**FOREWORD**

This model is the result of an internal roundtable of Italian Tech Alliance, coordinated by PedersoliGattai, with the collaboration of Growth Capital and many other associates.

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The purpose of this paper is to disseminate knowledge of the most common clauses in stock option plan regulations, providing a basic model that-in the intentions and wishes of the editors-could become widely used by all early stage start-ups, optimizing their work.

This document is therefore not intended as legal advice or as a substitute for legal advice, and its contents will need to be adapted, revised, modified and supplemented according to the peculiarities of each case.

We recommend reading the notes, which provide an overview of certain practical aspects and alternatives, and the Glossary, which provides an explanation of the main terms used here.

**REGULATION OF THE STOCK OPTION PLAN**

***"[Company name] Stock Options Plan [year]"***

**Article 1. RECITALS AND OBJECTIVES**

1. These regulations set forth the rules applicable to the incentive plan called *"****[Company Name] Stock Options Plan [year]****"* (the "**Plan**") intended for a limited number of employees, directors or service providers including consultants, both quotaholders and non-quotaholders, of [Company Name] S.r.l. (respectively, the "**Beneficiaries**" and the "**Company**") **(Note [[1]](#footnote-0))**, with the aim of incentivizing them in accordance with the Company's value growth and promoting their loyalty, while also providing a valuable tool for talent *retention* and *attraction*.
2. On [...], [the Quotaholders' Meeting] **(Note [[2]](#footnote-1))** of [Company Name] resolved [*"to approve the Plan (...) in favor of the Beneficiaries to be identified by the administrative body, as well as to grant such body any and all powers (...) in order to (i) implement and execute the Plan, (ii) prepare the related terms and conditions, (iii) identify the Beneficiaries, (iv) determine the nominal value of the quotaholding that can be subscribed by each Beneficiary, as well as the terms and conditions for the vesting and exercise of the Option Rights, and (v) assign the Option Rights to the Beneficiaries"*] **(Note [[3]](#footnote-2))**. [At the same time,] the aforementioned quotaholders' meeting - at a notarial meeting - approved the increase in share capital, for cash and in divisible form, for a maximum nominal amount of Euro [value], without share premium **(Note [[4]](#footnote-3))**, for the purposes of the Plan, by issuing new ordinary quotas of the Company with regular dividend entitlement (the "**ESOP Quotas**") **(Note [[5]](#footnote-4))** and with a final subscription deadline on [date] (collectively, the "**Capital Increase**") **(Note [[6]](#footnote-5))**.
3. On [...], [*Administrative Body*] of the Company **(Note [[7]](#footnote-6))**, - by virtue of the powers granted by the Quotaholders' Meeting referred to in subparagraph B. above, and in compliance with the provisions therein, resolved to implement the Plan by approving this regulation (the "**Regulation**"), providing the free assignment of option rights (the "**Option Rights**") to the Beneficiaries granting them the right to subscribe for newly issued ESOP Quotas of the Company under the terms and conditions set forth therein **(Note [[8]](#footnote-7))**.
4. The goals and objectives that the Plan intends to pursue can be illustrated and summarized as follows:

* to ensure full alignment of the interests of employees, directors or contractors, including consultants of the Company with the interests of the Company's quotaholders;
* To establish a medium- to long-term remuneration and incentive system capable of creating a strong link between remuneration of the Company's employees, directors or service providers, including consultants, and value creation for quotaholders;
* to support the *retention* of the Company's key resources in the medium to long term;
* to ensure that the overall remuneration of Beneficiaries remains competitive in the market;
* to remunerate employees, directors or contractors, including consultants, of the Company by benefiting from the preferential tax and contribution regime provided for in Article 27 of *Decree-Law* No. 179 of 2012, as amended and supplemented, (as recalled by Article 4 of *Decree-Law* No. 3 of 2015), where applicable.

**Article 2. SUBJECT**

The Plan provides for the free assignment to the Beneficiaries of up to [...] Option Rights each entitling the right to subscribe to Euro [0.01] of the Company's nominal share capital, and thus in total up to a maximum of Euro [value] of the Company's (nominal) share capital, represented by ESOP Quotas, newly issued, with regular dividend entitlement and resulting from the Capital Increase, at the Subscription Price (as defined below) **(Note [[9]](#footnote-8))**.

The Beneficiaries of the Plan may be a limited number of employees, directors or contractors of the Company, including consultants, both quotaholders and non-quotaholders, identified by the Company's Administrative Body (with the abstention of the direct interested party where applicable), as provided for in the quotaholders' meeting resolution approving the Capital Increase.

The Option Rights will vest at the conclusion of each Vesting Period (*as defined below*) pursuant to Article 5 of the Regulation, and may be exercised, in whole or in part, by the relevant Beneficiaries during the relevant Exercise Periods (*as defined below*) and, in any case, no later than the Expiration Date (*as defined infra*) **(Note [[10]](#footnote-9))**.

**Article 3. ADMINISTRATION**

The Administrative Body of the Company, as it is in office from time to time, shall administer the Plan, in accordance with the provisions of the Regulation and of the Company's Bylaws **(Note [[11]](#footnote-10))**.

Therefore, in accordance with the Company's strategic objectives and on the basis of the authority granted by the quotaholders' meeting of the Company deliberating on the Plan and the Capital Increase, the Administrative Body of [company name], as it is in office from time to time, shall have the power to evaluate discretionally the inclusion of resources among the Beneficiaries of the Plan and to assign Options to them, even at different times, provided that they are within the Deadline (*as defined below*) and ascertain their actual vesting. In the event that the Administrative Body of the Company has a collegial composition, the same may assign Option Rights to one or more of its members (i.e., directors), subject to the abstention of the concerned individual.

