



Template convertible note

User notes

This agreement is one of three different convertible instruments on our templates page that are intended to be used when recording either a *seed investment* from a third party investor or a *bridge financing* from existing shareholders:

- ▲ this convertible note is intended to be used when a company is raising *seed capital* from a third party investor in the form of a convertible instrument. The terms of the convertible note are based on the “keep-it-simple-security” created by 500 Startups and include some of the *investor friendly* provisions typically included in convertible *seed investments* in the US and as adopted for other global markets
- ▲ the SAFE is also intended to be used when a company is raising *seed capital* from a third party investor in the form of a convertible instrument. The terms of the SAFE are *company friendly* and are based on Y-Combinator’s template agreement of the same name
- ▲ the convertible shareholder loan agreement is a simple *company friendly* agreement, intended to be used when an *existing shareholder* lends money to a company as a form of *bridging finance* until an expected future financing event takes place.

This agreement anticipates that the investment amount is drawn down in a lump sum on one date and is unsecured. The investment amount:

- ▲ automatically converts to equity on the date of a qualifying equity financing

- ▲ is repayable (potentially at a multiple of the outstanding amount) or convertible at the investor’s discretion on the occurrence of a liquidity event
- ▲ is repayable or convertible at the investor’s discretion at any time following maturity.

This agreement also anticipates that it may be one of a series of identical agreements entered into as part of a seed investment round. In that case, some decisions that relate to the investment round as a whole are to be made by a majority of the investors, rather than by an individual investor.

The taxation of agreements of this nature has not been widely discussed or tested in New Zealand. We do recommend that the investor receive specialist tax advice before entering into this agreement (noting that any tax obligations will be on the account of the investor rather than the company).

Under New Zealand securities legislation, a company may not issue (or offer to issue) shares, options or other securities without providing detailed disclosure information to the new holders of those shares, options or other securities, unless the company is satisfied that an exclusion to the information disclosure requirements of the Financial Markets Conduct Act 2013 applies in relation to that offer or issue. Please see our *NZ securities law – tech company capital raising* guide under the capital raising section of the guides page of our website for an explanation of the relevant exclusions.

A company must ensure that an exclusion described in that guide applies before it offers to issue, or issues, shares

or other securities (including this convertible note).

using this template

The **User Notes** and the statements in the footer below (all marked in red) are included to assist in the preparation of this document. They are for reference only – you should delete all user notes and the statements in the footer from the final form of your document.

The use of [*square brackets*] around black text means that:

- ▲ the requested details need to be inserted

- ▲ there are different options for you to consider within a clause
- ▲ the whole clause is optional and you need to consider whether to include it, based on the company's circumstances and the user notes.

Before finalising your document, check for all square brackets to ensure you have considered the relevant option and ensure that all square brackets have been deleted.

If you delete any clauses or schedules, remember to cross reference check the document.

CONVERTIBLE NOTE

DATE

PARTIES

- 1 **[User note: Use this description if the Investor is a company.]** **[INSERT NAME OF COMPANY] LIMITED**, company number *[insert company number]* (Investor)
[User note: Use this description if the Investor is an individual.] **[INSERT]** (Investor)
[User note: Use this description if the Investor is a trust.] **[INSERT]**, **[INSERT]** and **[INSERT]** as trustees of *[insert name of trust]* (together, the Investor)
- 2 **[User note: Use this description for the company receiving the investment.]** **[INSERT NAME OF COMPANY] LIMITED**, company number *[insert company number]* (Company)

BACKGROUND

The Investor has agreed to provide to the Company an investment amount of \$*[insert]* on the terms set out in this Agreement.

SIGNED for and on behalf of **[INSERT]**)
NAME OF COMPANY] LIMITED by:)

Signature of authorised signatory

Print full name of authorised signatory

[User note: Use the following signature block if the Investor is a company.]

SIGNED for and on behalf of **[INSERT]**)
NAME OF COMPANY] LIMITED by:)

Signature of authorised signatory

Print full name of authorised signatory

[User note: Use the following signature block if the Investor is an individual.]

