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| AANZ Template | **Subscription Agreement** |
| Version Number and Release Date | Version 1 - 4 February 2019 |
| AANZ Number | 218261 |
| Version 1 Notes | This template is a revised version of the NZVIF Subscription and Shareholders Agreement (5 December 2016), which has been separated into a standalone subscription agreement and a standalone shareholders’ agreement to assist with the documentation of follow-on investment rounds.  |
| Use Notes | This template is intended to be used for all investors in the investment round, and is recommended to be used in conjunction with the Template Shareholders’ Agreement and Template Constitution.  |

This template has been prepared by AANZ together with members of the NZ angel investment community and legal profession.

The aim of this template (and other template documents we make available) is to promote industry standard legal documentation for use in NZ so investors, entrepreneurs, and companies can focus on deal-specific matters.

All parties should:

* ensure they are aligned about the business outcomes, success, and the return on their investment;
* consider the appropriateness and implications of key terms, including:
	+ investment conditions
	+ how the shares are priced and paid for
	+ types of shares
	+ warranties
	+ the application of FMCA exclusions to the investor/investment; and
* seek their own legal advice when agreeing and documenting investments terms.

AANZ aims to coordinate updates of the template documents annually to keep up with market practice. Comments on the documents are welcome, and will be taken into account in the next review (or urgently should this be required). Comments can be sent to templates@angelassociation.co.nz

AANZ would like to thank Avid.legal, Chapman Tripp, NZVIF, Simmonds Stewart, and Simpson Grierson who, among others, kindly provided support and expertise in the development of this template.

**Legal disclaimer**: Neither AANZ nor any contributors to this document take any responsibility for the content of the template or the consequences of using it. You should take legal advice before using this template. This template is intended to serve as starting point only and should be tailored to meet your specific requirements. Nothing in this template should be construed as legal advice for any particular facts or circumstances.

**SUBSCRIPTION AGREEMENT**

**[NAME OF THE COMPANY]**

**[NAME(S) OF FOUNDER(S)]**

**[NAME(S) OF INVESTOR(S)]**

|  |
| --- |
| **WARNING STATEMENTS**You are being offered **[**shares**]** in **[**name of investee company**]**.*This part of the warning statement applies to investors who make an investment in reliance of the small offers exclusion under schedule one of the Financial Markets Conduct Act 2013.****Small Offers Warning Statement****:* New Zealand law normally requires people who offer financial products to give information to investors before they invest. This requires those offering financial products to have disclosed information that is important for investors to make an informed decision. The usual rules do not apply to this offer because of an exception or exemption applying to the Investor. As a result, you may not be given all the information usually required. You will also have fewer other legal protections for this investment.Ask questions, read all documents carefully, and seek independent financial and legal advice before committing yourself.*This part of the warning statement applies to investors who make an investment in reliance of certain wholesale investor exclusions under schedule one of the Financial Markets Conduct Act 2013.* ***Wholesale Investor Warning Statement****:* The law normally requires people who offer financial products to give information to investors before they invest. This information is designed to help investors make an informed decision. If you are a wholesale investor, the usual rules do not apply to offers of financial products made to you. As a result, you may not receive a complete and balanced set of information. You will also have fewer other legal protections for those investments. Make sure you understand these consequences.Ask questions, read all documents carefully, and seek independent financial advice before committing yourself.**Offence**It is an offence to give a certificate knowing that it is false or misleading in a material particular. The offence has a penalty of a fine not exceeding $50,000. |

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**DATED** **[**insert year**]**

**PARTIES**

**1. [**Name of the company**]** (**Company**)

**2. [**Name(s) of the Founder(s)**]** (**[**each a**]** **Founder**)

**3. [**Name(s) of Investor(s)**]** (**Investor(s)**)

**BACKGROUND**

**A.** The Company is **[**a company**][**part of a Group**]** which **[**insert description of the business carried on, or proposed to be carried on, by the Company/Group**]**.

**B.** **[**Each/The**]** Investor has agreed to invest in the Company by subscribing for **[**Ordinary Shares**][**Preference Shares**]**.***[Drafting note: delete as applicable]***

**C.** The parties wish to enter into this agreement to record the terms of the investment described in paragraph B above.

**AGREEMENT**

# INTERPRETATION

## **Definitions**: In this agreement unless the context indicates otherwise:

**Accounts** means in respect of the Company the **[**unaudited**]** accounts **[**audited by the Auditor**]** for the year ended **[**insert date**]**;

**Act** means the Companies Act 1993;

**Associated Person** has the meaning ascribed to the term in Rule 1.8 of the New Zealand Stock Exchange Listing Rules and **Associate** and **Associated** have corresponding meanings;

**[Auditor** means **[**insert**]**;**]**

**Board** means the Directors acting as a board of directors;

**Business** means the **[**Company’s**][**Group's**]** **[**proposed**]** business as defined in paragraph A of the background;

**Business Day**means any day excluding Saturdays, Sundays, and statutory holidays in **[**insert city in which Company is located**]**;

**Business Plan**means the business plan and annual budget for the **[**Company**][**Group**]** at a relevant time where the initial Business Plan will be the business plan agreed pursuant to clause 2.1, or as updated from time to time in accordance with the Shareholders’ Agreement;

**Capitalisation Table** means the table attached as Schedule 3;

**CCLA** means the Contract and Commercial Law Act 2017;

 **Completion** means the **[**initial**]** issue of **[**Ordinary Shares**][**Preference Shares**]**

to **[**each/the**]** Investor in accordance with clause 4.1; ***[Drafting note: "initial" not required where investment is not tranched]***

**Completion Date** means five (5) Business Days after the satisfaction or waiver of the Conditions provided the Conditions are satisfied or waived in accordance with this agreement no later than the Condition Date,or such other day agreed between the **[**Investor(s)/Investor Representative**]** and the Company;

**Completion Documents** means the documents, copies of which are to be delivered to the Investor**[**s**]** on or before Completion, as described in Schedule 8;

**Condition Date** means **[**insert date**]**;

**Conditions** means the conditions set out in Schedule 2;

**Constitution** means **[**the new constitution of the Company to be adopted in the agreed form**][**OR**][**the constitution of the Company as at the date of this agreement**]**;

**Director** means a director of the Company;

**Due Diligence Materials** means the written material made available by the Company to the Investor referenced in Schedule 6;

**Existing Shareholders** means the shareholders of the Company being those listed in Schedule 1;

**FMCA** means Financial Market Conduct Act 2013;

**GAAP** means generally accepted accounting practice within the meaning of section 8 of the Financial Reporting Act 2013;

**Group** means the Company together with its Subsidiaries, and unless the context requires, a reference to the Group includes each member of the Group;