It is further understood that the Administrative Body of the Company, as in office from time to time, shall have the power, among other things, to establish additional rights and restrictions applicable to the Option Rights.

**Article 4. ALLOCATION OF OPTION RIGHTS**

The Administrative Body, through one or more resolutions, shall identify the Beneficiaries of the Plan and the number of Option Rights to be granted to each Beneficiary, it being understood that the deadline for granting Option Rights is the [*deadline*] (hereinafter, the "**Deadline**") **(Note [[12]](#footnote-11))**.

The number of Option Rights allocated to each Beneficiary may vary from the number allocated to other Beneficiaries, and this assessment is left to the sole discretion of the Administrative Body, an assessment that cannot be challenged in any way by the Beneficiaries.

The Administrative Body of the Company, as from time to time in office, once it has identified the Beneficiaries and the number of Options to be granted to each, shall notify each Beneficiary of their inclusion in the Plan in writing by sending a notice substantially in accordance with the form attached as Annex A (*Notice of Assignment*) of the Regulation (hereinafter, the "**Notice of Assignment** "), with a copy of the Regulation attached thereto.

Participation in the Plan by the Beneficiary is subject to the latter's confirmation and full acceptance of the Notice of Assignment and of this Regulation. Such acceptance must be communicated by delivering to the Company of a copy of the Notice of Assignment (with these Regulation attached) (the "**Acceptance**") initialed on each page and signed at the bottom, no later than 15 (fifteen) days from the date of receipt of the Notice of Assignment by registered letter with return receipt or by certified e-mail or hand delivery. Failure to meet the deadline as provided above will result in the ineffectiveness of the Acceptance pursuant to Article 1326, Paragraph 2 of the Civil Code.

The Option Rights for which the Company has received the Acceptance duly signed by each Beneficiary within the aforesaid deadline shall be deemed granted effective as of the date of receipt of the Notice of Assignment by the relevant Beneficiary (the "**Effective Date**"), unless otherwise provided in each Notice of Assignment - this, in view of the circumstance that the Administrative Body may (*i*) back-date the Effective Date to the date of commencement of the existing organic, employment or collaboration relationship between the Beneficiary and the Company and/or (*ii*) provide for an initial *cliff* period, during which the *vesting* of the Rights shall be suspended.

The Option Rights will be granted free of charge to the Beneficiaries. The gratuitousness of the Option Rights is justified in the Company's economic interest, as the Option Rights are part of the incentive program reserved for employees, directors or contractors including consultants, both quotaholders and non-quotaholders, of the Company.

**Article 5. TERMS AND CONDITIONS OF OPTION RIGHTS**

*Option Rights*

The Beneficiary acknowledges and recognizes that (i) any increase in the value of the ESOP Quotas subscribed under, and as a result of, the exercise of the Options compared to the relevant Subscription Price (*as defined below*) and, more generally, (ii) any benefit awarded under the Plan to the Beneficiary who is an employee of the Company, constitutes an award of benefits of an extraordinary nature and is in no way attributable to or considered part of the normal compensation of said Beneficiary, nor can it be considered as a prerequisite for the recognition of similar or additional benefits.

In addition, the Plan does not in any way bind the Company to maintain the employment or collaboration relationship with the Beneficiary, or the Beneficiary's job title or classification.

Any benefit accruing to each Beneficiary who is an employee of the Company, under and/or in execution of the Plan, shall have no reflection for salary purposes, nor shall it affect any other form of indirect compensation to which he or she is entitled by law or by contract (such as, but not limited to, compensation in lieu of notice, additional monthly salaries or severance pay).

*ESOP quota*

Each Notice of Assignment shall specify the number of Option Rights assigned as well as the par value of the ESOP Quota of the Company that is the subject of the Option Rights assigned to the relevant Beneficiary, it being understood that each Beneficiary, under the terms and conditions set forth in the Regulation, shall have the right to subscribe to the ESOP Quota of the Company by exercising, in whole or in part, the Option Rights assigned to him or her once vested.

The Administrative Body may at its discretion provide, depending on the specific circumstances of the Beneficiary under consideration **(Note [[13]](#footnote-12))**, an option to repurchase the ESOP Quota subscribed by the Beneficiary, subject to the conditions detailed and indicated in the relevant Notice of Assignment (if applicable). However, the exercise of such an option to repurchase the ESOP Quota is left to the discretion of the Administrative Body **(Note [[14]](#footnote-13))**.

*Subscription price of the ESOP Quota*

Each vested Option Right entitles the holder to subscribe for an ESOP Quota worth Euro [0.01] of the Company's nominal share capital at a subscription price equal to the nominal value that ESOP Quota, and thus equal to Euro [0.01] for each vested and exercised Option Right (the "**Subscription Price**") **(Note [[15]](#footnote-14))**.

