

## PROGRAM PARTICIPATION, ISSUANCE OF SHARES AND SHAREHOLDERS AGREEMENT

This Agreement is dated dd.mm.yyyy (the “Agreement”)

### Between

- (1) SER eignarhaldsfélag ehf., reg. no. 691211-31320, Borgartúni 19, 105 Reykjavík, Iceland (“SER”),
- (2) [Founder 1], reg. no [•], [Address], [postal code], [country],
- (3) [Founder 2], reg. no [•], [Address], [postal code], [country],,
- (4) [Founder 3], reg. no [•], [Address], [postal code], [country],
- (5) [Startup ehf]. reg. no [•], [Address], [postal code], [country],, a limited liability company incorporated under the laws of Iceland (the “Startup”).

The parties (1) - (4) are hereinafter also individually and collectively referred to as “Shareholder” or as “Shareholders”. The parties (2) - (4) are jointly referred to as the “Founders”. The parties mentioned under (1) - (5) are hereinafter also individually and collectively referred to as “Party” or as “Parties”.

Whereas:

- a. SER is the organizer of a a Start-up Accelerator Program for startup companies in collaboration with Icelandic Startups and Iceland Geothermal ehf., taking place in fall 2016 in Reykjavík, branded as Startup Energy Reykjavik, as further described on [www.startupenergyreykjavik.com](http://www.startupenergyreykjavik.com) (the “Program”).
- b. The Startup is a limited liability company incorporated under the laws of Iceland with a registered purpose in connection with the Idea.
- c. The Startup is active in [•], as outlined in Schedule 1 (the “Idea”).
- d. The Startup has an issued share capital of ISK [•], each of a nominal value of ISK [•] each. The Founders currently hold all the shares in the Startup;
- e. During February-May of 2016, the Startup successfully participated in the selection process to qualify for participation in the Program and SER has invited the Startup to participate in the Program. The Founders and the Startup have accepted such invitation and will participate in the Program;
- f. The Program involves, that the Startup will receive from SER 5,000,000 ISK, as described in this Agreement, and will furthermore be provided with housing, internet, and connections with network and mentors for 8-10 weeks, in order to accelerate their Idea, in turn for a 10% stake of the Startup. The Program ends on a Demo day (the “Demo day”) where the Founders pitch their Idea, for potential future investors and partners.
- g. The Parties now therefore desire to lay down their understanding in writing in this Agreement stipulating the terms and conditions of i) the right of the Startup to participate in the Program, ii) the issuance of shares in the Startup and iii) the Parties' possession of the shares and all other shares in the Startup that might be issued at a later date.

## 1. PARTICIPATION IN THE PROGRAM AND ISSUANCE OF THE SHARES

1.1. SER hereby grants the Startup the right to participate in the Program and the Startup accepts the right to participate in the Program.

1.2. The Founders and the Startup shall issue as many shares to SER as necessary, in order for SER to hold 10% of all the shares in the share capital of the Startup (the "**Shares**"). SER hereby agrees to accept these Shares. The Shares shall enjoy the same rights as shares directly or indirectly owned by the Founders.

1.3. The Founders and the Startup are obliged to undertake the following actions immediately after the signing of this Agreement, including but not limited to:

1.3.1. calling for a meeting of the Startup's shareholders where a resolution to authorize the board of directors of the Startup to issue the Shares in two phases is approved. The Founders shall have waived their pre-emptive rights to the Shares;

1.3.2. Amending the Startup's Articles of Association in accordance with the resolution under Clause 1.3.1.

1.3.3. Notifying the Company Registry of the changes to the Articles of Association in accordance with Clause 1.3.2.

1.4. SER shall have the discretionary right to require the Startup to leave the Program at any time. The Startup shall be present on the Demo/Investor Day to be held no later than 30 November 2016 but SER has a discretionary right to deny the Startup to be present if SER takes the discretionary view that the Startup cannot deliver the quality required. In any case, SER will still hold its Shares in the Startup.

## 2. PAYMENT OF THE SHARES

2.1. The subscription price for the Shares is ISK 5,000,000 (the "**Subscription Price**") and shall be paid by SER into the bank account of the Startup in the following manner:

2.1.1. 50% of the Subscription Price, i.e. ISK 2,500,000 shall be paid upon completion by the Startup of the first week of the Program. At this point the Board of Directors of the Startup shall utilize the authorization granted by the shareholders' meeting, cf. Clause 1.3.1., and issue the first half of the Shares to SER and deliver an updated share register of the Startup (showing SER as a 5% shareholder) to SER; and

2.1.2. The remaining 50% of the Subscription Price, i.e. ISK 2,500,000) shall be paid upon the Startup's completion of the first six weeks of the Program. At this point the Board of Directors of the Startup shall utilize the authorization granted by the shareholders' meeting, cf. Clause 1.3.1., and issue the second half of the Shares to SER and deliver an updated share register of the Startup (showing SER as a 10% shareholder) to SER.