SIGNED by [**INSERT NAME OF**)
INDIVIDUAL]:)

Signature

[User note: Use the following signature block if the Investor is a trust. Each trustee of the trust must sign the agreement. Insert this signature block for each trustee.]

SIGNED by [**INSERT NAME OF**)
TRUSTEE] as trustee of the [**INSERT**)
NAME OF TRUST]:)

Signature of [*insert name of trustee*]

TERMS OF THE AGREEMENT

1 INTERPRETATION

1.1 **Definitions:** In the Agreement, unless the context requires otherwise:

Definition	Meaning
Agreement	this agreement, including any schedule attached to it.
Business Day	Monday to Friday, other than any public holiday within the meaning of section 44 of the Holidays Act 2003 that occurs in <i>[insert the city where the Company is located]</i> .
Conversion	the conversion of the Investment Amount, together with all unpaid interest accrued on it, into Conversion Shares under clause 4.
Conversion Price	<p>▲ for a Conversion under clause 4.1, a price per Share equal to the lower of:</p> <ul style="list-style-type: none"> > the Valuation Cap divided by the Fully Diluted Capitalisation immediately prior to the Qualifying Equity Financing; and > the price per Share at which Shares were issued to investors under the Qualifying Equity Financing, less a discount of [20%]; <p><i>[User note: Alternatively, the Conversion Price on a Qualifying Equity Financing can be calculated without reference to a valuation cap and/or without a discount to the price per share of the Qualifying Equity Financing.]</i></p> <p>▲ for a Conversion under clause 4.3, a price per Share equal to the Valuation Cap divided by the Fully Diluted Capitalisation immediately prior to the Liquidity Event; and</p> <p>▲ for a Conversion under clause 4.4, a price per Share equal to the Valuation Cap divided by the Fully Diluted Capitalisation immediately prior to the Maturity Date.</p>

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Conversion Shares	<ul style="list-style-type: none">▲ for a Conversion under clause 4.1, the highest class of Shares issued under the Qualifying Equity Financing;▲ for a Conversion under clause 4.3, the highest class of Share in issue immediately prior to the Liquidity Event; and▲ for a Conversion under clause 4.4, the highest class of Share in issue on the Maturity Date.
Drawdown Date	the later of [<i>insert date</i>] or the date that is two Business Days following the satisfaction or waiver of all of the conditions set out in clause 2.1, or such other date as the parties agree.
Fully Diluted Capitalisation	the number of Shares on issue at the relevant time, including: <ul style="list-style-type: none">▲ the number of Shares to be issued on the exercise of any options over, or other rights to be issued, Shares in existence at the relevant time (excluding any conversion of (i) the Investment Amount under the Agreement, together with all unpaid interest accrued on it; and (ii) all other convertible loans or notes); and▲ all Securities reserved and available for future issue under any equity incentive or similar plan of the Company, including any such plan created or increased in connection with a Qualifying Equity Financing.
Insolvency Event	has the meaning given in clause 8.1.
Intellectual Property Rights	includes copyright and all worldwide rights conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity.
Interest Rate	<p>[User note: If interest will not be charged, insert an interest rate of 0%.]</p> <p>[<i>insert</i>]% per annum.</p>
Investment Amount	\$(<i>insert amount of the investment</i>) or the principal amount outstanding from time to time.
Liquidity Event	any of the following events:

- ▲ the Company or a shareholder (or shareholders) of the Company enters into a binding agreement with a third party (or a group of associated third parties) on arms' length terms under which the third party is to acquire (other than by way of a subscription for new Shares) 50% or more of the voting Shares of the Company, and that agreement becomes unconditional;
- ▲ the Company enters into a binding agreement to dispose of assets comprising more than half the value of the Company's assets, and that agreement becomes unconditional;
- ▲ the Company resolves to amalgamate with any other company (whether or not it is the continuing company), in a transaction that is in substance the same as those described above; or
- ▲ the Company enters into a listing agreement with the New Zealand stock exchange, or other national stock exchange of similar or better standing,

provided, however, that a transaction will not constitute a Liquidity Event if its sole purpose is to change the place of the Company's incorporation, or to create a holding company that will be owned in substantially the same proportions by the persons who held the Shares immediately prior to such transaction.