*Option Rights Vesting Period*

Subject to the provisions of Article 7 below (*Effects of a Corporate Event or Qualified Transaction*), the Option Rights granted under the Plan shall vest in favor of the relevant Beneficiary in accordance with the following terms and timing:

(i) 25.0% (twenty-five percent) of the Option Rights granted to each Beneficiary (the "**First *Tranche***") shall vest on the date that falls 12 (twelve) months after the Effective Date relating to that Beneficiary (the "**First Vesting Period**");

(ii) 25% (twenty-five percent) of the Option Rights granted to each Beneficiary (the "**Second *Tranche***") shall vest on the date that falls 24 (twenty-four) months after the Effective Date relating to the Beneficiary in question (the "**Second Vesting Period**");

(iii) 25% (twenty-five percent) of the Option Rights granted to each Beneficiary (the "**Third *Tranche***") shall vest on the date that falls 36 (thirty-six) months after the Effective Date relating to the Beneficiary in question (the "**Third Vesting Period**");

(iv) 25% (twenty-five percent) of the Option Rights granted to each Beneficiary (the "***Fourth Tranche***") shall vest on the date that falls 48 (forty-eight) months after the Effective Date relating to the Beneficiary in question (the "**Fourth Vesting Period**" and, indistinctly, the First Vesting Period, the Second Vesting Period, the Third Vesting Period, and the Fourth Vesting Periodthe "**Vesting** **Period**")

The Company's Administrative Body may at its discretion determine, depending on the peculiarities of the Beneficiary under consideration, alternative *vesting* arrangements, which - if applicable - will be detailed and indicated in the relevant Notice of Assignment **(Note [[16]](#footnote-15))**.

*Exercise Period*

The Option Rights granted under the Plan may be exercised by the relevant Beneficiary, in each case to the maximum extent they have vested and subject to the provisions of Article 7 below (*Effects of a Corporate Event or Qualified Transaction*), at any time during the period between ***(i****)* the date (inclusive) on which they have vested as a result of the expiration of a Vesting Period, and *(****ii****)* the 30th (thirtieth) calendar day following the expiration of such Vesting Period (hereinafter, the "**Exercise Period**") **(Note [[17]](#footnote-16))**.

*Formalities for subscribing to the ESOP Quotas*

To the extent that the conditions set forth in the Regulation and, if applicable, in the Notice of Assignment have been met, each Beneficiary shall have the right to subscribe for the ESOP Quotas of the Company to be issued as a result of the exercise, in whole or in part, of the vested Option Rights granted to the Beneficiary concerned. Such subscription shall be made in accordance with the terms and conditions set forth in the Plan, as governed by this Regulation.

Without prejudice to the provisions of Article 7 below (*Effects of a Corporate Event or Qualifying Transaction*), each Beneficiary who intends to subscribe, in whole or in part, the ESOP Quota shall notify the Company in writing of the exercise of the Option Rights - once they have vested due to the expiration, respectively, of the First Vesting Period, the Second Vesting Period, the Third Vesting Period, or the Fourth Vesting Period, respectively - by registered letter with return receipt or by certified mail or by hand delivery in the form set forth in Schedule B (*Notice of Exercise*) of this Regulation (hereinafter, the "**Notice of Exercise**").

The Notice of Exercise must be received by the Company, except in the cases provided for in Article 7 below (*Effects of a Corporate Event or Qualified Transaction*), by the end of the relevant Exercise Period and must specify the number of Option Rights accrued in the relevant Vesting Period that the Beneficiary intends to exercise and, therefore, the value of the ESOP Quota that the Beneficiary intends to subscribe.

The Company shall confirm to each individual Beneficiary concerned, within 7 (seven) business days from the receipt of the Exercise Notice and by any means, *(****i****)* the timely receipt of the Exercise Notice sent by the Beneficiary by the end of the relevant Exercise Period, *(****ii****)* the value of the ESOP Quota that the Beneficiary intends to subscribe, (***iii***) the price payable by the Beneficiary for the subscription of the ESOP Quota, as well as *(****iv****)* the Company's bank details for the payment of the Subscription Price.

*Exercise Date*

Subject to the Company's receipt of the Notice of Exercise within the relevant Exercise Period and in accordance with the provisions of the Regulation, the exercise of the Option Rights shall be deemed valid only upon the relevant Beneficiary's subscription of the respective ESOP Quota and payment of the Subscription Price to the Company.

The subscription of the ESOP Quota and the related payment of the Subscription Price shall occur on a date falling annually (after each Vesting Period), as defined by the Company and communicated to all Beneficiaries who have exercised their Option Rights with at least 7 (seven) business days' notice (the "**Exercise Date**"), subject to the observance of the Plan’s Expiration Date **(Note [[18]](#footnote-17))**. In such case, the Company shall bear all external costs related to the transaction and the issuance and registration of the ESOP Quota for all the Beneficiaries of the Plan (such as, but not limited to, the cost for registering each Beneficiary as a quotaholder of the Company).

*Non-Exercise or non-payment*

If the Exercise Notice is not received by the Company by the end of each Exercise Period or the different period provided pursuant to Article 7 below (*Effects of a Corporate Event or Qualifying Transaction*) or the Subscription Price of the ESOP Quota due from the Beneficiary is not paid in full to the Company on the Exercise Date, the Option Rights shall be deemed unexercised and definitively forfeited, resulting in the mutual release of both the Company and the Beneficiary concerned from any obligation or liability in this regard.

Without prejudice to the foregoing and except as otherwise indicated from time to time in the Notice of Assignment, if the Options are not exercised or are exercised only in part, the unexercised portion of the vested Options may be exercised in the next Exercise Period and, in any event, not later than the last Exercise Period, after which the unexercised Options shall automatically expire, releasing the Company from any obligation or liability to the Beneficiary and without the need for any notice or other formality to that effect.

*Expiration Date*

The Plan shall expire on [date], corresponding to the deadline for subscription of the Capital Increase (hereinafter, the "**Expiration Date**"). Therefore, after the Expiration Date each and all of the Option Rights shall cease to be valid and effective and may no longer be exercised by the relevant Beneficiaries.