## 3. ADDITIONAL INVESTOR AND ANTI-DILUTION

3.1. The Shareholders may admit an additional investor ("**Additional Investor**"), to invest cash into the Startup in exchange for new shares. As and from the applicable date of admission any such Additional Investor shall be deemed to be party to this Agreement. The Founders shall procure that on the date of admission each Additional Investor shall execute a deed of adherence to this Agreement in a form acceptable to all Shareholders and thereafter this Agreement and such deed of adherence shall constitute one agreement.

3.2. In case any future capital contributions will be made by Additional Investors in the Startup with an aggregate worth less than ISK 40,000,000, the Founders shall transfer as many of their shares in the Startup for no consideration to SER, in order for SER to maintain its 10% shareholding or if so agreed by the Parties, ensure that the Startup issue new shares in the Startup to SER at a nominal value in order for SER to maintain its 10% shareholding.

3.3. In the case that future capital contributions by Additional Investors in the Startup would exceed ISK 40,000,000 ("**Qualified Injection**"), SER shall have the same rights as the Founders. This includes that the Shares shall be diluted in the same proportion as the shares belonging to the Founders

3.4. In order to avoid confusion it shall be emphasized that only injections of cash into the Startup against the Startup issuing new shares are taken into consideration when determining whether funding is considered to be a Qualified Injection or not. Loans of any kind, such as but not limited to convertible loans or loans with an equity risk, are not taken into consideration and will therefore not dilute SER.

3.5. Under no circumstances has SER an obligation to make any additional investments by (including but not limited to) injecting cash into the Startup.

#### **4. TRANSFER OF SHARES TO THIRD PARTIES**

##### **4.1. Restrictions on transfers**

4.1.1. Transfer of shares in the Startup (whether partial or in whole) shall not be executed without the written consent of other shareholders. They shall always be subject to the condition that any new shareholder undertakes all the shareholder obligations of the shareholder transferring the shares.

4.1.2. Notwithstanding Art 4.1., any shareholder shall be free to transfer shares into a company that is 100% in his ownership. All same restrictions on transfer of shares that apply to the shares in the Startup shall apply to the transfer of ownership of such a company.

##### **4.2. Right to enter into transfer of shares**

4.2.1. If a shareholder ("the seller") receives an offer to buy his shares from a third party ("buyer"), the seller may not sell the shares unless the conditions of Article 4.1. for such a sale are met and he first offers the shares to all other shareholders.

4.2.2. The other shareholders must be notified in writing of the proposed transaction, including the price and the terms. The other shareholders shall be entitled to enter into the transaction at the price and the terms agreed between seller and buyer.

4.2.3. Any shareholder shall notify the seller whether he intends to exercise his right to enter into the transaction within seven days from the date he received verifiable notice of the bid.

4.2.4. Rights to enter into transfer of shares under this Article and under the Articles of Association shall not apply if:

A - The transaction is in accordance with Art 4.1.2.

B - The transaction is part of a Tag-along in accordance with Art 4.3.

C - The transaction is part of a Drag-along in accordance with Art 4.4.

D - The transaction is based on shareholders exercising their right to require other to purchase their entire shareholding in accordance with Art 4.5. (Put-option)

##### **4.3 Tag Along**

4.3.1 In the event of a transfer (whether it be direct or indirect) of shares in the Startup by one or more shareholders, excluding SER, (the "**Selling Shareholders**"), whether jointly or severally, and, subsequent to such transfer, one shareholder or a related party of shareholders (the "**Transferee**") will become the holder of 50% or more of the Startup's registered share capital, or one or more of the shareholders selling more than 50% of his shares, then those other shareholders of the Startup who were initially not intended to be parties to the transfer (the "**Other Shareholders**") shall be entitled to participate in such transfer on a pro-rata basis and on the same terms as the Selling Shareholders.