**Group Company** means any company within the Group;

**Intellectual Property** means all trade marks, domain names, copyright, patents, registered designs, circuit layouts, rights in computer software, databases and lists, rights in inventions, know-how, and trade secrets and all other intellectual property, in each case whether registered or unregistered (including applications for the grant of any of the foregoing) and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world, and all rights of action, powers and benefits of the same;

**Investment Amount** means the total investment amount listed in Schedule 1;

**Investment Round** means **[**insert parameters of the investment round**]**. ***[Drafting note: this definition is only used where the Investors’ waiver of pre-emptive rights is required as part of a rolling close – refer clause 10.1(d)]***

**Investor Investment Amount** means in respect of an Investor, that portion of the Investment Amount specified in Schedule 1 for that Investor ***[Drafting note: delete remainder of the definition where the investment is not tranched]***

payable in **[**three**]** tranches as follows:

### On Completion: **[**insert percentage**]** of the Investor Investment Amount for **[**insert percentage**]** of **[**Ordinary Shares**][**Preference Shares**]** specified in Schedule 1 for that Investor (rounded down to the nearest whole share);

### On the Tranche 2 Completion Date: **[**insert percentage**]** of the Investor Investment Amount for **[**insert percentage**]** of **[**Ordinary Shares**][**Preference Shares**]** specified in Schedule 1 for that Investor (rounded down to the nearest whole share); and

### On the Tranche 3 Completion Date: **[**insert percentage**]** of the Investor Investment Amount for the remainderof **[**Ordinary Shares**][**Preference Shares**]** specified in Schedule 1 for that Investor;**]**

**[Investor Representative** means **[**insert name**]**,whomay be removed or replaced as investor representative by written approval of a majority of Investors (by Investment Amount) with written notification to be provided to the Company and Investors**]**; ***[Drafting note: delete this definition if no investor representative is appointed.]***

**Issue Price** means the issue price of NZ$**[**insert amount**]** per **[**Ordinary Share**][**Preference Share**]** for the **[**Ordinary Shares**][**Preference Shares**]** being subscribed for by the Investor**[**s**]** under this agreement;

**Management Accounts** means the management accounts of the **[**Company**][**Group**]** (including statements of financial performance and position) for the period ended **[**insert date**]**;

**[Milestone[s]** means **[**the Tranche 2 Milestone or the Tranche 3 Milestone (as relevant);**]**

**[Milestone Certificate** means a certificate confirming that a Milestone has been satisfied, substantially in the form attached as Schedule 9;**]**

**Ordinary Shares**means the ordinary sharesin the Company***,*** with the rights attaching to them as set out in the Constitution;

**[Preference Shares** means the preference shares in the Company, with the rights attaching to them as set out in the Constitution;**]*[Drafting note: delete this definition if Investors are being issued Ordinary Shares. Amend this definition if the Company has different classes of preference shares in existence.]***

**Securities** means:

### **[**in relation to the Company,**]** Shares or any security which can be converted (at the option of the Company and/or the holder) to Shares; **[**and

### in relation to any other member of the Group, any shares in the capital of that member or any option, instrument or other security which can be converted (whether at the option of the Group member and/or the holder or otherwise) to such shares;**]**

**Shareholders** means the Investor**[**s**]** and the Existing Shareholders and **Shareholder** means any of them;

**Shareholders’ Agreement** means the shareholders’ agreement **[**to be entered into by **[**the Company**][**each Group Company**]**, Investor**[**s**]**, **[**eachFounder**]** and Existing Shareholders in the agreed form**][**OR**][**theshareholders’’ agreement of the Company dated **[**insert**]]**;

**Shares** means all of the shares issued by the Company, including the **[**Preference Shares and**]** Ordinary Shares;

**[Share Scheme** means the share scheme (or schemes) to be established by the Board in accordance with clause 2.1 on those terms and conditions agreed by the Board;**]**

**[Subsequent Completion** means the issue of Preference Shares to the Investor in accordance with clause 4.3;**]**

**[Subsequent Completion Date** means the Tranche 2 Completion Date or the Tranche 3 Completion Date (as relevant);**]**

**Subsidiaries:**

### has the meaning set out in section 5 of the Financial Reporting Act 2013 with the definition of “company” being read to include a company or other body corporate wherever incorporated; and

### includes any subsidiaries listed in Schedule 1,

### and **Subsidiary** means any of them;

**Taxation** includes any and all forms of tax (both domestic and foreign) imposed by any level of government or any public body and includes (without limitation) dividend withholding payments, excess retention tax, duties, levies, tariffs, rates and all charges, interest, penalties, fines, additional tax, costs and expenses incidental and relating to or arising in connection with the re-assessment of any tax or the negotiation and restoration of any dispute as to liability for any tax or any actual or threatened taxation claim;

**[Tranche 2 Completion Date** means **[**insert date**] [**or**] [**three (3) Business Days after the satisfaction or waiver of the Tranche 2 Milestone provided the Tranche 2 Milestone is satisfied or waived in accordance with this agreement no later than the Tranche 2 Longstop Date**]**,or such other day agreed between the **[**Investor**[**s**]**/Investor Representative**]** and the Company;**]**

**[Tranche 2 Longstop Date** means **[**insert date**]**;**]**

**[Tranche 2 Milestone** means:

### the Conditions having been satisfied or waived in accordance with this agreement; and

### **[**insert description of the Milestone**]** as evidenced by the receipt by the Investor of a duly completed Milestone Certificate;**]**

**[Tranche 3 Completion Date** means **[**insert date**] [**or**] [**three (3) Business Days after the satisfaction or waiver of the Tranche 3 Milestone provided the Tranche 3 Milestone is satisfied or waived in accordance with this agreement no later than the Tranche 3 Longstop Date**]**,or such other day agreed between the **[**Investor**[**s**]**/Investor Representative**]** and the Company;**]**

**[Tranche 3 Longstop Date** means **[**insert date**]**;**]**

**[Tranche 3 Milestone** means:

### the Tranche 2 Milestone having been satisfied or waived in accordance with this agreement; and

### **[**insert description of the Milestone**]** as evidenced by the receipt by the Investor of a duly completed Milestone Certificate;**]**

**Warranties** means the representations and warranties set out in Schedule 4;

**Warranty Claim** means a claim by **[**the Investor**][**an Investor or Investors**]** under clause 5.

## **Interpretation:** In this agreement unless the context indicates otherwise:

### **Defined Expressions:** expressions defined in the main body of this agreement have the defined meaning throughout this agreement, including the background;

### **Headings:** clause and other headings are for ease of reference only and will not affect this agreement's interpretation;

### **Parties:** references to any **party** include that party's executors, administrators, successors and permitted assigns;

### **Persons:** references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;

### **Plural and Singular:** references to the singular include the plural and vice versa;

### **Clauses/Schedules:** references to clauses and schedules are to clauses in, and the schedules to, this agreement. Each such schedule forms part of this agreement;

### **Statutory Provisions:** references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by‑law, regulation, order, statutory instrument, determination or subordinate legislation made under it;

### **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

### **Inclusive Expressions:** the term **includes** or **including** (or any similar expression) is deemed to be followed by the words **without limitation**;

### **Awareness and knowledge:** references to awareness or knowledge means the actual knowledge, information and beliefs of the Company’s directors and each Founder’s at the date of this agreement;

### **Documents:** references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form; and

### **Agreed form:** a document in the agreed form is a reference to a document in a form approved by the Investor**[**s**]** and the Company.

