Dated [\*]

**Share Subscription Agreement**

by and between

[Name of “Company”]

and

[Name of “Investor”]

Japan Association of Corporate Directors

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This Share Subscription Agreement (the “Agreement”) is entered into on [Date] by and between:

1. [Name of “Company”], a corporation duly organized and existing under the Laws of [Country], having its registered office located at [Registered Address] (the “Company”); and
2. [Name of “Investor”], a corporation duly organized and existing under the Laws of [Country], having its registered office located at [Registered Address] (the “Investor”).

The Company and the Investor shall be collectively referred to as the “Parties” or individually as the “Party”.

NOW THEREFORE, in consideration of the promises and the mutual covenants, herein contained, the Parties hereby agree as follows:

# CHAPTER 1: DEFINITION AND INTERPRETATION

## Article 1.1 (Definition)

1.1.1 Unless otherwise defined herein, the meanings of the capitalized terms used in this Agreement shall be as defined in Schedule 1.1 (Definition).

## Article 1.2 (Interpretation)

1.2.1 In this Agreement:

(a) words importing the singular shall, unless the context otherwise requires, include the plural and　vice versa;

(b) a reference to any document (including but not limited to this Agreement) or Laws shall be deemed to refer to such document or Laws as it may be amended, extended, novated, consolidated, supplemented, substituted or renewed from time to time;

(c) a reference to “JPY”, “yen” or “¥” is to Japanese yen, the lawful currency of Japan; and

(d) a reference to time is to Tokyo, Japan time.

1.2.2 The headings in this Agreement are for convenience only and shall not affect its interpretation.

1.2.3 Any Schedule or Exhibit to this Agreement shall be considered as part of this Agreement, and references to this Agreement shall include its Schedules and Exhibits.

1.2.4 An Article or Schedule or Exhibit, unless the context otherwise requires, is a reference to an Article of, or a Schedule or an Exhibit to this Agreement.

# CHAPTER 2: SHARE ISSUANCE AND SUBSCRIPTION

## Article 2.1 (Share Issuance and Subscription)

2.1.1 Subject to the terms and conditions herein, including the satisfaction of each Condition Precedent set forth in Article 3.1, the Company shall, in accordance with the terms set forth in Schedule 2.1 (Share Issuance), issue and allot the Series A Preferred Shares to the Investor and the Investor shall subscribe for such Series A Preferred Shares.

## Article 2.2 (Execution of a Contract in Article 205 of the Companies Act)

2.2.1 The Company and the Investor shall enter into a *Contract for Subscription for the Total Number of Those Shares* (*Sousu-Hikiuke-Keiyaku*) as provided for in Article 205 of the Companies Act on or before [Date], or such other date as may be separately agreed upon by both Parties, to certify that the Investor has subscribed for the total number of Shares to be issued.

# CHAPTER 3: CLOSING

## Article 3.1 (Condition Precedent)

3.1.1 The obligations of the Company under Article 2.1.1 and Article 3.3.2 are subject to the fulfillment of each of the following conditions, unless otherwise waived by the Company:

(a) the representations and warranties of the Investor set forth in Article 4.2.1 shall be true and correct in all material respects as of the Closing;

(b) all of the obligations and covenants of the Investor hereunder to be performed or complied with by it on or before the Closing shall have been performed and complied in all material respects;

(c) approval by the Investor’s general meeting of shareholders, board of directors, investment committees and/or other corporate bodies as may be required by Laws or its constitutional documents or all necessary third party consents (if applicable) in connection with the transactions contemplated under this Agreement are obtained and effective as of the Closing; and

(d) a shareholders’ agreement (the “SHA”), to be executed by the relevant parties in the manner satisfactory to both Parties to this Agreement, shall have been executed by the relevant parties and shall be effective as of the Closing.