[Majority of Investors

[User note: Delete this definition if the Company is raising money from a single investor.]

investors representing greater than 50% of the aggregate Investment Amount outstanding in respect of all of the agreements in the Series.]

Maturity Date

[User note: On or after the Maturity Date, the Investor can elect to convert the Investment Amount if it has not already converted automatically due to a Qualifying Equity Financing. The Maturity Date should therefore be set far enough ahead to give the Company enough time to complete a Qualifying Equity Financing.]

the date that is [24] months following the Drawdown Date.

[Participation Amount	<p>[User note: See our note to clause 10.3.]</p> <p>[\$[insert].]</p>
Purpose	<p>[User note: Consider the Purpose carefully. The Company is required to use the Investment Amount only for this stated purpose (unless the Investor agrees otherwise).]</p> <p>[meeting the Company's working capital requirements while seeking to complete a Qualifying Equity Financing].</p>
Qualifying Equity Financing	<p>[User note: The Investment Amount will automatically convert to shares on the completion of a future funding round of sufficient size. The minimum size of the Qualifying Equity Financing will vary depending on a number of factors, including (i) the stage of the Company, (ii) the amount raised in this funding round, (iii) the purpose of this funding round, and (iv) the expected size of the Company's next funding round. In general, the minimum size of the Qualifying Equity Financing should be high enough to reflect these factors, but not so high that it cannot be reasonably achieved prior to the Maturity Date.]</p> <p>the next issue or related series of issues by the Company of Shares for capital raising purposes after the date of the Agreement, under which the Company raises not less than \$[insert] on arms' length terms.</p>
Securities	any Share and any security that may be converted into Shares or that gives the holder of the security the right to have Shares issued to it (including options and warrants).
[Series	<p>[User note: Delete this definition if the Company is raising money from a single investor.]</p> <p>has the meaning given in clause 3.4.]</p>
Shareholders' Agreement	a shareholders' agreement (or subscription and shareholders' agreement) between the Company and all of the shareholders of the Company.
Shares	shares in the Company.
Valuation Cap	[User note: The valuation cap is critical to the economics of the note. The amount of the valuation cap divided by

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the number of shares on issue in the Company at the relevant time is the price per share at which the Investment Amount will convert to Conversion Shares on maturity or on the occurrence of a Liquidity Event (if the Investor elects to convert). On the occurrence of a Qualifying Equity Financing the price per share determined by the valuation cap is the highest price at which the Investment Amount will automatically convert to Conversion Shares (whereas the Investment Amount will automatically convert at a lower price per share if the capital raise is undertaken at a valuation that is lower than the valuation cap, after applying the discount set out in the definition of Conversion Price).]

[\$[insert valuation cap].

1.2 Interpretation:

- a A reference to:
 - i a **clause** or a **schedule** is to a clause in or a schedule to the Agreement;
 - ii a **person** includes a body corporate, an association of persons (whether corporate or not), a trust, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal personality;
 - iii **including** and similar words do not imply any limitation;
 - iv a **statute** includes references to that statute as amended or replaced from time to time;
 - v a **party** is a reference to a party to the Agreement, and includes that party's permitted successors and permitted assigns; and
 - vi **\$** or **dollars** are to New Zealand currency.
- b The **headings** in the Agreement are for convenience only and have no legal effect.
- c The **singular** includes the plural and vice versa.

2 CONDITIONS

2.1 Conditions: The Agreement is conditional on:

[User note: See our template "resolutions to approve a convertible instrument" for a directors' resolution approving the execution of the agreement and the issue of shares under it.]

- a the Company delivering to the Investor:
- i resolutions of the directors and (if necessary) shareholders of the Company authorising the execution of the Agreement and the issue of the Conversion Shares on Conversion; and
 - ii to the extent necessary, signed waivers from the existing shareholders of the Company of any rights of pre-emption relating to the execution of the Agreement and any issue of Conversion Shares, arising under the Companies Act 1993, the constitution of the Company, or otherwise;

[User note: See our “NZ securities law – tech company capital raising” guide for an explanation of the relevant exclusions. A company must ensure that one of the exclusions described in that guide applies before it takes the Investment Amount.]