# CONDITIONS

## **Conditions:** Completion is subject to the Conditions set out in Schedule 2 being satisfied or waived in accordance with this agreement.

## **Reasonable Endeavours:** The parties will use all reasonable commercial endeavours to fulfil the Conditions by no later than the Condition Date.

## **[Access for Due Diligence:** The Company will allow the Investor**[**s**]** and any persons authorised by the Investor**[**s**]** reasonable access during normal business hours to the records of the Company and to the Company's senior employees as may be reasonably requested by the Investor**[**s**]**, and will provide information reasonably requested by the Investor**[**s**]** for the purpose of carrying out due diligence on the Company and its business.**]**

## **Satisfaction and Waiver of Conditions:** The Conditions are for the benefit of the Investor**[**s**]** and will be satisfied when it is confirmed in writing by or on behalf of **[**the Investor**][**all of the Investors**]** that they have been met to the satisfaction of the Investor**[**s**]** or waived. **[**The Investors appoint the Investor Representativeto confirm satisfaction or waiver of each Condition on behalf of the Investors in accordance with this clause. The Investor Representative shall provide written confirmation of satisfaction or waiver of any Condition to the other Investors when providing such confirmation to the Company, and may not waive a Condition on behalf of another Investor without the prior approval of that Investor.**]**

## **Non-fulfilment:** If the Conditions are not fulfilled or waived by or on behalf of the Investor**[**s**]** by the Condition Date then this agreement will be voidable by the Investor**[**s jointly**]**, or the Company, giving notice in writing to the other of them, and on giving noticethis agreement will have no further force or effect except forclauses 7, 8and 9 of this agreement (which will remain in effect).

# AGREEMENT TO ISSUE AND SUBSCRIBE FOR SHARES

## Subject to satisfaction or waiver (as applicable) of the Conditions, the Company agrees to issue to the Investor**[**s**]**, and the Investor**[**s**]** agree**[**s**]** to subscribe for, the **[**Ordinary Shares**][**Preference Shares**]** on the terms and conditions set out in this agreement.

# COMPLETION [AND SUBSEQUENT TRANCHES]

## **Completion:** Subject to the satisfaction or waiver (as applicable) of the Conditions, on or prior to the Completion Date:

### the Company will:

#### deliver to the Investor**[**s**]** copies of all the **[**relevant**]** Completion Documents in a form reasonably acceptable to the Investor**[**s**]**; and

#### **[**procure adoption of the Constitution and deliver notice in the prescribed form to the Registrar of Companies for registration of the Constitution**]**;

#### issue the Investor**[**s**]** **[**insert number**]** of **[**Ordinary Shares**][**Preference Shares**]**; and

### **[**each**][**the**]** Investor will:

#### deliver a copy of the **[**Shareholders’ Agreement**]**[OR**][**deed of accession to the Shareholders’ Agreement in the agreed form**]** signed by the Investor; and

#### pay the Company its **[**relevanttranched**]** Investor Investment Amount.

***[Drafting note: delete subclauses 4.2 and 4.3 where the investment is not tranched]***

## **[Satisfaction and Waiver of Milestones:** The Milestones are for the benefit of the Investor**[**s**]** and will be satisfied when it is confirmed by or on behalf of the Investor**[**s**]** (acting reasonably) that they have been met to the Investor**[**s’/s’**]** satisfaction or waived. **[**The Investors have appointed the Investor Representative to confirm satisfaction or waiver of each Milestone on behalf of the Investor in accordance with clause 4.2. The Investor Representative shall provide written confirmation of satisfaction or waiver of any Milestone to the other Investors when providing such confirmation to the Company, and may not waive a Milestone on behalf of another Investor without the prior approval of that Investor.**]**

## **[Subsequent Tranches:** Subject of the satisfaction or waiver (as applicable) of the relevant Milestone, on the relevant Subsequent Completion Date:

### the Company will:

#### deliver to the Investor**[**s**]** copies of all the relevant Completion Documents in a form reasonably acceptable to the Investor**[**s**]**;

#### issue the relevant number of Preference Shares; and

### **[**each**][**the**]** Investor will pay the Company the relevanttranched Investment Amount.**]**

## **Requirements for Investment:** The obligations of the Investor**[**s**]** to make any subscriptions and payments under clause 4.1 **[**and 4.3**]** will, at the absolute discretion of the Investor**[**s**]**, cease if any of the following events occur:

### **Warranty Breach:** the Investor**[**s**]** considers that they have reasonable grounds upon which to base a claim for a material breach of the Warranties (or would have if Completion were to occur) based on advice from an independent firm of solicitors or a barrister; and

***[Drafting note: delete paragraphs 4.4(b) and 4.4(c) where the investment is not tranched]***

### **[Breach of Agreement:** the Company is in material breach of its obligations under this agreement or the Shareholders’ Agreement or Constitution**[**; and**][**.**]**

### **Milestones:** if any of the Milestones which are required to have been achieved by the relevant date have not been achieved to the satisfaction of the Investor**[**s**]** (acting reasonably).**]**

## **Company Obligations after [each] Completion:** Immediately after Completion **[**and each Subsequent Completion**]**, the Company will give the requisite notices to the Registrar of Companies and update the minute book and registers of the Company.

## **Use of Funds by Company:** The Company undertakes to use the sums invested by the Investor**[**s**]** solely in accordance with the Business Plan or as otherwise approved by the Investor**[**s**]**.

## **Reorganisations:** The Issue Price and the number of **[**Ordinary**][**Preference**]** Shares to be issued on Completion and each Subsequent Completion shall be adjusted to take into account and any Reorganisations (as defined in the Constitution).

# WARRANTIES

## **Warranties:** In consideration of **[**each**][**the**]** Investor entering into this agreement the Company **[**and each Founder**]** warrants and represents that each of the Warranties is true and accurate and not intentionally misleading.

## **Time Warranties Given:** The Warranties referred to in clause 5.1 will be deemed to be given on the date of this agreement and on the Completion Date.

