarantee, or (ii) an indemnity contained in this Agreement shall be limited to the rights and remedies pursuant to this § 9. SBC hereby waives any claims under statutory representations and warranties (Sec. 434 et seq. Civil Code), irrespective of whether any defects (*Mängel*) exist on the date of this Agreement, and any claims related to statutory contractual or pre-contractual obligations (Sec. 280 to 282, 311 Civil Code), frustration of contract (Sec. 313 Civil Code) or tort (Sec. 823 et seq. Civil Code) are excluded to the extent legally permissible. SBC shall not have any right to rescind, cancel or otherwise terminate this Agreement or exercise any right or remedy which would have a similar effect.
- 9.8 Notwithstanding anything to the contrary herein, nothing in this Agreement shall have the effect of limiting any liability of the Guarantee Obligor(s) arising from misconduct (*Vorsatz*) or fraudulent misrepresentation (*arglistige Täuschung*).

§ 10

Precautionary Transfer of Founders' Intellectual Property

- 10.1 Each Founder herewith transfers to the Company as a matter of precaution to the broadest extent legally possible any and all of their IP Rights and Intellectual Property that fall inside the scope of the Company's Business, irrespective of how these rights were obtained by such Founder (the "**IP Transfer**"). This IP Transfer applies to (i) any and all current IP Rights of each Founder that fall inside the scope of the Company's Business and (ii) to any and all future IP Rights that fall inside the scope of the Company's Business and obtained by each Founder while being a director or officer (*leitender Angestellter*) of the Company or any of its Subsidiaries or employed by the Company or any of its Subsidiaries.
- 10.2 To the extent that such transfer is not possible for any legal reason, each Founder herewith grants to the Company an exclusive and irrevocable license (*übertragen das*

ausschließliche Nutzungsrecht) to use such IP Rights and Intellectual Properties that fall inside the scope of the Company's Business for all uses currently known and unknown (the "IP License"). The IP License is granted as broadly as legally possible and shall specifically, without limitation, be unlimited (in respect of duration, territorial scope and scope of the rights concerned), exclusive and transferable and shall include the right to grant sub-licenses to third parties. In particular, the IP License shall include rights to permanently or temporarily reproduce the works underlying the respective IP Rights by any means and in any form, in part or in whole (including the loading, displaying, running, transmission or storage of works for the purposes of execution and processing of data or transmission to picture, sound and other data storage media) and the right to distribute, display and present such works and the right to make available such works to the public (for example via the Internet), to transmit and to display the works by any means. The IP License also includes rights to translate, adapt, arrange and otherwise alter the works and to use such results in the same way as the original works.

- 10.3 The Company herewith accepts the assignments and the licenses pursuant to this § 10.
- 10.4 The IP Transfer and IP License are granted free of charge and the Company is not obliged to pay any fees to any Founder for its use, given that the Founders participate indirectly in the proceeds from the IP Rights by means of the Shares they directly or indirectly hold in the Company.
- 10.5 If the IP Transfer or IP License requires any further deeds, acts or declarations to entitle the Company or its assignees to ensure the entire and exclusive use and advantages of the work each Founder agrees to give and make any such deeds, acts and declarations forthwith. Any costs accruing in this context shall be borne by the Company.

§ 11

Founders' Obligations regarding Intellectual Property and IP Rights

- 11.1 Each Founder, for as long as the Founder is a director or officer (*leitender Angestellter*) of, employed by or a shareholder of the Company, shall use best efforts to procure that the Company has – to the broadest extent legally possible – a perpetual, irrevocable, royalty-free, sub-licensable, freely transferrable, exclusive right to install, execute, reproduce, revise, copy, modify, decompile, create derivative works of, display, publish, perform, and otherwise use and commercially exploit any and all Intellectual Property and IP Rights that the Founder has obtained or will obtain in connection with the setting up or developing or the rendering of services to the Company, and irrespective of how this Intellectual Property and these IP Rights were obtained, for exhaustive commercial exploitation and use on an exclusive basis without limitations as to time, territory and scope (i.e., including all current and future business purposes of the Company and any (future) Subsidiaries with regard to all types of use or exploitation currently known or yet unknown).
- 11.2 Each Founder, for as long as the Founder is a director or an officer (*leitender Angestellter*)

of, employed by or a shareholder of the Company, shall use best efforts to procure that each person who is or will be involved in the creation or development of any Intellectual Property or IP Rights for the Company has signed – as part of his/her employment or service agreement or otherwise, and (in case of employees) to the extent required in light of Sec. 69b German Copyright Act (*UrhG*), and further (in case of employees, freelancers or independent contractors) taking into account all applicable statutory provisions and obligations under German law with a view to (A) protecting the Company's Intellectual Property and IP Rights and (B) ensuring confidentiality with respect thereto – a valid and enforceable agreement sufficient to irrevocably assign and transfer such Intellectual Property and IP Rights to the Company.