- b the Company being satisfied that an exclusion to the information disclosure requirements of the Financial Markets Conduct Act 2013 applies in relation to the execution of the Agreement by the Investor; and

[User note: Delete clause 2.1c if the Company is raising money from a single investor.]

- c *[the Company entering into a series of agreements with other investors on terms that are, except for the Investment Amount, substantially the same as the Agreement and under which the aggregate investment amount payable to the Company in connection with those agreements, plus the Investment Amount, is at least \$[insert the minimum aggregate investment amount required in order for the Company and the Investor to proceed].]*

2.2 **Non-fulfilment:** If the conditions in clause 2.1 are not satisfied or waived by both parties in writing on or before the date that is [30 days] following the date of the Agreement, the Investor or the Company may terminate the Agreement by written notice to the other. If the Agreement is cancelled in accordance with this clause 2.2, no party will have any obligation to any other party other than for a breach of the Agreement occurring before termination.

3 THE INVESTMENT AMOUNT AND TERMS OF THE AGREEMENT

- 3.1 **Investment Amount:** The Investor must make the Investment Amount available to the Company in one drawing only on the terms set out in the Agreement.
- 3.2 **Drawdown:** The Investor must pay the full amount of the Investment Amount to the Company on the Drawdown Date in cleared funds into the nominated account of the Company.
- 3.3 **Purpose:** The Company must use all amounts drawn down only for the Purpose or for any other purpose approved by the [Investor/Majority of Investors].

[User note: Delete clause 3.4 if the Company is raising money from a single investor.]

- 3.4 **[Series of agreements:** *The Agreement is one of a series of agreements which may be entered into by the Company with other investors on terms that are substantially the same as the Agreement (except for the Investment Amount and (in some cases) the Drawdown Date) (Series). The total capital raised under the Series may be up to \$[insert] and the other agreements in the Series may be entered into at any time up to [insert date] (and the Company may have entered into some or all of those other agreements as at the date of the Agreement).*]

4 CONVERSION

- 4.1 **Qualifying Equity Financing:** On the date of a Qualifying Equity Financing, the Investment Amount, together with all unpaid interest accrued on it, is to automatically convert into Conversion Shares by applying that amount to subscribe for Conversion Shares at the Conversion Price.
- 4.2 **Conversion documentation:** The Investor must execute any agreements, resolutions and/or other documents (including any subscription agreement or shareholders' agreement) that are required to be executed by the Investor in order to complete a Qualifying Equity Financing and/or record the Conversion contemplated by clause 4.1, provided that the terms of issue of the Conversion Shares are in accordance with clause 4.5.
- 4.3 **Liquidity Event:** If a Liquidity Event occurs, the *[Investor/Majority of Investors]* may elect to convert the Investment Amount *[and all other investment amounts under the Series]*, together with all unpaid interest accrued, into Conversion Shares on the date of the Liquidity Event by applying that amount to subscribe for Conversion Shares at the Conversion Price. If the *[Investor/Majority of Investors]* *[does/do]* not elect to convert the Investment Amount, together with all unpaid interest accrued on it, to Conversion Shares, the Company must repay to the Investor the Investment Amount ***[User note: The right of an Investor to be repaid the Investment Amount, plus an additional amount equal to one times their Investment Amount, plus all unpaid interest accrued on the Investment Amount, on the occurrence of a Liquidity Event (if the Investor does not elect to convert) is included in the 500 Startups standard document on which this agreement is based. However, in our experience it is often negotiated out in favour of the Investor simply being repaid their original Investment Amount.]*** *[plus an additional amount equal to one times the Investment Amount]*, plus all unpaid interest accrued on the Investment Amount within 20 Business Days of the date of the Liquidity Event.
- 4.4 **Maturity conversion:** At any time on or after the Maturity Date, the *[Investor/Majority of Investors]* may elect, by written notice to the Company, to convert the Investment Amount *[and all other investment amounts under the Series]*, together with all unpaid interest accrued, into Conversion Shares by applying that amount to subscribe for Conversion Shares at the Conversion Price.
- 4.5 **Terms of issue:** Shares issued as a consequence of a Conversion will rank for dividends from the date they are issued and will otherwise rank equally in all respects with all other Shares of the same class, except that in the case of a Conversion in accordance with clause 4.1, any

price based anti-dilution rights, dividend rights, or liquidation preferences may be amended (at the discretion of the Company) to reflect the Conversion Price.