Consequently, since the Capital Increase has been approved by the Company's quotaholders' meeting on a divisible and progressive basis **(Note [[19]](#footnote-18))**, the share capital of [company name] will be increased from time to time following each Exercise Date into which the Plan is divided by an amount equal to the subscriptions collected as of that date, in compliance with the Expiration Date.

*Termination of the existing relationship with the Company*

Except where otherwise indicated in the relevant Notice of Assignment, each Beneficiary who, as of the Exercise Date, maintains an organic, employment or collaboration relationship with the Company shall be entitled to exercise the Option Rights, subject to the terms and conditions of the Regulation, provided that:

* 1. if, prior to the Exercise Date, any of the following events occur in relation to the organic, employment or collaboration relationship between the Beneficiary and the Company: (1) dismissal for just cause; (2) dismissal for objective and/or subjective justified reason (i.e., subjective and/or objective justification); (3) resignation without just cause or without the prior written consent of the Company; (4) revocation from the office of director or of any delegated powers or functions conferred for just cause; (5) non-renewal of the office of director, due to reasons that would have constituted just cause for revocation; (6) termination of the collaboration relationship due to non-performance attributable to the Beneficiary **(Note [[20]](#footnote-19))** (7) non-renewal of the collaboration relationship; (8) termination for just cause from the collaboration relationship by the Company or termination without just cause from the collaboration relationship by the consultant; and/or (9) any other case that is not qualified as a Good Leaver Event (*as defined below*) referred to in paragraph (b) below (each case, a "**Bad Leaver Event**"), the Option Rights assigned to the same shall lose any and all effect and/or validity and shall no longer be effective and the Beneficiary shall permanently forfeit the status of Beneficiary and any rights thereto;
  2. if, prior to the Exercise Date, the organic, employment or collaboration relationship between the Beneficiary and the Company lapses, ceases to exist, or is terminated due to (1) death or permanent disability of the Beneficiary, (2) dismissal without just cause or justified reason (i.e., subjective and objective justification), (3) resignation for just cause from the organic or employment relationship, and/or (3) revocation from the office of director or any delegation of powers or duties conferred without just cause (each case, a "**Good Leaver Event**"), the Beneficiary (or his heirs or legal successors) shall, within 20 days from the date on which the Good Leaver Event occurred, under penalty of forfeiture, have the right to exercise [50% (fifty percent)] of all the Option Rights assigned to him/her but not yet vested and all the Option Rights assigned to him/her and vested but not yet exercised **(Note [[21]](#footnote-20))**. Once this deadline has passed, the unexercised Option Rights will automatically expire, releasing the Company from any obligation or liability to the Beneficiary and without the need for any notice or other formality to that effect.

Following the subscription of the ESOP Quota on the Exercise Date as a result of the exercise of the Option Rights vested for each Vesting Period, the dissolution, termination, forfeiture, and any other cause of termination of the existing organic, employment, or collaboration relationship between the Beneficiary and the Company shall be irrelevant with respect to the full ownership of the ESOP Quota by the relevant Beneficiary, except as follows.

The Administrative Body may discretionally provide, depending on the peculiarities of the Beneficiary under consideration, an option to repurchase the ESOP Quota subscribed by such Beneficiary in the event that, subsequent to the Exercise Date, a Good Leaver Event or a Bad Leaver Event occurs with respect to such Beneficiary, subject to the conditions detailed and set forth in the relevant Notice of Assignment. However, the exercise of such a repurchase option is left to the discretion of the Administrative Body **(Note [[22]](#footnote-21))**.

*Transferability of the Option Rights*

No Option Right shall be transferable, in any way and under any title, by the Beneficiaries.

Each Option Right may be exercised during the life of the Beneficiary personally, subject to the terms and conditions of the Regulation; except in cases of *mortis causa* succession or permanent disability of the Beneficiary, in which case the relevant Option Rights may be exercised - in accordance with the provisions above in the case of a Good Leaver Event - by the heirs or successors in title.

No Option Right may be assigned or given as pledge or other form of security by the Beneficiary.

**Article 6. RIGHTS OF ESOP QUOTAS**

Each ESOP Quota issued as a result of the exercise of a vested Option Right represents an ordinary quota **(Note [[23]](#footnote-22))** of the Company and, therefore, all rights, obligations, and limitations provided in the Company's bylaws, as in effect from time to time, for ordinary quotas will apply for such ESOP Quotas

The ESOP Quotas newly issued under the Plan and arising from the Capital Increase are in fact at the time of approval of the Regulation ordinary quotas of the Company, registered and with regular dividend entitlement. In the event that the Company resolves to issue more than one category of quotas, the ESOP Quotas may be changed into category quotas without the right to vote and to intervene in the Quotaholders' Meeting, but with the retention of ordinary property rights, subject to the consent of each Plan Beneficiary, who, by accepting this Regulation in full, expressly agrees to do so.

In the event that the Company, prior to the subscription of an ESOP Quota by the relevant Beneficiary concerned, resolves to issue new quotas or new stock options or other special rights entitling the Beneficiary to subscribe for quotas of the Company with respect to which the members of [company name] have pre-emption rights, such Beneficiary shall have no rights with respect to such new quotas issued by the Company.

Neither the Plan nor any Option Right granted under the Plan shall entitle any Beneficiary to remain an employee, director, or consultant of [company name]. [company name], therefore, reserves the right to terminate the employment and/or administration and/or collaboration relationship with any Beneficiary at any time and for any reason, subject to applicable laws and written agreements between the parties (if any).