## **Exclusions from Warranty Claims:** No facts or circumstances will give rise to a Warranty Claim to the extent that those facts or circumstances:

### **Disclosed:** are fully and fairly disclosed with sufficient particularity (so that the Investor**[**s**]** can understand the relevance and impact of the disclosure on the Warranties) in Schedule 5 or the Due Diligence Materials; or

### **Actions with Consent:** arise because of an action taken by the Company with prior express written consent of the Investor**[**s**][**, or Investor Representative,**][** or an Investor Director**]**.

## **Warranty Caps:** The Company’s liability to **[**each**][**the**]** Investor under or in connection with any Warranty Claims will not exceed the Investment Amount paid to the Company by or on behalf of **[**that**][**the**]** Investor. **[**Each Founder’s liability to the Investor**[**s**]** under or in connection with any Warranty Claims will not exceed $**[**30,000**]]**.

## **Time limit:** Despite any other provision in this agreement, no claim may be made in respect of the Warranties, unless written notice of the claim has been given to the Company by an Investor **[**or Investor Representative**]** within **[**12**]** months of Completion.

## **General Authority Warranty:** Each party warrants and represents to each of the other parties that:

### **Authority:** it has the legal right, authority and full power to enter into this agreement and to perform its obligations under it and has taken all necessary corporate and other action to authorise its execution, delivery and performance; and

### **Binding Obligation:** this agreement constitutes valid and binding obligations of that party enforceable against that party in accordance with its terms.

# TRANSACTION FEES AND COSTS

## **Agreement to Pay:** Immediately following Completion **[**and each subsequent Completion Date**]**, the Company will pay a sum equivalent to **[**insert percentage**]** of the **[**Investment Amount**][**proportion of the Investment Amount subscribed for on the First Completion and each subsequent Completion Date**]** (plus GST) to **[**insert name of Angel Club entity**]]**. Such amount may be set off from the Investment Amount to be paid by **[**insert Angel Club entity**]** at Completion.

## **Reasonable Costs:** Subject to Completion occurring, the Company will bear all reasonable out of pocket costs incurred by the Investor**[**s**]** associated with the investment contemplated by this agreement, including all legal costs associated with the preparation of this agreement and all related documents, and all reasonable third party out of pocket costs incurred by the Investor**[**s**]** associated with due diligence up to a maximum of $**[**insert**]**. **[**Where more than one Investor has incurred such costs and the total costs exceed the cap, the Company shall reimburse the Investors on a pro rata basis in relation to the total costs incurred up to the cap.**]** The Company will bear its own legal and professional costs associated with the investment contemplated by this agreement.

## **Benefit:** The undertakings in this clause 6 confer, and are intended to confer, benefits on **[**insert name of Angel Club entities**]** for the purposes of the Part 2, sub part 1 of the CCLA despite such persons not being parties to this agreement.

# OBLIGATIONS TO SURVIVE

Termination of this agreement will not affect the parties' rights and obligations intended to survive termination, and termination will be without prejudice to, and will not be a waiver, of any claims which any party may have against any other party concerning any breach or other failure to comply with any term or condition of this agreement before the date of termination.

# NOTICES

## **Method of Delivery:** Any written notice required under this agreement must be signed by a duly authorised senior representative of the party giving that notice and will be deemed validly given only if:

### delivered by hand to the intended recipient's address as set out in Schedule 1; or

### sent by email to the intended recipient's email address as set out in Schedule 1 one hour after the email is sent unless a return email is received by the sender within that one hour period stating that the email address is wrong or that the message cannot be delivered.

## **Time of Delivery:** Any notice transmitted by email delivered after 5 pm on a Business Day, or at any time on a non-Business Day, will be deemed received at 9 am on the next Business Day (being, in each case, the time of day at the intended place of receipt of that notice).

# NO RELIANCE

Each party confirms to each other party that it:

## **Independent Advice:** has had the opportunity to instruct and receive separate legal advice on the terms and effect of this agreement; and

## **No Reliance:** has not entered into this agreement in reliance on any warranties, representations or other statements made by any of the other parties, except as expressly set out in this agreement.

# INVESTOR ACKNOWLEDGEMENTS

## **Acknowledgements:[**Each**][**The] Investor acknowledges that:

### **No Reliance on Other Parties:** it has not received or relied on any representations, warranties or other assurances from any other Investor, or any other Investor’s affiliates, employees or officers (**Relevant Parties**) in relation to any aspect of the investment in the Company or the financial or operational position or prospects of the Company and its Business. It further acknowledges that it have no rights of recourse to any other Investor or Relevant Parties in respect of such representations, warranties or other assurances and unconditionally waive any claim (whether arising in tort, contract, by operation of law or otherwise) it might have had against any other Investor or any Relevant Parties in respect of such representations, warranties or other assurances; and

### **Foreign Security Laws:** where the Investor received an offer to subscribe for **[**Ordinary Shares**][**Preference Shares**]** outside of New Zealand:

#### that neither the issue of the **[**Ordinary Shares**][**Preference Shares**]**, nor this agreement, constitutes an offer of securities to the public that would breach applicable foreign laws or require a prospectus, investment statement or product disclosure statement or any similar documents or registrations under any applicable foreign laws; and

#### the Company may terminate the Investor’s subscription and refund any monies received from the Investor if the Company is not satisfied on or before Completion (on reasonable grounds) as to the truthfulness of the statements in clause 10.1(b)(i); and

### **NZ Security Laws:** where the Investor received an offer to subscribe for **[**Ordinary Shares**][**Preference Shares**]** is in New Zealand:

#### the offer of the **[**Ordinary Shares**][**Preference Shares**]** is made to the Investor solely on the basis that an exclusion set out in Schedule 1 of the FMCA applies;

#### the Company may terminate the Investor’s subscription and refund any monies received from the Investor if the Company is not satisfied on or before Completion (on reasonable grounds) that an exclusion in Schedule 1 of the FMCA applies;

#### the Investor has understood and correctly completed the safe harbour certificate in a form substantial the same as attached as Schedule 7; and

#### to the extent the Investor is nominee on behalf of other investors, the Investor holds valid safe harbour certificates in relation to each of those beneficial investors.

### ***[Drafting note: delete para (d) below where a rolling close is not a feature of the investment round]***

### **[Rolling Close:** [Each][The] Investor waives its pre-emptive rights in relation to the Company issuing **[**Ordinary Shares**][**Preference Shares**]** in this Investment Round after it becomes a Shareholder, provided that consideration for and other financial terms of issue will not be more favourable to such person or persons than granted to the Investor under this agreement (it being acknowledged however that the Company may choose to offer any warranties, undertakings, or other conditions to new investors which the Company regards as being within the bounds of such provisions typically sought by new investors and which do not alter the financial terms of issue or the rights attaching to the **[**Ordinary Shares**][**Preference Shares**]**, without such provisions being construed as “more favourable” terms).**]**

## **Benefit:** The acknowledgment and waivers contained in clause 10.1 are promises which confer, and are intended to confer, a benefit upon the Company and each Shareholder, and accordingly the provisions of subpart 1 of part 2 of the CCLA apply to, and for the benefit of, each of them despite not being parties to this agreement.