- 4.6 **Notice of Qualifying Equity Financing or Liquidity Event:** The Company must provide the Investor with written notice of:
- a the terms of a Qualifying Equity Financing at least 5 Business Days prior to the closing of the Qualifying Equity Financing; and
 - b a Liquidity Event at least 10 Business Days prior to the occurrence of the Liquidity Event.
- 4.7 **Governing documents following a Liquidity Event or the Maturity Date:** Any Conversion Shares issued in accordance with clause 4.3 or 4.4 are to be issued subject to the terms of any constitution of the Company and any Shareholders' Agreement in force as at the date of issue of the Conversion Shares. Immediately following the issue of any Conversion Shares, the Investor must execute either the in force Shareholders' Agreement or a deed of accession to the in force Shareholders' Agreement, agreeing to be bound by its terms.
- 4.8 **Fractional entitlements:** The number of Conversion Shares to be issued to the Investor must be rounded up to the nearest whole number if there is a fractional entitlement.
- 4.9 **Adjustment:** If there is any bonus issue, consolidation or subdivision of any Shares or any reduction or cancellation of share capital (or any similar reorganisation of the capital of the Company), the Conversion Price must be adjusted by the Company, if necessary, to ensure that the economic effect of the Conversion remains the same.

5 INTEREST

- 5.1 **Interest:** **[User note: Use the following option for simple interest.]** *[Simple interest on the Investment Amount is to accrue [daily/monthly/annually] at the Interest Rate.]* **[User note: Use the following option for compounding interest.]** *[Interest on the Investment Amount is to accrue [daily/monthly/annually] and compound [monthly/annually] at the Interest Rate.]* The Company must pay the accrued interest on the Investment Amount on the date of repayment of the Investment Amount.
- 5.2 **Tax:** All references to the conversion or repayment of interest in the Agreement are net of any tax required to be withheld by law (if applicable).

6 REPAYMENT AND PREPAYMENT

- 6.1 **Repayment of Investment Amount:** The Company must repay the Investment Amount, together with all interest accrued on it, within 5 Business Days after receipt of a written demand from the *[Investor/Majority of Investors]*, provided that the *[Investor/Majority of Investors]* must not make a demand under this clause before the Maturity Date.

[User note: Clause 6.2 prohibits the prepayment of the Investment Amount by the Company before the maturity of the Investment Amount. This is a critical feature of the

agreement as it ensures that the principal of the Investment Amount will convert to equity in the Company unless the Investor elects otherwise on the occurrence of a Liquidity Event or at maturity. The Company does have the option of repaying the interest that accrues on the Investment Amount at any time prior to a conversion.]

- 6.2 **No prepayment of Investment Amount:** The Company may not prepay all or any part of the Investment Amount prior to the date that is 5 Business Days following the Maturity Date. The Company may prepay all or any part of the interest accrued on the Investment Amount at any time after the Drawdown Date.

7 COMPANY'S UNDERTAKINGS

While the Investment Amount is outstanding, the Company:

- a must notify the Investor promptly in writing upon the occurrence of an Insolvency Event and provide a statement of steps being taken to remedy the Insolvency Event; and
- b must not, unless approved in writing by the *[Investor/Majority of Investors]*:
 - i make any material change to the business carried on by it at the date of the Agreement; or
 - ii pay any dividend or make any other distributions in respect of its Shares.

8 INSOLVENCY EVENTS

- 8.1 **Default:** An **Insolvency Event** occurs if:

- a an order is made, resolution passed or legal proceedings issued (other than a proceeding which is vexatious or frivolous), or corporate action is taken, notice given or other step taken for the winding up or liquidation of the Company;
- b a liquidator, receiver, manager, statutory manager, inspector, trustee or other similar person is appointed in respect of the Company or some or all of its assets;
- c any distress, attachment, or execution is levied, issued, enforced or obtained on or against all or a material part of the Company's assets;
- d any security over all of the assets of the Company is enforced;
- e the Company suspends, stops, or threatens to suspend or stop payment of a material part of its debts;
- f the Company commences negotiations or takes any proceedings for the general deferral, readjustment or rescheduling of its indebtedness, or a material part of its indebtedness;
- g the Company makes, or proposes to make, any assignment, arrangement or composition for the benefit of its creditors generally;

- h the Company ceases or threatens to cease to carry on all or substantially all of its business or operations; or
- i any event occurs that is in substance the same as those in clause 8.1a to 8.1h above.