4.3.2 The Selling Shareholders shall provide a written notification to the Other Shareholders immediately upon the Selling Shareholders having received an offer (whether jointly or severally) from the Transferee which they wish to accept and which they are aware will trigger the tag-along right provided by clause 4.1 above. Such notification shall provide a complete description of all the terms of the proposed transfer. The notice shall, further, provide the Other Shareholders with period of seven Working Days (each Working Day a day on which banks in Reykjavik are generally open for business) for the purposes of deciding whether or not they wish to invoke the tag-along right. If no reply from the Other Shareholders is received by the end of the 7-day period, the Selling Shareholders shall be entitled to infer that the Other Shareholders (to the degree that no response has been received from such Other Shareholders) have forfeited their tag-along right in respect of the said transfer.

4.3.3 The Selling Shareholders undertake not to conclude the transfer unless the Other Shareholders have been afforded the aforesaid facilities to decide whether or not they will invoke the tag-along right. Furthermore, the Selling Shareholders undertake that the Transferee is made aware of the drag-along

right afforded to the Other Shareholders and that they shall, further, procure that all agreements entered into with the Transferee in respect of the transfer shall fully take into account the tag-along right of those Other Shareholders who wish to invoke it.

#### 4.4 Drag Along

4.4.1 If one or more of the Shareholders (hereinafter jointly referred to as Sellers and individually as Seller) wish to contemporaneously sell and transfer their entire shareholdings in the Startup to a single third party for cash, at a price which corresponds to a total equity value of the Startup of ISK 200 million or more, such Sellers shall be entitled to require the other Shareholders to also sell and transfer (upon which such Shareholder shall be obligated to sell and transfer), at the same time, their entire holdings to such third party upon the same terms as agreed by the Sellers, provided that the shareholdings thus sold and transferred by the Sellers corresponds to 70% or more of the Startup's registered share capital.

4.4.2 If the Sellers wish to invoke the drag-along right afforded by clause 4.4.1, the Sellers shall provide a written notification to the other Shareholders to that effect. Such notification shall furthermore contain complete details of the terms of the proposed transfer, which shall include information on the identity of the third party and the price offered.

4.4.3 Those of the Shareholders, the shareholdings of which are subject to the drag-along, shall, within 14 days of having received the drag-along notice under clause 4.4.2, decide whether they regard the price offered by the third party as constituting a fair price for their shares. If, within the 14 day time period, the said shareholders deem the price offered to be unfair they shall be entitled to demand that two independent assessors are appointed to provide an opinion of the fairness of the price offered. The assessors shall be appointed by the parties; one on behalf of the Sellers, and one on behalf of the other shareholders. Should the assessors prove to be unable to reach a joint conclusion on the fairness of the purchase price, then each of the Sellers or the other Shareholders jointly, shall be entitled to request that two independent assessors are appointed by the Reykjavik District Court to provide the fairness opinion. Should it transpire that such court-appointed assessors find that price offered by third party as consideration for the shares is 10% or more lower than the fair value of such shares, then the price shall be regarded as unjust and the other shareholders shall be released from their duty pursuant to clause 4.4.1. The other shareholders may, notwithstanding such a result, elect to submit to the drag-along, as per the third party offer. All costs incurred in connection with the appointment of assessors shall be borne by the shareholders proportionally to their shareholdings.

4.4.4 All shares sold and transferred on the basis of the drag-along provided by clause 4.4.1, shall be sold and transferred without any restrictions or pledges and with all rights attached thereto. The transfer of the shares, and all associated rights, shall take place upon payment of the purchase price.

#### 4.5. Put Option

Should the shareholders of the Startup receive an offer for the entire shareholding of the Startup, whether it be from a third party or a shareholder, which SER wishes to accept and such wish has been communicated to the Startup's other shareholders, but which is declined by such other shareholders (the „Refusing Shareholders“), then SER shall enjoy the right to require the Refusing Shareholders jointly or severally, to purchase (upon which requirement they shall be obligated to purchase) SER's entire shareholding in the Startup at a purchase price which corresponds to the consideration which would have become payable to SER, should the offer have been accepted. Should SER wish to invoke the put option described above, it shall, within 14 Working Days of becoming aware of the refusal of Refusing Shareholders, notify the Refusing Shareholders in writing of its requirement to that effect, subsequent to which the Refusing Shareholders shall within 14 Working Days complete the purchase and transfer of SER's shareholdings in the Startup. The transfer of SER's shares in the Startup, along with all associated rights, shall take place against payment of the purchase price in cash.

## 5. REPRESENTATIONS AND WARRANTIES

5.1. The Founders and the Startup represent and warrant that each of the representations and warranties below is true and accurate on the date of this Agreement. Furthermore, the Founders represent and warrant that they have given all such information and documentation to SER that is reasonably deemed relevant for the contents of this Agreement.