# Electronic Signatures

## **Consent:** On and from the date of this agreement, each party hereby irrevocably consents to the use of electronic signatures for the purposes of the CCLA, including:

### the use of electronic signatures in relation to documents, resolutions, certificates, waivers, consents, correspondence or the like relating to the Company; and

### receipt of documents, resolutions, certificates, waivers, consents, correspondence or the like relating to the Company by electronic signature,

## and agrees to be bound by any documents, resolutions, certificates, waivers, consents, correspondence or the like relating to the Company executed by electronic signature.

## **Electronic signatures:** Where the Company or any party wishes to use the provision of electronic signatures, then the Company shall facilitate the use of an electronic signature system capable of meeting the requirements of section 228 of the CCLA.

## **Other means:** This clause 11 does not detract from the CCLA nor does it limit the ability of the Company or the other parties the signing of a document, resolution, certificate, waiver, consent, correspondence or the like by any other means so permitted at law.

# GENERAL

## **Confidentiality**: The confidentiality provisions of the Shareholders’ Agreement shall apply as between the Company and the Investor in respect of this agreement as if they were stated in this agreement (and adjusted as necessary).

## **Further Assurances:** The parties will each execute and deliver such other documents, pass such resolutions and do such further and other things as may be necessary to implement and carry out this agreement's intent including without limitation, exercising their respective best efforts to ensure the Directors appointed by them act in accordance with this agreement's intent.

## **Modification:** This agreement may be amended by a written instrument signed by each of the parties.

## **Waiver of breach:** No party will be treated as having waived any right under this agreement unless the waiver is in writing and signed by such party. Any such waiver by a party of a breach of any provision of this agreement will not constitute a waiver of any subsequent or continuing breach of such provision or of the breach of any other provision of this agreement by that party.

## **Governing Law and Jurisdiction:** This agreement will be governed by and construed in accordance with New Zealand law. The parties submit to the exclusive jurisdiction of the New Zealand Courts in respect of all matters relating to this agreement.

## **Severability:** If anything in this agreement is unenforceable, illegal or void, it may be severed and the rest of this agreement will remain in force.

## **Implied Relationships: [**Except to the extent the Investors authorise the Investor Representative to act on its behalf in accordance with the specific provisions of this agreement, **[**n**][**N**]**othing expressed or implied in this agreement constitutes any party as the partner, agent, employee or officer of, or as a joint venturer with, any other party. No party will make any contrary representation to any other person.

## **Execution and Counterparts:** The parties may execute a counterpart copy of this agreement by photocopying, or printing out an email version, of this agreement and executing that photocopy or email version. Where a party executes such a counterpart copy and transmits the signed execution page of that counterpart copy by email to the other parties, then, for the purposes of this agreement:

### **Proof:** the transmission will be deemed proof of signature of the original; and

### **Counterpart:** the signed counterpart copy will be deemed an original for the purposes of this agreement.

## Entire Agreement: This agreement and the documents referred to in this agreement constitute the entire understanding and agreement between the parties relating to the matters dealt with in this agreement and supersede all prior understandings, agreements, representations and correspondence between the parties.

## **Remedies:** The rights, powers and remedies provided in this agreement are cumulative and are in addition to any rights, powers or remedies provided by law.

## **Non Merger:** The Warranties, undertakings, obligations and indemnities given under this agreement will not merge or be treated as discharged on Completion **[**or any subsequent Completion Date**]** but will remain enforceable to the fullest extent, despite any rule of law to the contrary.

# TRUSTEE LIABILITY

## **Independent Trustee**: This clause 13 applies if any of the signatories for a party are trustees of a trust and who have no right to, or interest in, any of the assets of the trust except in his, her, or its capacity as trustee of that trust (each such person being an **Independent Trustee**).

## **Liability**: The liability of each Independent Trustee under or in connection with this agreement (including liability for breach of a duty, including any duty of care) will not be an unlimited personal liability and is limited to the assets for the time being of the relevant trust (including proceeds of realisation or reinvestment of any of those assets) which are in that Independent Trustee’s hands as trustee in the proper course of the administration of that trust. Those assets will not include any capital or income of the relevant trust which has been transferred or paid to or appropriated or applied to the benefit of any person in accordance with the deed establishing the trust.

## **Breach of Trust**: If due to a breach of trust as a direct consequence of dishonesty by the Independent Trustee, any party claiming under or in connection with this agreement is unable to recover from the assets for the time being of that trust all or any moneys properly payable to that party, then that party may seek to recover those moneys from the personal assets of that Independent Trustee provided that in doing so, that party may only recover the amount (if any) by which the value of the relevant trust assets has been diminished due to the breach of trust.

**SIGNATURES**

**SIGNED** by **[**Company**]** by:

|  |  |
| --- | --- |
|  Full name of director/authorised signatory |  Signature of director/authorised signatory |
|  Full name of director/authorised signatory |  Signature of director/authorised signatory |

**SIGNED** on behalf of **[**insert name of Investor**]**:

|  |  |
| --- | --- |
|  Full name of director/authorised signatory |  Signature of director/authorised signatory |
|  Full name of director/authorised signatory |  Signature of director/authorised signatory |

**SIGNED** by **[**insert name of Founder**]**:

|  |  |
| --- | --- |
|  Full name of Founder |  Signature of Founder |

1. SCHEDULE 1

COMPANY AND PARTY DETAILS; INVESTMENT AMOUNTS

**Company name:**

**Company street address for notices:**

**Company email address for notices:**

**Current directors:**

**Subsidiaries:**

**Issued Shares and Existing Shareholders:** See the Capitalisation Table in Schedule 3

**Investors and Notice Details:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **INVESTOR NAMES** | **SHARES** | **INVESTOR INVESTMENT AMOUNT**  | **STREET ADDRESSES** | **EMAIL ADDRESSES** |
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| **Total** |  | **$[insert]** (**Investment Amount**) |

1. SCHEDULE 2

CONDITIONS

The following conditions apply pursuant to clause 2.1.

