[Proposed company name]

# Spin-Out and Investment

# Term Sheet – Subject to Contract

**The University is not providing any advice in relation to the contents of this Term Sheet. If you are in any doubt about the contents of this Term Sheet or any action to be taken, you should seek your own independent legal and tax advice.**

**Between:**

## [TBC], [TBC] and [TBC] (the "**Founders**")[[1]](#footnote-2);

## [TBC] (the "**University**");

## [TBC] (the "**Investor**")[; and

4. [TBC] (the "**Company**”).]

**Background:**

1. The University has agreed, subject to contract, to licence to a new spin-out company [to be]established by the Founders (the "**Company**") certain intellectual property rights which the Company intends to commercialise.
2. The proposed terms of the intellectual property licence agreement (the "**Licence Agreement**") are set out in the Licence Agreement Term Sheet.
3. The proposed business of the Company is to [TBC].
4. The Investor has agreed, subject to contract, to invest in aggregate £[TBC] in the Company (the "**Investment**").
5. The Licence Agreement will be entered into alongside (i) the Company adopting new articles of association (“**Articles**”), (ii) the Company, the University, the Founders and the Investor entering into a shareholders' agreement, and (iii) the Company, the University, the Founders and the Investor entering into a subscription agreement, in each case reflecting the terms set out in this Term Sheet.
6. This Term Sheet sets out the main terms that the parties intend to incorporate into legal binding written agreements.

**Terms:**

These terms are not and are not intended to be legally binding, save as set out in paragraphs 3.26, 3.27, 3.28 and 3.29:

**Licence Agreement:**

|  |  |  |
| --- | --- | --- |
|  | Licence Agreement: | The proposed terms of the Licence Agreement are set out in the Licence Agreement Term Sheet. The University will be issued with its Ordinary Shares (as shown in the Share Capital Table (as defined below)) at nominal value immediately prior to and conditional upon completion of the Investment ("**Completion**"). |

**Capitalisation**:

|  |  |  |
| --- | --- | --- |
|  | Share capitalisation table: | A copy of the share capital table of the Company ("**Share Capital** **Table**") at the date of this Term Sheet and showing the position before and after Completion (as defined below) is appended to this Term Sheet (see Appendix). |
|  | Share Incentive Plan: | The Company shall create a share incentive pool of up to [10]% of the fully diluted post-Completion share capital of the Company which shall be available for the grant or issue of share incentives (options, reverse vesting shares etc) to employees, consultants and directors of the Company (**Share Incentive Pool**).  Following Completion the Company may put in place a share incentive plan to grant or issue incentives over the shares in the Share Incentive Pool (**Share Incentive Plan**). Approval of the Share Incentive Plan will require Special Shareholder Consent[[2]](#footnote-3) (see 3.21 (*Protective rights*)). |

**Subscription Agreement:**

|  |  |  |
| --- | --- | --- |
|  | Investment: | The Investor will invest in aggregate £[TBC] in the Company for the Ordinary Shares[[3]](#footnote-4) as shown in the Share Capital Table at a pre-money valuation of £[TBC], being a price per share of £[TBC] (the "**Share Price**"). |
|  | Conditions: | The Investment is conditional upon:   * the Licence Agreement being duly entered into between the Company and the University; * negotiation of definitive legal documentation in respect of the matters set out in this Term Sheet; * [Facilities Access Agreements]; * [Research Contracts]; * [Consultancy Contracts]; * [Secondment Agreement]; * [any clearance under the National Security and Investment Act required being obtained] * [Other – any tax clearances, investor DD, investor approvals, management questionnaires etc]   The University will have the right to review and approve the aforesaid agreements involving University members of staff. |
|  | [Right to hold round open]: | [[For a period of [TBC months] following Completion the Company shall have the right to issue and allot up to [TBC] Ordinary Shares to new investors at a price of no less than the Share Price provided that such new investors must be approved by the Board, the Investor and shall adhere to the subscription agreement and the shareholders' agreement [as an Investor].] |
|  | Warranties: | On Completion, the Company and Founders will give standard commercial warranties to the Investor [and the University] on a joint and several basis.[[4]](#footnote-5) For the avoidance of doubt, such warranties will be appropriate to an early stage company and will include, without limitation, warranties relating to the share capital, intellectual property, the business plan, events since incorporation, staff, insurance, litigation, taxation, assets and liabilities, borrowings, property, records and compliance with laws.  Liability of Founders for breach of warranty shall be capped at £[TBC] and liability of the Company for breach of warranty shall be capped at the aggregate amount of the Investment, provided that in each case the aggregate liability of the warrantors to the University shall be £[TBC].  Any warranty claim must be brought within 1 year of Completion and will be subject to matters "fairly disclosed". Other standard limitations of liability will apply[[5]](#footnote-6). |
|  | Use of proceeds: | The investment by the Investor is to fund the growth and development of the Company and its business in accordance with the Company’s business plan, a copy of which shall be agreed with the University and the Investor. |
|  | [Any SEIS / EIS / tax specific provisions to be added] | [Note that where SEIS and EIS investments are being made there will need to be two tranches of investment (with SEIS first and EIS at least one day later). Note also that HMRC advance assurance / comfort letter from appropriate tax advisor may be required by investors] |