3.1.2 The obligations of the Investor under Article 2.1.1 and Article 3.3.1 are subject to the fulfillment of each of the following conditions, unless otherwise waived by the Investor:

(a) the representations and warranties of the Company set forth in Article 4.1.1 shall be true and correct in all respects as of the Closing;

(b) all of the obligations and covenants of the Company hereunder to be performed or complied with by it on or before the Closing shall have been performed and complied in all material respects;

(c) approval by the GMS, Board, investment committees and/or other corporate bodies as may be required by Laws or its constitutional documents or all necessary third party consents (if applicable) in connection with the transactions contemplated under this Agreement are obtained and effective as of the Closing; and

(d) the SHA shall have been executed by the relevant parties and shall be effective as of the Closing.

## Article 3.2 (Ordinary Course of Business)

3.2.1 Between the date of this Agreement and the Closing, the Company shall conduct its business in all material respects only in the ordinary course of business consistent with past practice and policies and in accordance with all Laws and shall preserve its current business relationships with customers, suppliers and any other stakeholders.

## Article 3.3 (Closing Delivery)

3.3.1 Subject to Article 3.1.2, the Investor shall, on the Closing Date, pay the total amount by wire transfer to an account at a financial institution separately designated by the Company.

3.3.2 Subject to Article 3.1.1, the Company shall, on the Closing Date, enter the Investor as a Shareholder in its register of shareholders and shall deliver a certified copy of the original to the Investor.

# CHAPTER 4: REPRESENTATIONS AND WARRANTIES

## Article 4.1 (Representations and Warranties by the Company)

4.1.1 The Company represents and warrants to the Investor as at the date of this Agreement and the Closing that each warranty set forth in Schedule 4.1 (Representations and Warranties by the Company) is true and accurate and not misleading.

## Article 4.2 (Representations and Warranties by the Investor)

4.2.1 The Investor represents and warrants to the Company as at the date of this Agreement and the Closing that each warranty set forth in Schedule 4.2 (Representations and Warranties by the Investor) is true and accurate and not misleading.

# CHAPTER 5: INDEMNIFICATION AND TERMINATION

## Article 5.1 (Indemnifications)

5.1.1 Each Party (the “Indemnifier”) shall indemnify and hold harmless the other Party and its Employees (collectively “Indemnitees”) from and against any loss (including consequential losses such as loss of profits, loss of revenue and loss of data), costs (including legal costs), damages, claims or expenses which are incurred or suffered by such Indemnitees as a result of:

(a) any misrepresentation or breach of representation or warranty made or given hereunder by the Indemnifier; or

(b) any attributable breach or failure of covenant or obligation given hereunder by the Indemnifier.

5.1.2 None of the Parties shall be liable for any claim for indemnification pursuant to Article 5.1.1 above unless it has received a written notice of that claim, specifying (in reasonable details) the nature of the claim and the amount claimed within [twelve (12)] months from the Closing.

## Article 5.2 (Termination)

5.2.1 Subject to the relevant consequences of termination in Article 5.2.3, this Agreement may be, at any time only before the Closing, terminated:

(a) by mutual written agreement of the Parties; or

(b) if either Party commits a material breach of any of its obligation hereunder and such Party fails to remedy such breach within [fourteen (14)] days of being given notice from the other Party to remedy such material breach.

5.2.2 If, by the Long Stop Date, the Condition Precedent is not fulfilled or waived pursuant to Article 3.1, this Agreement will be automatically terminated.

5.2.3 Each Party’s further rights and obligations cease immediately on termination hereof, except that the provisions of this Chapter 5 and Chapter 6 shall survive the termination of this Agreement and remain in full force and effect with respect to the Parties. Termination of this Agreement does not affect a Party’s accrued rights and obligations at the date of termination.

# CHAPTER 6: MISCELLANEOUS

## Article 6.1 (Confidentiality)

6.1.1 None of the Parties shall disclose a Confidential Information to any third party, without prior written consent of the Discloser, except:

(a) any disclosure as required under Laws, provided that the Recipient shall, where reasonably possible and permitted by Laws, give the Discloser written notice prior to any such disclosure;

(b) any disclosure when it is necessary to consult with attorneys, certified public accountants, tax accountants, or other professionals who are legally obligated to maintain confidentiality;

(c) any disclosure made by the Recipient to the Employees and advisors of the Recipient, and to those of its Affiliates for the purpose of this Agreement, provided that the Recipient shall ensure that such person treats such information as confidential and not to disclose to any third party except as may be required under this Article 6.1; or

(d) any disclosure made by the Recipient to a potential investor who is considering investing into the Company, provided that the Recipient shall ensure that such potential investor treats such information as confidential and not to disclose to any third party except as may be required under this Article 6.1.