8.2 **Acceleration:** The Investor may, by written notice to the Company at any time after the occurrence of an Insolvency Event, declare the Investment Amount, together with all interest accrued on it, due and payable. Following receipt of that notice from the Investor, the Company must immediately repay the Investment Amount together with all interest accrued on it.

9 WARRANTIES

9.1 **Mutual warranties:** Each party represents and warrants to the other that the following is true as at the date of the Agreement:

- a if it is a company, it is duly incorporated and validly existing under the laws of New Zealand;
- b it has the power, and, if it is a company, has taken all necessary action (including the passing of all resolutions and obtaining any necessary consents) to enter into, execute and deliver, and exercise its rights, and perform its obligations, under the Agreement; and
- c it has validly executed and delivered the Agreement and its obligations under the Agreement are legal, valid and binding and the Agreement is enforceable against it in accordance with its terms.

9.2 **Company warranties:** The Company warrants to the Investor that the following is true as at the date of the Agreement:

- a as far as the Company is aware, the Company owns or is legally entitled to use all Intellectual Property Rights used in the conduct of its business;
- b as far as the Company is aware, the business of the Company does not infringe any Intellectual Property Rights of any other person and, as far as the Company is aware, no claims relating to Intellectual Property Rights used by the Company are pending or threatened by any third party;
- c the Company is not a party to any legal proceedings, arbitration, or statutory or governmental inquiry of any kind, nor is the Company aware of any such legal proceedings, arbitration or inquiry, pending or threatened against the Company;
- d as far as the Company is aware, there is not any existing cause of action, or facts or circumstances that could be used for commencing legal proceedings, either civil or criminal, against the Company that could prevent or materially alter or delay any of the transactions contemplated by the Agreement[.] / [; and]

e *[the Company has no actual or contingent liabilities greater than \$[50,000]].*

9.3 **Exclusions from warranty claims:** No facts or circumstances will give rise to a claim by the Investor against the Company under clause 9.2 to the extent that those facts or circumstances:

- a were fairly disclosed in Schedule 2;
- b were available on a public register, file or record maintained by the New Zealand Companies Office, the Intellectual Property Office of New Zealand or the Personal Property Securities Register as at the date of the Agreement; or
- c arose because of an action taken by the Company with the *[Investor's/Majority of Investors]* prior written consent.

9.4 **Timing:** The Company will have no obligation to the Investor in respect of any claim under clause 9.2 unless written notice of that claim is given to the Company within 12 months of the date of the Agreement.

9.5 **Aggregate maximum liability:** The Company's aggregate liability to the Investor in respect of a breach of any of the warranties set out in clause 9.2 will be limited to the Investment Amount.

10 **[ADDITIONAL INVESTOR RIGHTS]**

[User note: Some investors may expect additional information, control or protection rights. A non-exhaustive list of potential additional rights are set out in clauses 10.1 to 10.3 below. If offered, the Company may want to restrict those additional rights to major investors only.]

10.1 **[Regular reporting:** *[If the Investment Amount is greater than \$[insert]], [t/T]he Company must provide the following high level reports to the Investor within 10 Business Days following the end of each quarter:*

- a *a summary financial report setting out the Company's revenue and cash expenditure for the most recently completed quarter and its remaining cash runway; and*
- b *a management report covering the key discoveries, successes and learnings of the Company.*

10.2 **[Financial statements:** *[If the Investment Amount is greater than \$[insert]], [t/T]he Company must ensure that it provides to the Investor, within 60 Business Days from the end of the Company's financial year, financial statements for that year prepared in accordance with accounting principles, standards and practices generally accepted in New Zealand.]*

[User note: Some investors may want a right to participate in the Qualifying Equity Financing. If granted, include the participation right set out in clause 10.3. The amount of the Qualifying Equity Financing that must be offered to the Investor is defined as the "Participation Amount". Setting the Participation Amount at 1x the Investment Amount

is most common, but you should consider how much of the Qualifying Equity Financing you will need to allocate to your incoming investors. It can be hard to manage the allocation of a Qualifying Equity Financing if too much of the round has to be offered to your existing investors.]