**Article 7. EFFECTS OF A QUALIFIED TRANSACTION**

*Qualified Transaction*

For the purposes of this Plan, "***Qualified Transaction***" means any of the following events:

1. The transfer [of all/more than 50%] of the Company's share capital to a third party; or
2. The merger and/or demerger of the Company; or
3. The Company's listing on a regulated market or multilateral trading facility, in Italy or abroad; or
4. The sale of the going concern or of a business unit representing substantially the entire business complex of the Company.

In the event that a Qualified Transaction occurs, all of the Option Rights assigned but not yet vested and/or exercised for each Beneficiary following the commencement of each Vesting Period shall find accelerated vesting in part; consequently, each Beneficiary may exercise [50% (fifty percent)] of the Option Rights assigned to him or her but not yet vested and/or exercised, and all of the Option Rights assigned to him or her and already vested but not yet exercised, in accordance with the terms and conditions of the Regulation.

In such a case, the Company's Administrative Body, as it is in office from time to time, shall inform each Beneficiary in writing, with at least [15 (fifteen)] calendar days notice prior to the date of completion of the Qualified Transaction **(Note [[24]](#footnote-23))**, and each Beneficiary may exercise, in whole or in part, [50% (fifty percent)] of the Option Rights assigned to him/her, but not yet vested and/or exercised **(Note [[25]](#footnote-24))**, and all Option Rights assigned to him/her and already vested but not yet exercised, within [10 (ten) calendar days] of receipt of such notice under penalty of forfeiture. The Exercise Date of the Options shall be set by the Company in good time prior to the completion of the relevant Qualifying Transaction, so that the Beneficiaries themselves may benefit therefrom, subject to the provisions of Article 5 above in the event of non-payment of the Subscription Price of the ESOP Quotas. By way of example, in the event of a listing pursuant to letter c. above, the ESOP Quotas shall be subscribed and fully paid up by the Beneficiaries in time for the Beneficiaries to sell them as part of the initial public offering relating to such listing, again subject to and within the terms of the initial public offering resolved by the Company. In addition, in the event of a sale, in whatever form, of the entire share capital of the Company to a third party, the ESOP Quotas must be subscribed and fully paid up by the Beneficiaries before the sale is completed, and the Beneficiaries will be required to sell such ESOP Quotas to the third party purchaser, on the terms and conditions already agreed with such third party for the sale of the entire share capital of the Company.

The Company's Administrative Body may discretionally provide, depending on the peculiarities of the Beneficiary under consideration, for different structures of vesting of the Option Rights not yet vested and/or exercised in the event that a Qualified Transaction occurs, structures that - if applicable - will be detailed and indicated in the relevant Notice of Assignment **(Note [[26]](#footnote-25))**.

**Article 8. TAX REGIME.**

The Plan and the Regulation have been prepared on the basis of the favorable tax and contribution regime applicable to the Company as an innovative start-up (*start-up innovativa*),a favorable regime also provided in the event that the Company subsequently becomes an innovative SME(*PMI innovativa*)*.*

Therefore, pursuant to the relevant law as well as in accordance with the *"Italian Revenue Agency Circular No. 16/E of June 11, 2014"*,the labor income from the allocation of the Option Rights and the subsequent subscription of the ESOP Quota to each Beneficiary does not contribute to the formation of the Beneficiary's taxable income, for both tax and contribution purposes, provided that:

1. the regulations set forth in Section IX of *Decree-Law* No. 179 of 2012 - as referred to in Article 4 of *Decree-Law* No. 3 of 2015 - is still applicable to the Company as of the date the Option Rights are granted to the Beneficiary;
2. the Beneficiary does not transfer the ESOP Quota to one or more of the entities identified for this purpose by Article 27, paragraph 1 of *Decree-Law* No. 179 of 2012, as recalled by Article 4 of *Decree-Law* No. 3 of 2015; and
3. the Beneficiary is not a provider of work or services, including professional services of the Company (by way of example: consultant, lawyer or accountant).

Any increased tax, social security and/or contribution charges, if any, arising from the execution of this Regulation and/or from the subscription of ESOP Quotas to the Beneficiaries, which may arise as a result of any changes in the favorable regulations applicable to innovative start-ups and/or innovative SMEs in this regard, or the loss of innovative start-up and/or innovative SME status by the Company, shall be borne by each Beneficiary for the part pertaining to him/her and borne by the Company for the part pertaining to the latter. In such case, the Company shall have the right to withhold from any payment to each Beneficiary the amount of any increased tax, social security and/or contribution charges pertaining to the Beneficiary in question that the Company has incurred for the execution of the Regulation and/or for the transfer to the Beneficiary in question of the ESOP Quotas. This shall be without prejudice, in any case, to the right of each Beneficiary not to exercise the Options by the end of each Exercise Period, thereby forfeiting any right thereto.

It is, in any case, understood that if, as a result of the exercise of the Option Rights by the Beneficiary, the ESOP Quota is acquired by the Company or by any entity that directly controls or is controlled by the Company or is controlled by the same entity that controls the Company, the favorable tax and contribution regime will cease to apply and any tax, social security and/or other charges will be borne exclusively by the Beneficiary in question.

If, due to changes made to the aforementioned laws or due to the Company's loss of the requirements of "innovative start-up" and/or "innovative SME," the implementation of the Regulation should result in the Company incurring materially increased tax, social security and/or other burdens, the Company's Administrative Body shall have the right to unilaterally amend the terms of this Regulation by notifying the Beneficiaries.

**Article 9. DURATION AND INVALIDITY**

*Duration*

The Plan will be valid and effective until the Expiration Date.

*Invalidity*

In the event that any of the provisions of this Regulation are or become invalid or ineffective by applicable law, or by pronouncements or judgments of competent authorities, the validity and effectiveness of the remaining provisions shall not be affected in any way, unless the suitability of this Regulation for the fulfillment of its purposes is affected.