6.1.2 For the purpose of this Article 6.1, the “Discloser” means the Party who discloses or provides the Confidential Information to the other Party, and the “Recipient” means the Party who receives the Confidential Information from the Discloser.

6.1.3 For the purpose of this Article 6.1, the “Confidential Information” means the fact of the existence and execution of this Agreement, and all information disclosed by the Discloser (including by the Employees of the Discloser) to the Recipient in relation to the Discloser, including but not limited to all information regarding the business, operations or financial conditions of the Discloser. Provided, however, that the Confidential Information shall not include the following information:

(a) information which is already in the public domain at the time when it is disclosed or provided to the Recipient;

(b) information which enters the public domain after it is disclosed or provided to the Recipient, other than by a breach of any obligation of confidentiality hereunder;

(c) information which is already in the Recipient’s possession at the time when it is disclosed or provided to Recipient, other than by a breach of any obligation of confidentiality hereunder;

(d) information which was received by the Recipient on a non-confidential basis from a third party who is duly authorized to disclose such information; or

(e) information which is independently developed by the Recipient without any use of the Confidential Information.

6.1.4 The obligation set forth in this Article 6.1 shall endure, even after the termination of this Agreement, except and until such Confidential Information enters into the public domain.

6.1.5 None of the Parties shall make any press release or public announcement concerning the transactions contemplated by this Agreement without the prior written consent of the other Party.

## Article 6.2 (No Assignment)

6.2.1 None of the rights or obligations under this Agreement may be assigned or transferred by any Party without the prior written consent of the other Party.

## Article 6.3 (Cost and Expense)

6.3.1 Each Party shall be responsible for its own taxes, costs and expenses incurred by it in connection with the negotiation, preparation, execution and performance of this Agreement and other related documents contemplated herein.

## Article 6.4 (Notification)

6.4.1 Any notice or other communication given under this Agreement shall be in writing and may be delivered personally or sent by post or email to the Party to be served at its address as set forth in Schedule 6.4 (Notification) or to an alternative address, person or email address specified by the Party due to receive the relevant notice by not less than [ten (10)] days’ written notice to the other Party before the relevant notice is dispatched.

6.4.2 Unless there is evidence that it was received earlier, a notice is deemed given if:

(a) delivered personally, when left at the address set forth in Schedule 6.4 (Notification); and

(b) sent by email, the sender of any such email has not received an email from the applicable server indicating a delivery failure.

## Article 6.5 (Entire Agreement)

6.5.1 This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, and supersedes any previous arrangement, understanding or agreement between them relating to the same subject matter.

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| 【参考訳】6.5.1 本Agreementは、本契約の主題に関するPartiesの完全な合意を構成し、当該主題に関する両者間の以前の取り決め、理解又は合意に優先する。 |
|  |

## Article 6.6 (Force Majeure)

6.6.1 Upon the occurrence of a Force Majeure, each Party shall immediately notify in writing the other Party of such event and furnish a written notice of the details of such event and reasons for non-performance, partial non-performance or delayed performance.

6.6.2 None of the Parties shall claim for damages caused by the Force Majeure.

6.6.3 The Parties shall immediately take measures to resume performance of this Agreement upon termination of the Force Majeure.

## Article 6.7 (Counterparts)

6.7.1 This Agreement may be signed in any number of counterparts, each of which when executed and delivered is an original and all of which taken together constitute one and the same document.

## Article 6.8 (Language)

6.8.1 This Agreement has been made in English. If this Agreement is translated into any language other than English, this English version shall be the original and prevail.

## Article 6.9 (Severability)

6.9.1 If any provision of this Agreement is declared or becomes unenforceable, invalid or illegal for any reason whatsoever, including a decision by any court or panel of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect.