**Rights of Shares**:

|  |  |  |
| --- | --- | --- |
|  | Class of Shares: | Ordinary shares of £[0.001] each (**Ordinary Shares**). |
|  | Return of Capital: | On a liquidation or return of capital (including a share sale) the surplus assets or proceeds of sale (after allocation of a nominal sum to the Deferred Shares - see paragraph 3.16) will be divided between the Ordinary Shares on a pro rata basis. |
|  | Voting rights: | Each Ordinary Share shall carry one vote. Voting rights shall be suspended on all Ordinary Shares held by Leavers (unless otherwise determined by the Board on a case by case basis with Special Shareholder Consent). In no circumstances shall the University's voting rights exceed 49.9% of the share capital of the Company. |
|  | Pre-emption on new issues of shares: | Subject to standard carve-outs (including for shares issued from the Share Incentive Pool and under the Share Incentive Plan (see 3.3 (*Share Incentive Plan*) and where pre-emption rights are waived by special resolution or Special Shareholder Consent) new shares shall be offered to all holders of Ordinary Shares pro rata to the number of Ordinary Shares held. |
|  | Permitted Transfers: | Corporate shareholders (including the University) may transfer shares to any member of their corporate group [or, in the case of the University, any investment fund of which the University or any affiliate of the University is a participant, shareholder, partner or member (University Fund).]  Any Investment Fund may transfer shares to any member of the same Fund Group.  "**Fund Group**" means, as regards any fund, limited, general or other partnership, company, investment trust, unit trust, investment company or collective investment scheme (as defined by the Financial Services and Markets Act 2000) or other entity whose principal business is to make investments, including in securities, or whose business is managed by a Fund Manager (an "**Investment Fund**"):   * + 1. such Investment Fund;     2. any participant or partner in or member of any such Investment Fund or the holders of any unit trust which is a participant or partner in or member of any Investment Fund (but in each case only in connection with the dissolution of the Investment Fund or any distribution of assets of the Investment Fund pursuant to the operation of the Investment Fund in the ordinary course of business);     3. any other Investment Fund whose business is managed or advised by such Fund Manager or by a member of the same Group as such Investment Fund or Fund Manager;     4. a member of the same Group as such Investment Fund or Fund Manager; and     5. any trustee, nominee or custodian of such Investment Fund and vice versa,   (and, in each case, with respect to the holding of interests in Shares, any nominee or custodian of such interests in Shares) and the term "member of the same Fund Group" shall be construed accordingly;  "**Fund Manager**" means a person whose principal business is to make, manage or advise upon investments in securities.  Individual shareholders may transfer shares to any privileged relation (spouse or civil partner and lineal descendants (including step and adopted lineal descendants) or trustee of a family trust, save that consent of the Board and Special Shareholder Consent shall be required for any such transfer by any director or employee of, or consultant to, the Company within the period of three years from the date of adoption of the Articles.  The Board with Special Shareholder Consent may determine that any transfer is a permitted transfer. |
|  | Pre-emption on transfers of shares: | Save in respect of Permitted Transfers, shares being offered for transfer shall be offered to all holders of Ordinary Shares pro rata to the number of Ordinary Shares held. |
|  | Compulsory Transfers (including Leaver provisions): | Standard compulsory transfer provisions will apply to shareholders who become bankrupt/insolvent.  Shares held by employees, directors or consultants to the Company (and any shares transferred to a permitted transferee of such person) shall be subject to good/bad leaver provisions summarised below.  Bad Leavers shall have all their shares converted into Deferred Shares.  Good Leavers shall retain their vested shares and their unvested shares shall be converted into Deferred Shares. Shares shall vest monthly over a period of 3 years with a 1 year cliff [provided that vesting shall accelerate if there is an exit event prior to the end of the vesting period].  Bad Leaver shall be defined as gross misconduct, dishonesty or breach of restrictive covenant of confidentiality obligations or where they are summarily dismissed/terminated under the terms of their employment/consultancy agreement (unless otherwise determined by the Board with Special Shareholder Consent). Leaving in other circumstances (including resignation) shall be a Good Leaver event (subject to the vesting as above). |
|  | Tag Along, Drag Along, Exit: | Shares may not be transferred, if that would constitute a change of control, unless the proposed transferee offers to buy all of the shares in the capital of the Company at the same price and on the same terms.  All shareholders may be required (at the same price and on the same terms) to sell their shares if the holders of [75][[6]](#footnote-7)% Ordinary Shares wish to sell their shares[, save that the University may not be required to sell its shares where such sale is to a restricted purchaser [(being an entity which the University considers, acting reasonably, is likely to be reputationally damaging to the University)] [being an entity whose business includes the carrying on of Restricted Activities (as defined in paragraph 3.23].[[7]](#footnote-8)  Neither the University nor the Investor will give warranties or indemnities on a sale other than title to the shares held by it and capacity to sell such shares. |
|  | Co-Sale: | All shareholders will be entitled to sell a proportionate number of their shares where any Founder finds a purchaser for their shares (other than in the case of a permitted transfer). |
|  | Put Option: | The University will have the right to gift its shares to the Company for nil consideration at its absolute discretion (intended only if a continued shareholding would be detrimental to the University). |