- 11.3 To the extent that the operation or development of the Company's Business includes or will include the use of open source software components, each Founder shall use its best efforts to procure that the Company has no duty or obligation (whether present, contingent or otherwise) (i) to disclose any source code to third parties, and/or (ii) to utilize and/or distribute software other than the relevant open source software components under the terms and conditions of the license applying to such open source software, and/or (iii) to permit third parties to utilize software which is combined or distributed with such open source software components (copyleft effect). In addition, each Founder shall use its best efforts to procure that the use of any open source software components is adequately marked and documented according to customary industry standards (i.e., in form of inline comments in the source code), including a reference to the relevant terms and conditions of the license that apply to such open software components.

§ 12

Scope of Application, Accession

- 12.1 This Agreement relates to all present and future Shares held by the Shareholders in the Company or the legal successor thereof. If a third party subsequently joins this Agreement or a legal successor in the person of a Shareholder accedes, this Agreement shall encompass the total shareholding of the joining third party or legal successor, even if such shareholding should previously have existed prior to the accession or legal succession.
- 12.2 The Parties must ensure that throughout the term of this Agreement all shareholders of the Company are parties to this Agreement.
- 12.3 The Parties to this Agreement hereby submit to every natural or legal person permitted to acquire or take over Shares in the Company the offer to join this Agreement as a party and waive in this regard receipt of an acceptance declaration pursuant to Sec. 151, Sentence 1 of the Civil Code. The accession shall only be valid if the offer is accepted vis-à-vis the Company with effect for all Parties in notarized form. The Company shall inform all Shareholders without delay of the accession. The accession shall only be valid if made without any conditions, additions or other modifications of this Agreement. The acceding

party shall have the right and duties of a Shareholder.

§ 13 Period of Validity

- 13.1 This Agreement shall have a fixed term (the "**Fixed Term**") until the expiry of 15 (fifteen) years. During the Fixed Term, the right to ordinary termination of this Agreement shall be excluded hereby. After the cessation of the Fixed Term, this Agreement shall automatically be extended by one (1) year, unless terminated by a Shareholder with notice of 12 (twelve) months to the end of each term. The right to terminate this Agreement extraordinarily for good cause pursuant to Sec. 723 (1), Sentence 2 of the Civil Code remains unaffected.
- 13.2 This Agreement shall cease automatically if only one Shareholder holds a Share in the Company.
- 13.3 Without prejudice to any joint and several liability pursuant to § 6.2, a Shareholder automatically withdraws from this Agreement as soon as such Shareholder no longer holds any Shares. This Agreement shall continue between the other Parties.
- 13.4 The provisions in § 14, § 15 and § 19 shall remain in effect, as permitted by law, even after the cessation of this Agreement for some or all Shareholders between the (former) Parties to this Agreement. The cessation of this Agreement or the withdrawal from it shall further not affect those claims from this Agreement that arose prior to the cessation or the withdrawal.

§ 14 Notices

- 14.1 All declarations and other notices in legal transactions in connection with this Agreement (each a "**Notice**") must be made in writing, unless this Agreement stipulates otherwise and unless notarization or any other form is prescribed by mandatory law. The requirement for the written form shall be satisfied by (i) personal delivery (including by courier), (ii) sending by registered letter, and (iii) transmission by e-mail of a signed document as PDF-Scan. Notices are to be sent to the following addresses:

a) **[Founder 1]**

Street: [..]

City, Postal Code: [..]

E-Mail: [..]

b) **[Founder 2]**

Street: [...]
City, Postal Code: [...]

E-Mail: [...]

c) **SBC**

Street: c/o The Rainmaking Loft, International House, 1 St Katherine's
Way,
City, Postal Code: London E1W 1UN

E-Mail: LB@startupbootcamp.org

14.2 Each Party must notify any change of its address to the other Party without delay. The previous address shall apply until the receipt of such notice.

**§ 15
Confidentiality**

15.1 The Parties shall be obliged to treat the conclusion, content and performance of this Agreement and the information obtained on the basis hereof (together the "**Confidential Information**") strictly confidential and not to disclose such to third parties, unless:

- a) the relevant facts are known to the general public;
- b) publication of the relevant facts is prescribed by law, by court or administrative order in accordance with the rules of a stock exchange; or
- c) publication is required for the performance of this Agreement.