6.9.2 If any provision of this Agreement that is declared or becomes unenforceable, invalid or illegal would be enforceable or valid if some part of the provision were deleted or modified, then the Parties shall consult with each other to apply such deletion or modification as mutually agreed to be necessary to make it enforceable or valid.

## Article 6.10 (Waiver)

6.10.1 Except to the extent this Article 6.10 is inconsistent with any other provision in this Agreement or Laws, all rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available under Laws.

6.10.2 No failure on the part of any Party to exercise or delay in exercising any right hereunder shall be deemed a waiver thereof, nor shall any single or partial exercise preclude any further or other exercise of such or any other right.

## Article 6.11 (Governing Law)

6.11.1 This Agreement is governed by and construed in accordance with the Laws of [Japan].

## Article 6.12 (Dispute Settlement)

6.12.1 The Tokyo District Court shall have exclusive jurisdiction in the first instance over any and all legal disputes arising out of or in connection with this Agreement. [/ All disputes, controversies or differences arising out of or in connection with this Agreement shall be finally settled by arbitration in accordance with [the Commercial Arbitration Rules of The Japan Commercial Arbitration Association]. The place of the arbitration shall be [Tokyo, Japan].]

 (The remainder of this page is intentionally left blank)

**IN WITNESS WHEREOF**, the signatures of the duly authorized persons of the Parties are affixed below.

[Name of “Company”]

By:

Name:

Title:

(The remainder of this page is intentionally left blank)

**IN WITNESS WHEREOF**, the signatures of the duly authorized persons of the Parties are affixed below.

[Name of “Investor”]

By:

Name:

Title:

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# Schedule 1.1 (Definition)

|  |  |
| --- | --- |
| **Affiliates** | for a person, (i) a parent company (*Oya-Kaisha*) of the person or any other person which is directly or indirectly Controlling the first-mentioned person, (ii) a person which is directly or indirectly Controlled by the first-mentioned person; or (iii) a person which is under the common Control with the first-mentioned person |
| **Anti-Social Forces** | *Organized Crime Groups* (“*Boryoku-Dan*” as defined in Act on Prevention of Unjust Acts by Organized Crime Group Members (Act No. 77 of 1991)), member of the *Organized Crime Groups*, persons for whom five (5) years have not passed since they ceased to be members of the *Organized Crime Groups*, quasi-members of the *Organized Crime Groups*, related companies of the *Organized Crime Groups*, corporate racketeer (*Sokai-Ya*), a person or a member of an entity engaging in criminal activities under the pretext of conducting a social campaign or political activities, or a criminal group specialized in intellectual property crime or other similar persons. |
| **Board** | the board of directors (*Torishimariyaku-Kai*) of the Company at any relevant time |
| **Closing** | the completion of share issuance by the Company and the share subscription by the Investor set forth in Article 2.1 and fulfillment of their obligations set forth in Article 3.3 |
| **Companies Act** | the Companies Act of Japan (Act No. 86 of 2005), as amended from time to time |
| **Condition Precedent** | the matters set forth in each Item of Article 3.1.1 in relation to the performance by the Company of its obligation of the Closing; the matters set forth in each Item of Article 3.1.2 in relation to the performance by the Investor of its obligation of the Closing |
| **Control** | the term of “*Shihai*” as defined in the Companies Act |
| **Director** | a director (*Torishimari-Yaku*) of the Company at any relevant time |
| **Employees** | directors (*Torishimari-Yaku*), officers (*Shikko-Yakuin*), statutory auditors (*Kansa-Yaku*), employees, or any other similar person |
| **Encumbrance** | a *Mortgage* (*Teito-Ken*), *Pledge* (*Shichi-Ken*), *Statutory Lien* (*Sakidori-Tokken*), *Right of Retention* (*Ryuchi-Ken*), *Security Rights of Transfer* (*Joto-Tanpo-Ken*), *Reservation of Title* (*Shoyuken-Ryuho*) and other security rights, and *Superficies* (*Chijo-Ken*), *Farming Rights* (*Ei-Kosaku-Ken*), *Servitudes* (*Chieki-Ken*) and other encumbrance |
| **Force Majeure** | any objective circumstances which are unforeseen, unavoidable, insurmountable or otherwise beyond the control of the Party, including lightning, typhoon, storm, flood, fire, earthquake or other acts of nature, epidemic, war, strike and civil disobedience |
| **GMS** | the general meeting of shareholders of the Company at any relevant time |
| **Governmental Authority** | any relevant government, administrative or regulatory body or court tribunal, arbitrator or governmental agency or department |
| **Laws** | with respect to a person, any laws, regulations, rules, measures, guidelines, treaties, judgments, determination, orders or notices of any Governmental Authority or stock exchange that are applicable to such person |
| **Long Stop Date** | [\*] |
| **Permits** | permits, licenses, and other governmental or third party authorizations, certifications, consents necessary to conduct the Company’s business |
| **Series A Preferred Share** | a series A preferred share set forth in the Articles of Incorporation of the Company |
| **Share** | a share issued by the Company |
| **Shareholder** | a shareholder in the Company at any relevant time |
| **Statutory Auditor** | the *Statutory Auditor* (*Kansa-Yaku*) of the Company at any relevant time |
| **Stock Option** | any right which entitles the holder to acquire Shares in by exercising the right against the Company |