**Article 10. CONFIDENTIALITY OBLIGATIONS**

Throughout the period between the date on which the Beneficiary signs the Notice of Assignment and the Expiration Date, each Beneficiary undertake to keep strictly confidential and not to communicate and/or disclose to third parties the contents of this Regulation, the Plan and the respective Notice of Assignment, except (***i)*** for information relating to this Regulation, the Plan and the respective Notice of Assignment that the Beneficiary may provide to the extent strictly necessary and subject to the signing of appropriate confidentiality agreements, to its accounting and/or legal advisors, (***ii***) for information to be provided to supervisory authorities or to the public or third parties, in fulfillment of legal or regulatory provisions, and (***iii***) for information relating to this Regulation, the Plan and the respective Notice of Assignment for which the Company has given its prior written consent.

**Article 11. ADDITIONAL PROVISIONS**

Any benefit that may accrue to the Beneficiary by virtue of inclusion in the Plan is extraordinary in nature and may not, for any reason, affect the direct and indirect compensation institutions governed by collective agreements and by the law and may not, therefore, have any effect on the calculation of the same. The Plan does not give the Beneficiaries the right to participate in the future in any further incentive programs however implemented by the Company.

The Company has not represented or guaranteed to the Beneficiary any special tax and/or contribution treatment and/or benefit with respect to the grant of the Option Rights and/or the subsequent subscription of the ESOP Quotas that the Beneficiary may receive under the Plan. The Beneficiary shall be solely responsible for any tax and contribution charges and obligations arising therefrom.

**Article 12. COMMUNICATIONS**

Any communication between the Company and the Beneficiary, provided for or required by the Rules or otherwise necessary in connection therewith or with the Plan, shall be in writing, either ***(i***) by hand delivery, or (***ii***) by registered letter with return receipt, or (***iii***) by certified e-mail.

The Beneficiary shall provide its address for notices pertaining to the execution of the Plan in the copy of the Notice of Assignment to be signed by him/her pursuant to Article 4 above.

Communications to the Company shall be sent to:

\* [Company Name], to the kind attention of [name contact person], [address] or certified e-mail address [email pec], anticipated by e-mail to the following address: [...]

**Article 13. APPLICABLE LAW AND PLACE OF JURISDICTION**

This Regulation shall be governed by Italian Law. The Court of [*business court having jurisdiction over the registered office of the company*] shall have exclusive jurisdiction over any dispute relating to or connected with these Rules **(Note [[27]](#footnote-26))**.

**Annex A**

**Notice of Assignment**

[*Place and date*]

Dear/Dear

[*Name*]

[*Address*]

Subject: Notice of inclusion in the incentive plan named "***[company name] Stock Options Plan [year]***"

Dear Sir/Madam,

We are hereby notifying you of your inclusion as a Beneficiary in the incentive plan known as the *"****[company name] Stock Options Plan [year]****"*,the Regulations of which are attached to this notice.

Terms defined herein with a capital letter shall have the same meaning ascribed to them in the aforementioned Regulation.

The Company has decided to grant you a total of [*\_\_*] Options as of the Effective Date, coinciding for you with [the date of commencement of your existing relationship with the Company, i.e., [\_\_] *or* the date of receipt of this letter], with the aim of better aligning the Company's growth objectives with those of each of the selected Beneficiaries.

The vesting of the aforementioned Option Rights is subject to the passing:

* Of the First Vesting Period regarding the First Tranche relating to No. [\_\_] Option Rights;
* Of the Second Vesting Period regarding the Second Tranche relating to No. [\_\_] Option Rights
* Of the Third Vesting Period regarding the Third Tranche relating to No. [\_\_] Option Rights;
* Of the Fourth Vesting Period with regard to the Fourth Tranche relating to no. [\_\_] Option Rights.

Consequently, after the relevant Vesting Period has elapsed, you may exercise, in whole or in part, the vested Option Rights for the relevant tranche by subscribing for an ESOP Quota of the Company's share capital at a Subscription Price of Euro [0.01] **(Note [[28]](#footnote-27))** for each Option Right exercised, in accordance with the terms and conditions of the Regulation.

*[Indicate any conditions and terms deviating from the Regulation]*

Finally, we ask you to return signed, as a sign of full and unconditional acceptance of your inclusion in the Plan, a copy of this communication and the related Regulation initialed on each page and signed at the bottom, no later than [15 (fifteen) days] from the date of receipt of this letter.

Kind regards,

[Company name]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attached: Regulation of the incentive plan named *"****[company name] Stock Options Plan [year]****"*

For acknowledgement and acceptance

The Beneficiary

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Place and date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Annex B**

**Notice of Exercise**

[*Place and date*]

Dear

[*Company name*]

[*Address*]

To the attention of [*Administrative Body*].

Subject: Notice of exercise of vested Options related to the incentive plan named "**[company name] Stock Options Plan [year]**"

Dear Sirs,

The undersigned ............................................................,

**declares**

* To exercise no. ............. vested Option Rights, and to therefore subscribe to an ESOP Quota equal to Euro ............... of the Company's share capital;
* That as of today’s date the organic, employment or collaboration relationship with the Company [is duly in existence, said statement being expressly reiterated also as of the Exercise Date] [*or*] [has ceased due to a Good Leaver Event].