**Shareholders' Agreement:**

|  |  |  |
| --- | --- | --- |
|  | Board and Director appointment rights: | The Company will hold regular Board meetings (at least [6] per annum with a period of not less than [10] weeks between meetings unless otherwise agreed by the Board) and will ensure that all material business decisions are taken at Board level. Agendas and any other board papers will be circulated to all directors and observers with the notice (with an appropriate allowance for emergent business).  The Board will consist of a minimum of 2 directors and a maximum of [TBC] directors.  The initial directors will be [TBC], a director (if any) appointed by the University and a director (if any) appointed by the Investor.  Quorum for the Board shall be one more than half of the directors in office from time to time and the investment documents shall include market standard terms for the automatic adjournment of the meeting if not quorate[[8]](#footnote-9). In the event of an equality of votes, the chair shall not have a casting vote.  Each of the Investor and the University may appoint and maintain in office a director of the Company for so long as it (and its Permitted Transferees) holds not less than 10 % of the issued share capital of the Company. Such director may attend every committee of the Board. If the Investor or the University does not have a director in office (as the case may be), the Investor and the University may, for so long as it holds not less than 5% of the issued share capital of the Company, appoint an observer who may attend and speak at meetings of the Board (and every committee thereof) but may not vote at the same.[[9]](#footnote-10)  No fees will be paid to any Founder, employee, Investor or otherwise in respect of their role as a Director or an observer. |
|  | Protective rights: | All material decisions of the Company shall require Board approval. In addition the following matters will also be subject to Special Shareholder Consent (meaning the consent of holder of more than [75]% of the voting rights from time to time [which must include the Investor and the University] for as long as they hold [any shares] [not less than [10]% of the shares in issue [such [University][[10]](#footnote-11) consent not to be unreasonably withheld or delayed][[11]](#footnote-12)):  Share Capital: Altering in any way the articles of association.Permit or cause to be proposed any alteration to its share capital or the rights attaching to its shares, including increasing the amount of the Company's issued share capital, granting any option or other interest (in the form of convertible securities or in any other form) over or in its share capital (save pursuant to the Share Incentive Plan from the Share Incentive Pool), redeeming or purchasing any of its own shares, effecting any other reorganisation of its share capital or waiving any right to receive payment on any of its shares issued partly paid.Establishing or varying any profit-sharing, share incentive, bonus, SAYE, or other incentive scheme of any nature for officers or employees.Increase the number of shares available for the Share Incentive Pool and/or grant any share incentives other than on the form of the Share Incentive Plan.Declaring or paying any dividend, or making any other distribution (by way of capitalisation, repayment or in any other manner) out of the Company's distributable profits or any of its reserves.Company:Passing any resolution for its winding up or presenting any petition for its administration other than in accordance with this agreement unless a licensed insolvency practitioner has advised the Company that it is insolvent and that it should be wound up.Becoming resident for tax purposes, or establishing a permanent establishment, in a jurisdiction other than the UK.[Permitting the disposal of shares in the Company amounting to a share sale or applying for the listing of any shares or debt securities or any stock exchange or market][[12]](#footnote-13).Enter into any legally binding right of first refusal, negotiation or notification that applies in relation to a share sale or IPO which gives a third party a preferential right to negotiate, make an offer or receive information in relation to such share sale or IPO.The sale by the Company of all or substantially all of its assets.Creating or granting any encumbrance over the whole or any part of the business, undertaking, revenues property or other assets of the Company or over any shares, or agreeing to do so, other than liens arising in the ordinary course of business and any charge arising in the ordinary course of business by the operation or purported operation of title retention clauses.Amalgamating or merging with any other company or business undertaking or acquiring or disposing of any other business.Acquiring shares in any other company (other than a subsidiary) or participating in any partnership or joint venture (incorporated or not).Issuing any loan capital in the Company or entering into any commitment with any person with respect to the issue of any loan capital.Borrowing from or entering into any debt (other than hire purchase or similar agreements in the ordinary course of business) with any person, or entering into any commitment with respect to any such borrowing or the entering into any such debt, if the Company’s total borrowings and debts (including commitments to borrowings and debts) under those arrangements and any other arrangements would or could exceed £[10,000].Business:Changing in a material respect the nature or scope of the business or commencing any new business by the Company which is not ancillary or incidental to the business.Other than in the ordinary course of business, the disposal, assigning, licensing or leasing to any third party of any of the capital assets of the Company whether tangible or intangible (including but not limited to any part of the intellectual property rights of the Company) or the granting of any rights over such assets.Transactions outside the ordinary course of business.Directly or indirectly (i) sell, issue, sponsor, support, accept, create or distribute any digital tokens, coins, blockchain-based assets, digital assets or cryptocurrency (**Tokens**), including through any agreement, pre-sale, initial coin offering, token distribution event or crowdfunding, or develop or deploy a computer network, "smart contract" or protocol either incorporating Tokens or permitting the generation of Tokens by network participants or provide services