***[Drafting note: insert additional conditions or delete the below conditions as appropriate]***

|  |  |
| --- | --- |
|  | **[**The Investors in their sole discretion and judgement being satisfied with all aspects of the Investors' due diligence review of the Company.**]** |
|  | **[**All necessary corporate approvals of **[**each**][**the**]** Investor to enter into this agreement and the Shareholders’ Agreement.**]** |
|  | **[**The Investors’ confirmation of the Business Plan for the Company's activities post-Completion.**]** |
|  | **[**Agreement on Milestones which must be achieved for disbursement of post-Completion Date tranches of the Investment Amount.**]** |
|  | **[**The Company entering into subscription agreement(s) (on substantially the same terms as this agreement) so that the investors in the round are bound to invest a total investment amount which exceeds **[**insert minimum round size**]**.**]** |
|  | Entry into the Shareholders’ Agreement by all parties (excluding the Investors) required to sign the Shareholders’ Agreement including all holders of securities which will convert to Shares in the Company on Completion. |
|  | The shareholders of the Company adopting of the Constitution. |
|  | **[**Capitalisation of all outstanding loans **[**other than the loan(s) of $**[**insert amount**]** from **[**insert lender**]]** and that capitalisation resulting in the pre-investment capitalisation shown in the Capitalisation Table.**]** |
|  | **[**Entry into employment or contractor agreements(s) with **[**eachFounder**][**or insert names**]** on terms acceptable to the Investors (and which include suitable non-competition and non-solicitation covenants).**]** |
|  | **[**The Investors being satisfied that all relevant officers, employees, consultants and contractors (including each Founder) assigning (in a form acceptable to the Investors) all Intellectual Property linked to the Business.**]** |
|  | The Companyproviding evidence to the Investors that the Company has the authority from its shareholders and/or board (as applicable), or that the Company otherwise has irrevocable waivers from its existing shareholders, to issue the **[**Ordinary Shares**][**Preference Shares**]** to the Investors under this agreement. |
|  | **[**The Companyproviding evidence to the Investors that any third party consents, waivers, or other authorisations required to issue the **[**Ordinary Shares**][**Preference Shares**]** to the Investors under this agreement have been obtained.**]** |
|  | **[**Vesting terms being agreed and recorded with each Founder.**]** |
|  | **[**Insert any other specific conditions precedent.**]** |

**SCHEDULE 3**

**CAPITALISATION TABLE**

**SCHEDULE 4**

**WARRANTIES**

1. iNFORMATION DISCLOSED
	1. **Schedules:** The details set out in Schedule 1 are true and accurate.
	2. **Information:** All written factual information was at the time and in the context it was given to the Investor true and accurate in all material respects (and not misleading in its context, whether by omission or otherwise), excluding all forecasts, projections and forward looking information. All documents given to the Investor are true and complete copies of the originals.
	3. **Full Disclosure:** As far as the Company is aware, all information relating to the **[**Company**][**Group**]** which is material for the evaluation of its financial condition and trading prospects has been fully and accurately disclosed to the Investor in a manner that would not mislead a reasonable investor as to the state of the **[**Company**][**each Group Company**]**.
	4. **Business Plan:** The Company does not disagree with any statement of opinion contained in the Business Plan and, as far as the Company is aware, the factual information in the Business Plan is true and accurate in all material respects and all material assumptions on which the Business Plan are based are set out in the Business Plan.
2. SHARES AND OPTIONS
	1. **Shares and Options:** The Shares and options described in Schedule 1 constitute all of the issued Securities and all rights to be issued Securities of the Company immediately prior to Completion. **[**All shares, options, and other securities convertible to shares in each Group Company other than the Company are owned by the Company.**][**The Company has no Subsidiaries.**]**
	2. **Existing Shareholders:** The Existing Shareholders have no actual or contingent entitlement to the issue of Securities (whether pursuant to any option, ratchet or similar agreement with **[**the Company**][**a Group Company**]**). **[**The Company do not owe**][**No Group Company owes**]** an Existing Shareholder any money.
	3. **No Shareholdings:** The **[**Company**][**Group**]** has no shares or other securities in any other company except those subsidiaries listed in Schedule 1 and no partnership interest in any other business and has not agreed to acquire any such shares, securities or partnership interest.
	4. **FMCA**: The **[**Company**][**Group**]** has at all times complied with the FMCA (and any other relevant securities legislation at the time of, and in the relevant jurisdictions where, securities have been issued).
3. TRANSACTIONS WITH THE EXISTING SHAREHOLDERS
	1. **Arrangements with Existing Shareholders:** There are no:
		1. loans made by **[**the Company**][**a Group Company**]** to the Existing Shareholders, or any Associate of any Existing Shareholder;
		2. save in relation to unpaid salaries or expenses, debts owing by the **[**Company**][**Group**]** to the Existing Shareholders or any Associate of any Existing Shareholder; or
		3. guarantees entered into by **[**the Company**][**a Group Company**]** in respect of any loans, debts or other obligations of the Existing Shareholders and/or of any Associate of any Existing Shareholder.
	2. **Related Contracts:** Except for services provided to the **[**Company**][**Group**]** by the Existing Shareholders and/or any Associate of them:
		1. there are no existing and continuing contracts or arrangements between **[**the Company**][**any Group Company**]** and Existing Shareholders and/or any Associate of any Existing Shareholder; and
		2. **[**the Company**][**each Group Company**]** does not depend in any material respect upon the use of any property, right or asset owned by, or facilities or services provided by any Existing Shareholder or any Associate of them.
	3. **Competition by Existing Shareholders:** As far as the Company is aware, none of the Existing Shareholders nor any Associates of the Existing Shareholders is directly or indirectly engaged or concerned or interested in any way whatsoever in any other business competitive with the Business.
4. VALID AUTHORISATIONS

All requirements of the Act and the Company's Constitution (if any) have been, or will be, complied with on a timely basis in relation to the issue of the **[**Ordinary Shares**][**Preference Shares**]** to the Investor and the execution of this agreement and the allotment and issue of the **[**Ordinary Shares**][**Preference Shares**]** to the Investor have been authorised by all necessary corporate and other acts and do not violate any trust deed, instrument, agreement or other arrangement to which the **[**Company**][**Group**]** is party.

1. ASSETS UNENCUMBERED

As at the date of execution of this agreement, any material assets of the **[**Company**][**Group**]** are free of all encumbrances, mortgages, liens, charges, or any other claim by a third party other than:

* 1. encumbrances arising by operation of law; and
	2. purchase money security interests as defined in the Personal Property Securities Act 1999.
1. INTELLECTUAL PROPERTY
	1. **Ownership:** As far as the Company is aware, the **[**Company**][**Group**]** owns or is legally entitled to use all Intellectual Property used in, or in connection with, the Business.
	2. **Rights:** All Intellectual Property used by the **[**Company**][**Group**]** in, or in connection with, the Business:

### has been used under valid, binding and enforceable agreements (**Licensed Intellectual Property**) that permit the **[**Company**][**Group**]** to use the Licensed Intellectual Property as required by the **[**Company**][**Group**]** for the Business (at present and intended to be developed);

### has been used in a way thatis not in breach of any Licensed Intellectual Property and complied with all requirements around attribution of the ownership of the Intellectual Property; and

### has been used in accordance with usual terms made available by the relevant third party owner,

or if not used by the **[**Company**][**Group**]** pursuant to an agreement with a third party, then such Intellectual Property is the full legal, beneficial and unencumbered property of the **[**Company**][**Group**]**.