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# Schedule 2.1 (Share Issuance)

|  |  |  |
| --- | --- | --- |
| (1) | Class of Share(s) to be Issued: | Series A Preferred Share |
| (2) | Number of Shares to be Issued: | [\*] Shares |
| (3) | Paid-in Amount (per Share): | [\*] yen per Share (the “Paid-in Amount”) |
| (4) | Total Paid-in Amount ((3) \* (2)): | [\*] yen |
| (5) | Payment Date: | [\*] or a date to be separately agreed upon by the Parties (the “Closing Date”) |
| (6) | Amount of Stated Capital to be Increased: | [\*] yen |
| (7) | Amount of Capital Reserve to be Increased: | [\*] yen |

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# Schedule 4.1 (Representations and Warranties by the Company)

(1) Incorporation and Existence

 The Company is a company duly incorporated, validly existing and in good standing under the Laws of [Country].

 (2) Capacity and Authority

 The Company has the right, power and authority, and has taken all action necessary, to execute, deliver and exercise its rights, and perform its obligations, under this Agreement. The Company’s obligations under this Agreement are enforceable in accordance with its terms.

 (3) No Breach

 The execution of this Agreement and the undertaking and performance by the Company of its obligations hereunder will not conflict with, or result in a breach of or default under any Law, any agreement or instrument to which it is a party or by which it is bound or any provision of its constitutional documents.

 (4) Insolvency

 (i) The Company is not in a state of insolvency or suspension of payment. (ii) The Company is not in *Bankruptcy* (*Hasan*), *Civil Rehabilitation* (*Minji-Saisei*), *Corporate Reorganization* (*Kaisha-Kosei*), *Special Liquidation* (*Tokubetsu-Seisan*) or other insolvency proceedings, nor has any petition for the commencement of such proceedings been filed. (iii) No *Seizure* (*Sashiosae*), *Provisional Seizure* (*Kari-Sashiosae*), *Provisional Disposition* (*Kari-Shobun*) or other proceeding to prevent the execution or performance of this Agreement has been instituted against the Company.

 (5) Anti-Social Forces

 None of the Company, Directors, Statutory Auditors, or officers is Anti-Social Forces or involved in any activities thereof.

 (6) Share Capital

 (i) The total number of authorized shares of the Company is [\*], of which [\*] shares are the total number of shares issued and outstanding, all of which are duly and validly issued and fully paid up. (ii) The Company has issued [\*] Stock Options, all of which are duly and validly issued. (iii) Except as provided in (i) and (ii) above, there are no Shares, Stock Options or other similar securities of the Company, nor are there any contracts or resolutions of the Company promising to issue any such securities. (iv) There is no Encumbrance, and there will be no agreement, arrangement or obligation to create or give an Encumbrance, in relation to any of the Shares or Stock Options.