10.3 **[Participation rights:**

- a Subject to clauses 10.3c, 10.3d, and 10.3e, [if the Investment Amount is greater than \$[insert],] the Investor has the right to participate in the Qualifying Equity Financing, on the same terms and at the same price per Share as the investors under the Qualifying Equity Financing, by purchasing up to “X” Shares, calculated as follows:

$$X = A / B$$

Where:

A = the Participation Amount

B = the price per Share issued under the Qualifying Equity Financing.

- b The Company must provide a written notice to the Investor in respect of the Qualifying Equity Financing specifying:
- i the number, class and terms of the Shares offered, including the issue price and the maximum number of Shares that the Investor is entitled to purchase (calculated in accordance with clause 10.3a);
 - ii the date (being not less than 7 days nor more than 28 days after the date of the written notice) by which the Investor must give an acceptance notice in writing to the Company stating whether the Investor wishes to purchase the Investor’s entitlement or some lesser number of Shares.
- c The Investor has no right to be offered or issued any Shares under this clause 10.3 unless the Company is satisfied (acting reasonably) that any offer or issue of Shares to the Investor will be exempt from compliance with relevant securities legislation.
- d The participation rights in this clause 10.3 may be waived by agreement of the [Investor/Majority of Investors] in writing.
- e The provisions of clauses 10.3a to 10.3d apply only during the period following the date of the Agreement to the earliest of (i) completion of the Qualifying Equity Financing, or (ii) any Conversion, Liquidity Event, or repayment in full of the Investment Amount and all accrued interest.]

11 INDEPENDENT TRUSTEES

The liability of any independent trustee under the Agreement is not an unlimited or personal liability and instead is limited to the funds from time to time belonging to the trust on behalf of

which they have entered into the Agreement, in the proper course of the administration of that trust. In this clause, an **independent trustee** is any party who has signed the Agreement in their capacity as the trustee of a trust and who is not a beneficiary of the trust nor has any right to, or interest in, any of the assets of the trust except in their capacity as trustee of that trust.

12 GENERAL

[User note: Delete clause 12.1 if the Company does not wish to provide a “most favoured nation” clause (i.e. a right for the Investor to exchange the terms of this agreement for the terms of any other convertible instrument issued after the date of this agreement).]

12.1 **[Subsequent instruments:** *If the Company issues any convertible instrument (other than share options issued to employees, directors or service providers) (**Subsequent Instrument**) at any time during the period following the date of the Agreement and prior to the earlier of any Conversion, Liquidity Event, or repayment in full of the Investment Amount and all accrued interest, the Company must provide the Investor with written notice of the terms of the Subsequent Instrument (including the conversion price) within 5 Business Days of the date of issue of the Subsequent Instrument. The Investor may elect, by written notice to the Company no later than 20 Business Days following the date of issue of the Subsequent Instrument, to exchange the terms of the Agreement for the terms of the Subsequent Instrument (except that the Investment Amount is to remain as set out in the Agreement in all cases).]*

12.2 **Confidentiality:** Each party must keep the Agreement and information it receives about the Company and its business in connection with the Agreement (**Confidential Information**) confidential, and must not use or disclose that Confidential Information without the prior written consent of the Company except to the extent that:

- a disclosure is required by law;
- b the relevant information is already in the public domain other than through the default of that party;
- c it is reasonably required to obtain professional advice; or
- d it is reasonably necessary in connection with any proposed:
 - ▲ financing of that party;
 - ▲ sale of that party’s interest in the Company; or
 - ▲ sale of all or part of the business of, or the shares in, that party,

and the party receiving the Confidential Information has entered into confidentiality undertakings substantially the same as those set out in this clause.