Place and date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. **(Note )** Where necessary, the Plan may also be extended to employees, directors, contractors/consultants of directly controlled companies. In such cases, the Regulation shall be duly supplemented accordingly. [↑](#footnote-ref-0)
2. **(Note )** The power to approve the Plan normally pertains to the administrative body, unless otherwise provided for in the bylaws and except in cases where, in limited liability companies, the decision is referred to the quotaholders. [↑](#footnote-ref-1)
3. **(Note )** To be aligned with the wording of the quotaholders’ meeting resolution actually adopted. [↑](#footnote-ref-2)
4. **(Note )** The possibility to resolve by majority vote a capital increase with the exclusion or limitation of quotaholders' subscription rights, but without a share premium, is debated in legal doctrine and notarial practice, although most scholars and notarial indications support the legitimacy of not providing for a share premium.

   Without prejudice to the above, it is also common to delegate to the administrative body the subsequent determination (if any) of the share premium. [↑](#footnote-ref-3)
5. **(Note )** In the case of an S.r.l. with categories of quotas, the relevant provision shall specify the category of quotas to be issued for the purposes of the Plan. In practice, it is common to allocate special category quotas without voting rights. Reference is also made to the commentary under Note 9. [↑](#footnote-ref-4)
6. **(Note )** The capital increase for the purposes of the Plan shall be approved with the exclusion of existing quotaholders’ option rights (where a formal waiver is not otherwise recorded), in order to allow the allocation of option rights to the Beneficiaries according to the discretionary choices of the administrative body.

   It should be noted that the bylaws must provide for the possibility of offering the capital increase to third parties, pursuant to Article 2481*-bis*, paragraph 1, of the Italian Civil Code, and that the limitation or exclusion of the option right entitles the dissenting quotaholders to exercise their right to withdraw from the Company.

   Pursuant to Article 2481 of the Italian Civil Code, the bylaws (and, therefore, the quotaholders, with a resolution in notarized form) may also grant the Board of Directors the power to increase the share capital, determining the limits and the terms of exercise (including the maximum term for the execution of the delegation, which should preferably not exceed the five-year period under Article 2443 of the Italian Civil Code for joint-stock companies). The delegation clause in the bylaws must expressly empower the directors to exclude or limit quotaholders' option rights and that, where such power is exercised, quotaholders who are not offered subscription rights at the time of the delegated increase shall be entitled to withdraw from the Company.

   The capital increase must, in all cases, be a paid capital increase (also called onerous or real), divisible, to be executed in *tranches* (with the administrative body having the power to determine the value of each *tranche*) and shall become effective progressively upon receipt of valid subscriptions. [↑](#footnote-ref-5)
7. **(Note )** The applicable law and the Company’s bylaws for administrative body’s resolutions apply.

   Where the Company is managed by a sole director, for good order, the relevant decision may, for record-keeping purposes, be documented in a written determination and filed in the corporate records.

   In the case of collegial bodies (e.g., boards of directors), a special resolution of the administrative body is normally required but, where permitted by the bylaws, the relevant decision may be delegated to a single director or adopted by way of written consultation or on the basis of written consent.

   In companies with a plurality of directors (who do not constitute a board of directors), depending on whether the administration is conjunctive or disjunctive, the consent of all the directors or the decision of only one of them will be necessary, unless otherwise provided in the bylaws. [↑](#footnote-ref-6)
8. **(Note )** This Regulation template refers specifically to stock option plans. It differs from stock grant plans (in which quotas/shares are directly allocated instead of stock options), often used in work-for-equity formulas for consultants, and from phantom stock option plans, which are rare in venture capital practice. [↑](#footnote-ref-7)
9. **(Note )** This template of Regulation is based on the case of an S.r.l. that has not issued special categories of quotas pursuant to Article 26, Paragraph 2 of Decree Law 179/2012.

   It should be noted, however, that Article 6 (*Rights of ESOP Quotas*) of this template of Regulation specifies that the Company reserves the right to issue special categories of quotas and that, in such a case, the ESOP Quotas may be changed into a special category of quotas without the right to vote or intervene in the quotaholders’ meetings, while retaining the ordinary economic rights.

   To the extent possible, it is preferable to define from the beginning whether to create a special category of quotas. Otherwise, subsequent amendments may require:

   - the consent of each Plan Beneficiary who has already received a Notice of Assignment for the purpose of amending the Regulation;

   - the consent of those who have already subscribed ESOP Quotas for the purpose of converting them into the new category of quotas;

   - a new quotaholders' meeting resolution, in notarized form, to amend the terms of the capital increase already resolved for the purposes of the Plan and/or to convert ESOP Quotas already issued.

   Note that Article 6 of this template provides that, by accepting the Plan, each Beneficiary undertakes to provide such consent. [↑](#footnote-ref-8)
10. **(Note )** Classic *time-based vesting* structure, aimed primarily at Beneficiary *retention.*

    The use of mixed (partly *time-based* and partly *performance-based*) structures is less common in Italian *venture capital* practice, and the use of exclusively *performance-based* structures is even less common.

    Article 5 (*Terms and Conditions of Option Rights - Vesting Period Option Rights*) of this template of regulation grants the Administrative Body the discretion to apply different *vesting* scenarios, tailored to the individual Beneficiary. This includes the power to modify the scheduled *vesting* period (e.g., adopting daily or quarterly vesting following an initial cliff period) and to introduce *performance-based vesting* elements (e.g., for director or C-level Beneficiaries).