15.2 The Parties shall be entitled, however, to disclose Confidential Information:

- a) to employees or advisors of each Party and commercial banks;
- b) to future capital providers that want to participate directly or indirectly in the Company;
- c) to third parties planning to acquire Shares in accordance with this Agreement;
- d) to banks in connection with an initial public offering or financing measure of the Company;
- e) to Affiliated Companies of Shareholders within the framework of internal group reporting,

provided the aforementioned persons are obliged based on their employment agreement,

other written agreement or by profession to treat the Confidential Information confidentially at least to the above degree. That Party who discloses Confidential Information with reference to this section is liable for any breach of the obligation to confidentiality by the respective recipient of the Confidential Information.

- 15.3 The Parties shall coordinate the content of any press release to be issued after the notarization of this Agreement, if relevant.

§ 16

Prohibition on Competition of the Founders as Shareholders

- 16.1 The Founders hereby agree in relation to SBC and the Company not to become active during their status as direct or indirect Shareholders of the Company either directly or indirectly, either in their own name or in the name of third parties, or for either their own account or for the account of third parties in the field of the Company's Business or to establish an employment relation in such Business and Activity Field or to become active in an advisory capacity in such Business and Activity Field.
- 16.2 Geographically, the prohibition of competition shall exist for activities worldwide.
- 16.3 Exempt from the prohibition of competition shall be (i) the acquisition of stocks of up to 5% of the capital stock of publicly traded companies, (ii) the acquisition of securities of and/or shareholdings in investment companies of up to 5% and (iii) the acquisition of other publicly traded financial instruments, provided these do not grant corporate law or financial options to more than a 5% corporate shareholding, each for purposes of private investment without the assumption of an advisory function, employment relation and/or other board position in the relevant enterprise.
- 16.4 Should any provisions of this agreement on the prohibition of competition be or become invalid or impracticable in whole or in part, the validity of the other provisions of this Agreement shall not be affected thereby. To replace the invalid provisions, that valid provision shall be considered as agreed which most closely approximates the spirit and purpose of the invalid provision. This shall also apply in the event the invalidity of a provision is based on any degree of performance or time; the legally permissible degree shall then apply.
- 16.5 The preceding prohibition shall not prejudice the prohibitions of competition stipulated by law and in the employment agreements.

§ 17

Priority of this Agreement, Implementation Obligation

- 17.1 In the relation between the Shareholders, the provisions of this Agreement shall take precedent in the event of contradictory provisions over the provisions of the Articles of Association as amended from time to time. Upon the execution of this Agreement, all pre-

ceding shareholder and shareholding agreements between some or all of the Parties shall be cancelled. No verbal collateral arrangements have been made.

- 17.2 The Parties hereby agree to ensure with all the resources at their disposal, particularly through the exercise of their voting rights and managerial powers, that the measures foreseen in this Agreement are implemented and the provisions of this Agreement are observed. The Parties hereby agree to issue all declarations (in the necessary form) and undertake all acts necessary or expedient to implement and execute all measures and transactions foreseen pursuant to this Agreement.

§ 18 Costs

The costs of the Capital Increase shall be borne by the Company. Otherwise, each Party shall itself bear the costs incurred by it, particularly the costs of its legal, tax and other advisors.

§ 19 Final Provisions

- 19.1 Any modifications of or additions to this Agreement or the rescission hereof must be made in writing, unless a more stringent form is required by law. This shall also apply to the modification or rescission of this requirement for the written form.
- 19.2 Unless expressly stipulated otherwise in this Agreement, no Party shall be entitled to transfer rights from this Agreement without the approval of the other Parties.
- 19.3 Should any provisions of this Agreement be or become invalid or impracticable in whole or in part or should this Agreement have any gaps, the validity of the other provisions of this Agreement shall not be affected thereby. To replace the invalid or impracticable provision or to close the gap, that legally permissible provision shall be considered as agreed retroactively which most closely approximates what the Parties would have desired or would have agreed upon in accordance with the spirit and purpose of this Agreement had they considered the invalidity or impracticability of the relevant provision or the contractual gap. This shall also apply in the event the invalidity or impracticability is based on any degree of performance or time prescribed in this Agreement. In such event, that degree of performance or time permitted by law which most closely approximates the degree or period desired by the Parties shall replace that degree or period stipulated in this Agreement.
- 19.4 This Agreement shall be subject to the law of the Federal Republic of Germany, to the exclusion of German conflict of law rules.
- 19.5 The District Court of Berlin shall exclusively be competent, as permitted by law, for all disputes from or in connection with this Agreement, including concerning the validity hereof.