###

* 1. **No Infringement:** As far as the Company is aware, the Business as now carried on and as proposed to be carried on in the Business Plan 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 used by the **[**Company**][**Group**]** are pending or threatened by any third party.
	2. **No Rights Granted:** No rights of any nature have been granted to any other person or in relation to Intellectual Property created or developed by the **[**Company**][**Group**]** other than in the ordinary course of the **[**Company**][**Group**]**’s Business.
	3. **Related Party Claims:** All Intellectual Property created by the Existing Shareholders and current and former contractors and employees of the **[**Company**][**Group**]** and which is used, or proposed to be used, by the **[**Company**][**Group**]** in connection with its current or proposed Business (as set out in the Business Plan), is vested in and beneficially owned by the **[**Company**][**Group**]**.
	4. **Confidential Information** As far as the Company is aware, there has not been any unauthorised disclosure of any of the **[**Company**][**Group**]**'s financial or trade secrets or other Confidential Information.
	5. **Patent Rights**: In respect of any patents which are owned by the **[**Company**][**Group**]**:

### they are the full legal, beneficial and unencumbered property of the **[**Company**][**Group**]**; and

### the Company is not aware of any fact by which the patents may be declared invalid, or any claim by which the patents should be amended.

1. Accounts
	1. **Preparation of Accounts:** The Accounts have been prepared in accordance with applicable New Zealand legislation and GAAP and so as to give a true and fair view of the state of affairs of the **[**Company**][**Group**]** at the end of each accounting period covered by the Accounts and of the profits and losses for that period.
	2. **Preparation of Management Accounts:** The Management Accounts contain no material inaccuracies and were prepared in a manner consistent with those management accounts prepared for the year prior to the date of this agreement.
	3. **Since Accounts Date:** Since the date of the Accounts, **[**theCompany has not**][**no Group Company has**]**:
		1. authorised or paid any dividend, or made any other distribution (as defined in the Act) or repaid any loans from Shareholders (other than with prior written consent of the Investor Representative or as specified in this agreement); or
		2. undertaken or committed to any substantial item of capital or other expenditure, other than in the ordinary course of its ordinary business or otherwise without the prior written consent Investor**[**s**]**.
	4. **Actual or contingent liabilities**: The **[**Company**][**Group**]** has no actual or contingent liabilities in excess of $**[**insert**]** not specified in the Accounts or Management Accounts provided to the Investor and such statement provides a true and fair view of the **[**Company**][**Group**]**'s position.
2. NO PROCEEDINGS
	1. **No Litigation: [**TheCompany is not**][**No Group Company is**]** a party to any legal action or 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, or involving, **[**theCompany**][**any Group Company**]**.
	2. **No Existing Cause of Action:** As far as the Company is aware, there is not any cause of action, or facts or circumstances existing that could or might be used for commencing legal proceedings, either civil or criminal, against **[**the Company**][**any Group Company**]**.
3. EMPLOYMENT
	1. **No Disputes: [**The Company is not**][**No Group Company is**]** involved in any employment, labour or personal grievance dispute or problem, or any dispute with any employee representative or organisation or body of employees and, as far as the Company is aware, no event has occurred which might give rise to any such dispute.
	2. **No Profit Sharing Arrangements:** **[**The Company is not**][**No Group Company is**]** party to a contract or arrangement under which any of its officers or employees is entitled to receive a share of income or profits or a bonus calculated on turnover, income or profits, or any component of any of them, or any similar benefit.
4. CONTRACTS
	1. **Material Contracts:** All material contracts, commitments or arrangements of any nature whatsoever to which **[**the Company is**][** Group Companies are**]** party have been disclosed to the Investor.
	2. **No Breach of Contract:** As far as the Company is aware, **[**the Company**][**each Group Company**]** nor any counterparty to any material contract, commitment or arrangement of any nature whatsoever:

### is in material default; or

### but for the requirements of notice or lapse of time or both, would be in default where that default could be reasonably expected to have a material adverse effect on the interests, Business or assets of the **[**Company**][**Group**]**.

* 1. **No Affect:** No party to any material contract, commitment or arrangement of any nature whatsoever is, due to the issue of Shares in this agreement or by virtue of the entry by the Company **[**and any other Group Company**]** into this agreement, entitled to:

### terminate the relevant material contract, commitment or arrangement;

### require adoption of terms less favourable to the **[**Company**][**Group**]**; or

### do anything which would materially adversely affect the interests, Business or assets of the **[**Company**][**Group**]**.

* 1. **Agents:** No person is authorised to act as agent for **[**theCompany**][**a Group Company**]** or to bind **[**theCompany**][**a Group Company**]** (other than the Directors of the Company acting as a Board) and there are not in force any powers of attorney given by **[**the Company**][**a Group Company**]**.
	2. **Commission:** No one is entitled to receive from **[**the Company**][**a Group Company**]** any finder’s fee, brokerage or other commission in connection with financing of the **[**Company**][**Group**]** **[**except as set out in clause 6 of this agreement)**]**.
	3. **Grants:** No public grants or funding received by **[**the Company**][**a Group Company**]** is subject to an obligation to repay on a liquidity event of **[**the Company**][**a Group Company**]**, and any conditions of such grants or funding have been complied with in all material respects.
1. TAXATION
	1. **Lodgement of Returns: [**The Company**][**each Group Company**]** has lodged all Taxation returns, reports, declarations, notices, certificates, reconciliations and other information required to be lodged by them with the appropriate body within the relevant time limits.
	2. **Accuracy:** All such returns, reports, declarations, notices, certificates, reconciliations and other information were accurate, complete and not misleading on lodgement, were made on a proper basis and are not the subject of any dispute.
	3. **No Taxation Consequences from IP Transfer:** **[**The Company is not**][**No Group Company is**]** liable for any Taxation as a consequence of the transfer of Intellectual Property to **[**the Company**][**a Group Company**]**.
2. BOOKS AND RECORDS

## The **[**Company**][**Group**]** has properly kept and maintained:

* 1. **Accounting Records:** all accounting records and books of account properly entered and containing true, full and accurate records of all matters required to be dealt with in accordance with GAAP;
	2. **Statutory Records:** all minute books, records, registers and other records required by law containing full and accurate records of all matters required to be recorded in them; and
	3. **Returns:** all returns, resolutions and other documents required to be made and all such documents required by relevant law to be delivered or filed with the Registrar of Companies have been delivered or filed within the time required by law and are true and accurate.
1. CONSENTS
	1. **Consents:** The **[**Company**][**Group**]** holds all consents required for the carrying on of the Business and as far as the Company is aware **[**it**][**each Group Company**]** is not in breach of the terms and conditions of any such consents.
	2. **Consents Not Prejudiced:** None of these consents will be prejudiced or revoked by virtue of the execution, delivery and performance of this agreement.
2. OTHER OBLIGATIONS

## **[**The Company is not**][**No Group Company is**]** affected by any commitment or obligation greater than $**[**insert amount**]** which has not been reflected in the Accounts or Management Accounts or specifically approved by the Investor**[**s**]** in writing or disclosed to the Investor before the date of this agreement.