12.3 **Notices:** All notices and communications given under the Agreement must be in writing and must be delivered personally, sent by post or sent by email to the address or email address set out in Schedule 1 (or at such other address as notified from time to time by the party changing its address).

12.4 **Time of service:** Any notice given under the Agreement will be deemed to be validly given:

- a in the case of delivery, when received;
- b in the case of posting, on the third Business Day following the date of posting; or
- c if emailed, one hour after the email is sent unless a return email is received by the sender within that one hour period stating that the addressee's email address is wrong or that the message cannot be delivered,

provided that any notice received after 5 pm on a Business Day or on any day that is not a Business Day will be deemed to have been received on the next Business Day.

12.5 **Entire agreement:** The Agreement contains all of the terms, representations and warranties made between the parties relating to the matters dealt with in the Agreement and supersedes and cancels all prior discussions and agreements covering the subject matter of the Agreement. The parties have not relied on any representation, warranty or agreement relating to the matters dealt with in the Agreement that is not expressly set out in the Agreement, and no such representation, warranty or agreement has any effect from the date of the Agreement. Without limiting the previous sentence, the parties agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986.

12.6 **Further assurances:** The parties must each sign all further documents, pass all resolutions and do all further things as may be necessary or desirable to give effect to the Agreement.

12.7 **Amendment:** ***[User note: Use the following if the Company is raising money from a single investor.]*** *[The Agreement may only be amended by agreement of the parties in writing.]* ***[User note: Use the following if the Company is entering into a series of agreements with multiple investors.]*** *[Each of the agreements in the Series are separate agreements. However, any term of all of the agreements in the Series may be amended and any term of all of the agreements in the Series may be waived, by agreement of the Company and the Majority of Investors in writing, except that clauses 2, 9, 10 (subject to clause 10.3d), and 12 may not be amended or waived without the written consent of the Investor. Any waiver or amendment in accordance with this clause 12.7 is binding on the Company and each current and future investor in the Series.]*

12.8 **Waiver:** No exercise or failure to exercise or delay in exercising any right or remedy will constitute a waiver by that party of that or any other right or remedy available to it.

12.9 **No assignment:** No party may assign any of its rights or obligations under the Agreement without the prior written consent of the other party.

12.10 **Costs:** Except as otherwise provided in the Agreement, the parties will meet their own costs relating to the negotiation, preparation and implementation of the Agreement.

12.11 **Partial invalidity:** If any provision of the Agreement becomes invalid or unenforceable to any extent, the remainder of the Agreement and its application will not be affected and will remain enforceable to the greatest extent permitted by law.

12.12 **Signature:** The Agreement may be executed in two or more counterparts, each of which is deemed an original and all of which constitute the same Agreement. A party may enter into the Agreement by signing and sending (including by email) a counterpart copy to each other party.

12.13 **Governing law and jurisdiction:** The Agreement will be governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

SCHEDULE 1**Details for notices**

Company	
Contact Name:	<i>[insert]</i>
Address:	<i>[insert]</i>
Email address:	<i>[insert]</i>

Investor	
Contact Name:	<i>[insert]</i>
Address:	<i>[insert]</i>
Email address:	<i>[insert]</i>

SCHEDULE 2

Disclosures

The Company delivers this Schedule of disclosures to the Company’s warranties given in the Agreement. This Schedule of disclosures and the information and disclosures contained in it are intended only to qualify and limit the warranties of the Company contained in the Agreement, and are not to be deemed to expand in any way the scope or effect of any of the warranties. The clause numbers in this Schedule of disclosures correspond to the clause numbers in the body of the Agreement; *provided, however*, that any information disclosed under any clause number is deemed to have been disclosed and incorporated in any other clause of the Agreement where that disclosure would be appropriate. Disclosure of any information or document in this Schedule is not a statement or admission that it is material or required to be disclosed. References to any document do not purport to be complete and are qualified in their entirety by the document itself. Capitalised terms used but not defined in this Schedule have the same meanings given to them in the Agreement.

[User note: Insert any disclosures the Company wishes to make against the warranties in clause 9.2.]

Clause	Disclosure
[insert]	[insert]

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