    Note, however, that a *performance-based* plan typically involves different acceleration mechanisms (e.g., in case of early termination of office or in the case of Qualified Transactions), as vesting depends on the achievement of predefined objectives rather than the mere passage of time. [↑](#footnote-ref-9)
11. **(Note )** Bylaws’ limitations should also be taken into account. For example, the Company's bylaws may reserve approval of incentive plans to the board of directors, prohibit delegation to individual directors, or require approval by a specific director. [↑](#footnote-ref-10)
12. **(Note )** In a *time-based vesting* structure, the deadline for the assignment of option rights is typically earlier than the deadline for the subscription of the capital increase, as sufficient time must be allowed to the beneficiaries to vest the option rights assigned to them. However, it remains possible to give the administrative body the power to provide for different *vesting* terms and conditions on a case-by-case basis, allowing greater flexibility in the assignment of option rights even when there would not be time for full *vesting* of the rights. [↑](#footnote-ref-11)
13. **(Note )** Where applied to beneficiaries who are employees of the Company, this provision may result in a strong disincentive for them to subscribe the Plan. Pursuant to Article 27, Decree-Law 179/2012, in fact, income derived from the exercise of option rights granted for the purchase of financial instruments is not considered taxable income of the beneficiaries (neither for income tax nor for social security purposes), provided that such financial instruments are not repurchased by the issuing company. If financial instruments or option rights are transferred in breach of this rule, the previously non-taxable income becomes subject to taxation in the fiscal year in which the disposal occurs. [↑](#footnote-ref-12)
14. **(Note )** Within the corporate form of limited liability companies, the purchase of treasury quotas is possible only in the sub-type of S.r.l. SME, as an exception under Article 26, paragraph 6, of Decree Law 179/2012 to the general prohibition under Article 2474 of the Italian Civil Code, if the transaction is made in implementation of incentive plans that provide for the allocation of quotas to employees, collaborators or members of the administrative body, or service providers (including professionals).

    In the absence of specific guidance under Article 26(6) of Decree Law 179/2012, practice and legal doctrine generally apply by analogy the limits applicable to joint-stock companies for the purchase of own shares, including the prohibition of using sums in excess of distributable profits and available reserves resulting from the last financial statements to purchase them and the need for prior authorization of the quotaholders to purchase them (unless the bylaws contain a general authorization to purchase them). [↑](#footnote-ref-13)
15. **(Note )** See also the commentary under Note 4. If the Plan grants the administrative body the power to determine the share premium, if any, the related clause should be supplemented accordingly. [↑](#footnote-ref-14)
16. **(Note )** See also the commentary under Note 10 for an overview of alternative *vesting* structures. [↑](#footnote-ref-15)
17. **(Note )** Alternatively, the exercise of Option Rights granted under the Plan may be subject to certain conditions.

    In practice, the exercise of options is conditioned upon the occurrence of a liquidity event, with the aim of making the incentive plan more attractive, as the beneficiary is not required to pay the strike price (and taxes) before being able to collect the proceeds of the liquidity event. It should be noted that, in such cases, the liquidity event may still constitute a hypothesis of acceleration of the exercise period. [↑](#footnote-ref-16)
18. **(Note )** This mechanism allows the company to manage the exercise of option rights by beneficiaries in a more orderly and efficient manner and is where a broad base of beneficiaries is contemplated. Alternatively, the plan may provide for the immediate exercisability of the option rights, subject to the simultaneous payment of the subscription price. [↑](#footnote-ref-17)
19. **(Note )** See also the commentary under Note 6, regarding the characteristics that the capital increase resolution must have. [↑](#footnote-ref-18)
20. **(Note )** It is worth noting that termination for breach, except in specific cases, requires a judicial assessment. To mitigate uncertainty in the application of the Bad Leaver clause and the overall enforceability of the Plan, it is recommended that contracts with the consultant-beneficiaries (or amendments thereto made in connection with the grant of option rights) include at least an express termination clause identifying specific events of material breach, which allows for the immediate termination of the contract where it occurs. [↑](#footnote-ref-19)
21. **(Note )** Note that in the event the Plan is amended to introduce performance-based vesting criteria,it might be appropriate to amend the consequences of Good Leaver events, given that the vesting of Option Rights does not depend on the mere passage of time, but also on the achievement of certain goals, which is potentially very uncertain at the date of the Good Leaver event. [↑](#footnote-ref-20)
22. **(Note )** See also the commentary under Note 13 and under Note 14. [↑](#footnote-ref-21)
23. **(Note )** See also the commentary under Note 5 and under Note 9. [↑](#footnote-ref-22)
24. **(Note )** Unless otherwise provided in the bylaws or in a quotaholders' agreement, no prior notification obligation is imposed on quotaholders in respect of transfers of their holdings.

    To this end, where possible, it is recommended to check for pre-emption rights, *tag-along* or *drag-along* clauses in the bylaws, which may impose a duty of prior notice in connection with proposed transfers. [↑](#footnote-ref-23)
25. **(Note )** It is market practice to provide for full accelerated vesting of all unvested option rights upon the occurrence of certain events, rather than a partial acceleration. [↑](#footnote-ref-24)
26. **(Note )** Possible alternatives include the automatic termination of the Option Rights if the relevant Beneficiary is still within the cliff period, as well as the full vesting of all Options Rights. [↑](#footnote-ref-25)
27. **(Note )** It is important that the clause aligns with the provisions of the Company's bylaws (e.g., if the bylaws provide for an arbitration clause, it is recommended that the Regulation mirrors such clause). [↑](#footnote-ref-26)
28. **(Note )** The template of Regulation provide that each Option Right entitles the holder to subscribe Euro 0.01 of the Company's share capital, at a Subscription Price equal to the par value of the subscribed share capital (and, therefore, Euro 0.01 for the number of Option Rights exercised). See also the commentary under Note 4 and Note 15 regarding the case where the Plan grants the administrative body the power to determine the share premium, if applicable. [↑](#footnote-ref-27)