or receive proceeds in connection with the foregoing.Instituting, settling or compromising any legal proceedings (except debt recovery proceedings in the ordinary course of business) instituted or threatened by or against the Company or submitting to arbitration or alternative dispute resolution any dispute involving the Company.Entering into or varying any arrangement, contract or transaction otherwise than on arm's length terms;Entering into or varying any arrangement, contract or transaction if the Company’s potential liabilities arising out of the contract would exceed £[50,000] or there is a significant risk that they could.Giving (except in the normal course of trading) any guarantee or payment indemnity or the assumption of any other obligation on behalf of another party (other than a wholly owned subsidiary).Entering into, varying or terminating any agreement or other arrangement under which any officer, employee or consultant would or could be remunerated at a rate in excess of £80,000 per annum (by payment of fees, the provision of benefits-in-kind or otherwise).Enter into or vary any transaction or arrangement with, or for the benefit of any of its directors or shareholders or any other person who is a "connected person" with any of its directors or shareholders (subject to (i) above). |
|  | Financial Information: | The Investor and the University, for so long as they each hold [X%][ **OR** any] shares in the Company,[[13]](#footnote-14)] will receive standard information rights including (i) the Business Plan (which shall include a budget), (ii) annual accounts within 6 months of the year end and (iii) monthly management accounts (including a profit and loss account, a balance sheet and cashflow statement and such other information as the Investor or the University may reasonably require) within 21 days of month end, (iv) a quarterly share capitalisation table (which will disclose grants of options) within 21 days of the quarter end and (v) Board papers.  [The Company will also send a bi-annual newsletter to the Investor providing them with a general business update (and such newsletter shall not include confidential information), which the Investor shall be permitted to share with their underlying investors, shareholders and/or partners (if relevant).[[14]](#footnote-15)] |
|  | Undertakings: | Standard undertakings given by the Company and Founders to the Investor [and the University] covering the following items:Anti-corruptionCompliance with Business PlanObligations to maintain insurance (including director and officer liability insurance); andObligations with respect to ESG (and related reporting, where specifically required by the Investor) Standard undertakings given by the Company and Founders to the University covering the following items: Tax obligations on Founder sharesRestricted activities, being:any activity related to (i) human cloning, (ii) genetic heritage of human beings, (iii) human embryos and (iv) human stem cells where such projects:  * + modify the genetic heritage of human beings which could make such changes heritable;   + have the aim of human cloning for reproductive purposes;   + intend to create human embryos solely for the purpose of research or the purpose of stem cell procurement, including by means of somatic cell nuclear transfer; or   + on human stems cells, both adult and/or embryonic, violate(s) the legal framework of the Member State(s) involved;  any activities involved in any way with the production of, and trade in, tobacco and distilled alcoholic beverages and related products; internet gambling, online casinos or pornography;; or the development of weapons, armaments or ammunition; foreign military applications (excluding medical treatment of service personnel);activities with sanctioned countries under the US or UK government sanction list, the latter accessible at: [https://www.gov.uk/government/publications/the-uk-sanctions-list](https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.gov.uk%2Fgovernment%2Fpublications%2Fthe-uk-sanctions-list&data=05%7C02%7CV.Blakesley%40soton.ac.uk%7C1a90d2cb0e624c5fcd3308dd1ab29d12%7C4a5378f929f44d3ebe89669d03ada9d8%7C0%7C0%7C638696076624123487%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMiIsIkFOIjoiTWFpbCIsIldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=DYCmsojo6nBLWnZ6pH5o23n%2BVQbSSd%2Fj%2BPqzY6pIEQo%3D&reserved=0); orany activities which could reasonably have a detrimental impact on the reputation of the University (**Restricted Activities**)]. |
|  | Non-Competition: | The legal agreements will contain non-competition and non-solicitation clauses binding the Founders and key management (subject to standard carve outs for teaching and non-commercial academic research activities [whether or not commercially funded])[[15]](#footnote-16) for the period of their employment/consultancy/office and for a one year period thereafter. The legal agreements will also contain customary confidentiality provisions without limit in time.  The Founders who retain academic posts should not be prevented from carrying on commercial research and development or providing consultancy services under their employment with the University, any other academic institution or for any University licensee, in each case outside of the Field (as defined in the Licence Agreement). |
|  | Service Agreements / Consultancy Agreements: | [To be confirmed on a case by case basis. Please ensure that the list is in line with section 3.5.] |
|  | Confidentiality of Term Sheet: | This Term Sheet is confidential and will not (except with the agreement in writing of the parties) be disclosed by any party to any third party, other than the parties’ legal representatives or other advisors (who must also keep this Term Sheet confidential). |
|  | Conditions to Completion: | Completion will be subject to negotiation of definitive legal documents. As such, save for 3.26 (*Confidentiality of Term Sheet*), 3.28 (*Fees)* and 3.29 (*Governing law and jurisdiction*) this term sheet is not intended to be legally binding and shall not constitute a contractual commitment of the parties. |
|  | Fees: | Each party shall pay its own legal fees in connection with the drafting of the documents. |
|  | Governing law and jurisdiction: | This term sheet and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by English law. It is irrevocably agreed that the English courts shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with this term sheet, its subject matter or formation. |