## **General**

5.1.1. The Founders and the Startup represent and warrant that the Startup has been duly incorporated and validly exists under the laws of Iceland and that the Founders have the necessary corporate capacity and power to enter into this Agreement and to perform its obligations under the Agreement, the terms of which shall be valid and binding.

5.1.2. The Founders and the Startup represent and warrant that all corporate and other action required to be taken by the Founders to authorize the execution of this Agreement and the performance of its obligations under the Agreement have been duly taken or will have been duly taken by completion of the issuance of the shares of the Startup to SER.

## **Financial statements**

5.1.3. The Founders and the Startup represent and warrant that the financial statements of the Startup:

- a. will be prepared in accordance with the International Financing Reporting System('IFRS').
- b. show a true and fair view of the financial position, assets, liabilities and results of the Startup for the financial year ending on the 31 December 2015 and going forward;
- c. have been duly filed or an exemption from filing has been obtained in accordance with applicable law.

## **Litigation**

5.1.4. The Founders and the Startup represent and warrant that the Startup (and/or its affiliates) is not engaged in any litigation, arbitration or other legal proceedings and there are no written claims threatened against the Startup (and/or its affiliates).

5.1.5. The Founders and the Startup represent and warrant that the Founders or their affiliates are not engaged in any litigation, arbitration or other legal proceedings and there are no written claims threatened against the Founders or their affiliates in relation to the Idea or the Intellectual Property Rights.

## **Tax**

5.1.6. The Founders and the Startup represent and warrant that any and all tax for which the Startup has been assessed or that has or shall become due has either been paid in full or been fully provided for in the Startup's financial Statements.

5.1.7. The Founders and the Startup represent and warrant that the Startup has properly filed all returns required to be filed pursuant to any relevant law.

5.1.8. The Founders and the Startup represent and warrant that the Startup is not subject to any disagreement or dispute with any tax authority regarding the tax position of the Startup.

5.1.9. The Founders and the Startup represent and warrant that the Startup is not part of any fiscal unity for corporate income tax or value added tax purposes.

## **Shares**

5.1.10. The Founders and the Startup represent and warrant that all the issued shares in the share capital of the Startup have been paid up in full.

5.1.11. The Founders and the Startup represent and warrant that there are no holders of depository receipts that have been, or will be, issued. The Founders have not, and shall not, pledge or render a right of usufruct with regard to, any of the shares in the share capital of the Startup.

5.1.12. The Founders and the Startup represent and warrant that they will refrain from any transfer or issuance of any shares in the capital of the Startup to any third party and from the assumption of any obligation to such transfer or issue, and from any cooperation to such transfer of issue.

5.1.13. The Founders and the Startup represent and warrant that the Shares issued to SER rank equally in all respects holding the same rights as the existing shares.

## 6. INFORMATION RIGHTS AND D&O INSURANCE

6.1. The Startup shall no later than on the 10th business day of each quarter send SER a short general update of the business and financial affairs of the Startup. Furthermore, the Startup shall send SER all other information that SER may from time to time reasonably require by e-mail. The quarterly e-mail shall be sent without SER having to request it.

6.2. SER shall be entitled to appoint a supervisory board that shall have the right to attend all meetings of the board of directors of the Startup. The Startup shall send to SER:

6.2.1. a notice of each meeting of the board of directors with a reasonable advance. Such notice shall be accompanied by a written agenda specifying the business to be discussed at the meeting along with all relevant papers; and

6.2.2. as soon practicable after said meeting, a copy of the minutes from said meeting shall be delivered by email.

6.3. SER shall be entitled to annually audit the Startup. From this respect the Startup will send to SER any information deemed necessary by SER for the audit upon first written request.

6.4. The Founders are obliged to inform SER of any events or risks that can have a material impact on the Startup or the Founders ability to develop the Startup and its business.

6.5. Upon request of SER the Founders and the Startup shall to take such actions as necessary in order for the statutory directors of the Startup to take out directors' and officers' liability insurance.

## 7. INTELLECTUAL PROPERTY RIGHTS AND WORKS

### Definitions

7.1. "**Intellectual Property Rights**" shall be defined as, including but not limited to, patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, rights in goodwill, rights in designs, formulations, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) whether registered or unregistered and including all applications (and rights to apply for such rights as mentioned under this paragraph), and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world that can in any way be related to what is described in the application to the Program, see Schedule 1, and what is developed during the Program and what is in the future developed by the Startup and/or by third parties working for the Startup, see also Schedule 2.