 (7) Financial Statements

 (i) The balance sheet of the Company as of [Date] (the “Balance Sheet”) and the profit-and-loss statement for the fiscal year ended on such date have been prepared in accordance with generally accepted accounting principles and present fairly the financial position and results of operations of the Company. (ii) The Company has not incurred any debt or other liability, except for the liabilities shown on the Balance Sheet and liabilities incurred in the ordinary course of business after the Balance Sheet date.

 (8) Permits

 (i) Company has lawfully and validly obtained all necessary Permits to continue the business currently being conducted by the Company in accordance with the Laws. (ii) Company is conducting its business in compliance with the conditions and requirements associated with such Permits. (iii) There is no circumstances that would cause the Permits held by the Company to be invalid, revoked, or non-renewable. (iv) No Permits held by the Company will be invalidated, revoked or otherwise restricted by the execution and performance of this Agreement.

 (9) Contracts

 (i) The contracts necessary for the Company to continue its business as before have been duly and validly executed and are legally binding on and enforceable against each party to such contracts in accordance with their terms. (ii) No event of default by Company or the other party has occurred with respect to such contracts.

 (10) Intellectual Properties

 (i) The Company has the right to legally and validly own or lawfully use such intellectual property rights necessary for the Company to continue its business as before. (ii) The Company has not infringed the intellectual property rights held by any third party.

 (11) Other Properties

 (i) The Company has the right to legally and validly own or lawfully use such properties and assets necessary for the Company to continue its business as before (the properties is referred to as the “Material Properties”). (ii) No Encumbrances in third parties, rights of use over third parties, defects, lawsuits, claims, or other events adversely affecting the value of the Material Properties in which the Company has an ownership have occurred.

 (12) Litigation

 (i) No lawsuit is filed against the Company and, to the best of the Company’s knowledge, no lawsuit is likely to be filed against the Company. (ii) There are no lawsuits which is filed by the Company against third parties, nor are there any lawsuits which is planning to be filed by the Company against third parties.

 (13) Disclosure

 (i) All documents and other information provided to Investor and its advisors are true and accurate and are not false or materially misleading. (ii) There is no document or other information that has not already been disclosed that would require additional disclosure to avoid misinterpretation by Investor or its advisors.

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# Schedule 4.2 (Representations and Warranties by the Investor)

(1) Incorporation and Existence

 The Investor is a company duly incorporated, validly existing and in good standing under the Laws of [Country].

 (2) Capacity and Authority

 The Investor has the right, power and authority, and has taken all action necessary, to execute, deliver and exercise its rights, and perform its obligations, under this Agreement. The Investor’s obligations under this Agreement are enforceable in accordance with its terms.

 (3) No Breach

 The execution of this Agreement and the undertaking and performance by the Investor of its obligations hereunder will not conflict with, or result in a breach of or default under any Law, any agreement or instrument to which it is a party or by which it is bound or any provision of its constitutional documents.

 (4) Insolvency

 (i) The Investor is not in a state of insolvency or suspension of payment. (ii) The Investor is not in *Bankruptcy* (*Hasan*), *Civil Rehabilitation* (*Minji-Saisei*), *Corporate Reorganization* (*Kaisha-Kosei*), *Special Liquidation* (*Tokubetsu-Seisan*) or other insolvency proceedings, nor has any petition for the commencement of such proceedings been filed. (iii) No *Seizure* (*Sashiosae*), *Provisional Seizure* (*Kari-Sashiosae*), *Provisional Disposition* (*Kari-Shobun*) or other proceeding to prevent the execution or performance of this Agreement has been instituted against the Investor.

 (5) Anti-Social Forces

 None of the Investor, its directors, its statutory auditors or its officers is Anti-Social Forces or involved in any activities thereof.

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# Schedule 6.4 (Notification)

|  |
| --- |
| **To Company** |
| Name (PIC) | [\*] |
| Address | [\*] |
| E-mail | [\*] |
| **To Investor** |
| Name (PIC) | [\*] |
| Address | [\*] |
| E-mail | [\*] |

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