……………………………

**[University], acting by an authorised signatory**

……………………………

**[Founders]**

**……………………………**

**[Investor], acting by an authorised signatory**

**……………………………**

**[Company]**

**Appendix**

**Part 1**

**Share Capitalisation Table as at the date of this Term Sheet**

|  |  |  |  |
| --- | --- | --- | --- |
| **Shareholder** | **Number of Ordinary Shares** | **% Issued** | **% Fully Diluted** |
| [Founders] | [] | [] | [] |
| [Founders] | [] | [] | [] |
| [Academic IP Originator] | [] | [] | [] |
| [Academic IP Originator] | [] | [] | [] |
| **Total** | [] | **100** | **100** |

**Part 2**

**Pre-Completion Share Capitalisation Table**

|  |  |  |  |
| --- | --- | --- | --- |
| **Shareholder** | **Number of Ordinary Shares** | **% Issued** | **% Fully Diluted** |
| [Founders] | [] | [] | [] |
| [Founders] | [] | [] | [] |
| [Academic IP Originator] | [] | [] | [] |
| [Academic IP Originator] | [] | [] | [] |
| University | [] | [] | [] |
| **Subtotal** | [] | [] | [] |
| [Share Incentive Pool] | [] | - | [] |
| **Total** | [] | **100** | **100** |

**Part 3**

**Post-Completion Share Capitalisation Table**

|  |  |  |  |
| --- | --- | --- | --- |
| **Shareholder** | **Number of Ordinary Shares** | **% Issued** | **% Fully Diluted** |
| [Founders] | [] | [] | [] |
| [Founders] | [] | [] | [] |
| [Academic IP Originator] | [] | [] | [] |
| [Academic IP Originator] | [] | [] | [] |
| University | [] | [] | [] |
| Investor | [] | [] | [] |
| **Subtotal** | [] | [] | [] |
| Share Incentive Pool | [] | - | [] |
| **Total** | [] | **100** | **100** |