7.2. "**Works**" shall be defined as, including but not limited to documents, work product, products, processes, materials, designs, brands and images created prior to the date of signing of this Agreement by the Founders relating to what is described in the application to the Program, see Schedule 1, and what is developed during the Program and what is in the future developed by the Startup, see also Schedule 2.

### Assignment/transfer of Intellectual Property Rights and Works

7.3. The Founders hereby guarantee to have transferred to the Startup (and shall procure that any employees or third party consultants working for the Startup shall do the same as a part of the terms of their employment) the Intellectual Property Rights, and the Works to the Startup and the Startup hereby confirms to have received such Intellectual Property Rights and the Works.

7.4. The Founders unconditionally and irrevocably waive all rights which they may have in connection with the Intellectual Property and the Works (and shall procure that any employees or third party consultants working for the Startup shall do the same as a part of the terms of their employment).

7.5. The Founders agree that they eventually may make, discover or create Intellectual Property Rights in the course of or in connection with the Startup and agree that such Intellectual Property Rights, will become the property of the Startup and if necessary for protection the Founders have an obligation to

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immediately transfer these Intellectual Property Rights to the Startup, on their own initiative and/or on request of SER.

### **Transfer restrictions**

7.6. The Startup undertakes that, other than in the ordinary course of its business, it will not assign, transfer, sell, (sub)licence or otherwise dispose of or encumber any of the Intellectual Property Rights or Works of the Startup unless with the prior written consent of SER and it is at market value that is higher than ISK 100,000,000 (the “**Minimum Exit Value**”).

7.7. The above paragraph shall not apply to in the event a Qualified Injection by an Additional Investor has been made and as a result of the negotiations the Startup is transferring or injecting the Intellectual Property Rights or Works into a subsidiary, directed and controlled by the Startup. In that case the Startup undertakes that, other than in the ordinary course of its business, this subsidiary will not assign, transfer, sell, (sub)license or otherwise dispose of or encumber any of the Intellectual Property Rights or Works at a price below the Minimum Exit Value. Such a transfer of the Intellectual Property Rights or Works can only be to independent third parties and at fair market conditions. In this case the Founders are not entitled to own shares directly in the subsidiary Startup but only via their ownership in the Startup.

## **8. CONTRACTS WITH THE FOUNDERS AND RELATED PARTIES**

All agreements, including but not limited to employment contracts, between the Startup and the Founders and/or any related parties shall require the written prior approval of SER.

## **9. COMPETITION**

9.1. The Founders are not entitled to, in any other way than via the Startup, to directly or indirectly carry out any activity or have any interest in any other business that competes with a business model that can be related to or be considered to be similar to the Intellectual Property, the Works and/or the Startup's activities.

9.2. The Founders are aware that SER, being the founder of the Program in which various persons and companies are participating, cannot reasonably undertake the competition limitation mentioned in clause 9.1.

## **10. WAIVER**

10.1. The Founders and the Startup will from time to time receive advice, business coaching and similar services from SER and the mentors participating in the Program. The Shareholders agree that these services are advisory in nature and, as such, the final decision as to whether to follow such advice rests with the Startup and/or the Shareholders. Therefore the Startup and the Shareholders agree to waive any claims they may have against SER in contract, tort (including negligence) or otherwise arising at any time in relation to services provided by SER and/or its mentors.

## **11. AGREEMENT TO PREVAIL**

In the event of any inconsistency between any provisions of this Agreement and the articles of association of the Startup, this Agreement shall prevail.

## **12. PARTNERSHIP**

This Agreement and any actions taken by any of the Parties pursuant to this Agreement shall not be deemed to constitute a partnership, unincorporated association or joint venture between any of the Parties.

## **13. SEVERANCE**

If any provisions of this Agreement shall become illegal, invalid or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be impaired.

## **14. GOVERNING LAW AND JURISDICTION**

Please note that this is a draft agreement. SER eignarhaldsfélag ehf. requires that the Founders will sign this draft agreement, or an agreement for the most part similar to this draft agreement, prior to participating in the Program.

14.1. This Agreement shall be governed by and construed in accordance with the law of Iceland.

14.2. Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of Iceland.

## 15. SCHEDULES

Schedule 1 – The Founders application to the Program

Schedule 2 – The Startup's Intellectual Property Rights and Works

## 16. SIGNATURES

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on behalf of SER eignarhaldsfélag ehf.

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[Name Founders]

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[Name Founders]

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[Name Founders]

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[Name Founders]

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on behalf of [the Startup]

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on behalf of [the Startup]