1. What constitutes "Founders" will need to be considered on a case-by-case basis given that, for the purposes of the Term Sheet, this could include incoming management (i.e. persons who are not academic founders). "Founders" will have a role with the Company moving forward. "Academic IP Originators" (being those who receive shares in the Company but do not have an ongoing role with the Company) are expected to be party to the Shareholders' Agreement, but will not generally be required to sign this term sheet. [↑](#footnote-ref-2)
2. Terminology to be confirmed – this will depend on the investor and the consent matters negotiated. [↑](#footnote-ref-3)
3. Not all terms set out in this Term Sheet will be appropriate for all institutional investors - for example, some pre-seed investors will require a separate class of share (even if intended to be EIS qualifying). For now we have assumed that investors will subscribe for ordinary shares, alongside Founders and the University. [↑](#footnote-ref-4)
4. The Term Sheet assumes that the University will receive the same warranties as the investor, although this is not always the case - particularly if the University is not actually investing cash at the point of investment. Warranties will cover standard matters but will be appropriate to a recently incorporated company and there should be little to disclose (and disclosure may be covered in a disclosure schedule rather than a stand-alone disclosure letter). The Warrantors should still seek professional advice on the warranties e.g. what they mean, what might need to be disclosed and the terms of those disclosures (plus, potentially, the creation of a "disclosure bundle" of documents to support the disclosures. As such, from a fees and simplicity of process perspective, it would be prudent for the warranties to be few in number and focused on the key risk areas (and be drafted in a way that provides adequate comfort, but limits the need for professional input). This list of warranted topics should also be reviewed once there is a clearer picture on the nature of the investors - e.g. many angel investors will simply seek warranties limited to share capital, that the company owns or has valid licences to use the IP, that the company is not insolvent and that there is no litigation - against which it is very unlikely that any disclosures would be required. [↑](#footnote-ref-5)
5. From the perspective of the Company, Founders (and to the extent aligned, the University), it may be prudent to include in the Term Sheet references to other material limitations - for example, that no claim may be made by an Investor with respect to matters of which it had "actual knowledge" and that no Investor may claim for more than they themselves have invested. Alternatively, these could be explained in the Playbook. [↑](#footnote-ref-6)
6. Threshold to be considered on a case by case basis. Note that S/EIS investors may want to prevent a drag occurring within 3 years of their investment as they would lose their tax relief. In that case, we could add in a provision that the drag can nevertheless be triggered if the S/EIS investors would receive at least [1.5] times their investment. [↑](#footnote-ref-7)
7. Note that EIS investors will likely lose their tax relief were they to accept non-cash consideration on a drag along. The proviso is a commercial point to be discussed as this may not be appropriate/acceptable in the case of an investment by institutional/corporate investors or by a more institutional-behaving angel syndicate who may have a concern about the University having a veto on their exit. [↑](#footnote-ref-8)
8. An investor and/or University may take a view that an Investor-appointed Director and/or University-appointed Director would need to be present for a quorate board meeting [↑](#footnote-ref-9)
9. No entrenched Founder director provision has been offered but this could be added on a case by case basis. Any founder rights to appoint directors would need to fall away if (a) their shareholding dropped below, say, 10% of the issued shares and if they ceased to be an employee or consultant. [↑](#footnote-ref-10)
10. We have put the [University] consent not to be unreasonably withheld or delayed in square brackets. Ideally investors would also accept the same provision (or at least a requirement not to unreasonably delay). [↑](#footnote-ref-11)
11. We have also only provided for shareholder consent matters but if investor directors are being appointed, a set of IDC matters may also be appropriate. [↑](#footnote-ref-12)
12. To be considered alongside the drag along provision for alignment [↑](#footnote-ref-13)
13. University is likely to request information rights whilst it holds any shares (with no threshold) but this may not always be appropriate or accepted by Investors. The position with the Investors would also need to be considered on a case by case basis but ideally investors would always (or for as long as these initial documents are in place) be subject to minimum thresholds, otherwise there is a risk that management spend too much of their time responding to questions/feedback from very minority investors. Worth remembering that the University will likely have other information rights set out in the Licence Agreement. [↑](#footnote-ref-14)
14. Investor specific provisions may need to be included depending on the investor entity [↑](#footnote-ref-15)
15. Commercially funded academic research is of concern to Investors and the company (for example if a competitor was funding academic research with overlaps with the Company's activities) [↑](#footnote-ref-16)