**SCHEDULE 5**

**EXCEPTIONS TO WARRANTIES**

|  |  |
| --- | --- |
|  **Warranty** |  **Disclosure** |
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**SCHEDULE 6**

**DUE DILIGENCE MATERIALS**

**SCHEDULE 7**

**SAFE HARBOUR CERTIFICATE**

***[Drafting note: amend as appropriate]***

|  |
| --- |
| **WARNING STATEMENTS**This form relates to an offer (**Offer**) by **[**name of investee company**]** to issue Shares (**Financial Products**). It must be completed by an investor wishing to subscribe for the Financial Products under an exemption contained in Schedule 1 of the Financial Markets Conduct Act 2013 (**FMCA**).*This part of the warning statement applies to investors who make an investment in reliance of the small offers exclusion under Schedule 1 of the FMCA.****Small Offers Warning Statement****:* New Zealand law normally requires people who offer financial products to give information to investors before they invest. This requires those offering financial products to have disclosed information that is important for investors to make an informed decision. The usual rules do not apply to this offer because of an exception or exemption applying to the Investor. As a result, you may not be given all the information usually required. You will also have fewer other legal protections for this investment.Ask questions, read all documents carefully, and seek independent financial and legal advice before committing yourself.*This part of the warning statement applies to investors who make an investment in reliance of certain wholesale investor exclusions under Schedule 1 of the FMCA.* ***Wholesale Investor Warning Statement****:* The law normally requires people who offer financial products to give information to investors before they invest. This information is designed to help investors make an informed decision. If you are a wholesale investor, the usual rules do not apply to offers of financial products made to you. As a result, you may not receive a complete and balanced set of information. You will also have fewer other legal protections for those investments. Make sure you understand these consequences.Ask questions, read all documents carefully, and seek independent financial advice before committing yourself.**Offence**It is an offence to give a certificate knowing that it is false or misleading in a material particular. The offence has a penalty of a fine not exceeding $50,000. |

**PLEASE SELECT THE OPTION WHICH APPLIES TO YOU BELOW:**

|  |  |
| --- | --- |
|  | **OPTION 1 - Wholesale investor exclusion: investment activity** |
|  | In electing this option, the Investor hereby certifies that the Investor is a wholesale investor within the meaning of clause 3(2)(b) or 36(b)(ii) (as the case may be) of Schedule 1 of the FMCA due to meeting the investment activity criteria specified in clause 38 of Schedule 1 of the FMCA, on the grounds that one of the following paragraphs applies to the Investor:* the Investor owns, or at any time during the 2-year period before the relevant time has owned, a portfolio of specified financial products of a value of at least $1 million (in aggregate); or
* the Investor has, during the 2-year period before the relevant time, carried out 1 or more transactions to acquire specified financial products where the amount payable under those transactions (in aggregate) is at least $1 million and the other parties to the transactions are not associated persons of the Investor; or
* the Investor is an individual who has, within the last 10 years before the relevant time, been employed or engaged in an investment business and has, for at least 2 years during that 10-year period, participated to a material extent in the investment decisions made by the investment business,

and the Investor understands the consequences of certifying himself, herself, or itself to be a wholesale investor. |
|  | **OPTION 2 - Wholesale investor exclusion: investment business** |
|  | In electing this option, the Investor hereby certifies that the Investor is a wholesale investor within the meaning of clause 3(2)(a) or 36(b)(i) (as the case may be) of Schedule 1 of the FMCA due to being an investment business as specified in clause 37 of Schedule 1 of the FMCA, on the grounds that one or more of the principal activities of the Investor is set out below:* investing in financial products;
* acting as an underwriter;
* providing a financial adviser service (within the meaning of section 9 of the Financial Advisers Act 2008) in relation to financial products;
* providing a broking service (within the meaning of section 77B of the Financial Advisers Act 2008) in relation to financial products; or
* trading in financial products on behalf of other persons,

and the Investor understands the consequences of certifying himself, herself, or itself to be a wholesale investor. |
|  |  |
|  | **OPTION 3 - Small Offers exclusion** |
|  | In electing this option, the Investor hereby certifies that the Investor (or a person who controls the Investor) either:* **option (a)**: is likely to be interested in the offer, having regard to;
* previous contact between the person making the offer and that person; or
* some professional or other connection between the person making the offer and that person; or
* statements or actions by that person that indicate that that person is interested in offers of that kind (for example, through that person's membership of or participation in an angel network); or
* **option (b)**: has an annual gross income of at least $200,000 for each of the person’s 2 most recently completed income years before the relevant time or is controlled by that person.
 |
|  |

|  |
| --- |
| **OPTION 4 - Wholesale investor exclusion: Large investor**  |
| In electing this option, the Investor hereby certifies that the Investor is a wholesale investor within the meaning of clause 3(2)(c) or 36(b)(iii) (as the case may be) of Schedule 1 of the FMCA due to being a “large” investor as specified in clause 39 of Schedule 1 of the FMCA, on the grounds that one or more of the following paragraphs applies to the Investor: * as at the last day of each of the 2 most recently completed financial years of the person before the date of this certificate, the net assets of the Investor and the entities controlled by the Investor exceeded $5 million; or
* in each of the 2 most recently completed financial years of the person before the date of this certificate, the total consolidated turnover of the Investor and the entities controlled by the Investor exceeded $5 million,
 |

and the Investor understands the consequences of certifying himself, herself, or itself to be a wholesale investor. |
|  |
|  |
|  |
|  | **OPTION 5 - Wholesale investor exclusion: Eligible investor exclusion\*** |
|  | In electing this option and in respect of the offer of the Financial Products described in this agreement (**Transaction**) the Investor hereby certifies that the Investor understands the consequences of certifying himself, herself, or itself to be an eligible investor on the grounds that the Investor has previous experience in acquiring or disposing of financial products that allows the Investor to assess:* the merits of the Transaction or class of Transactions (including assessing the value and the risks of the financial products involved);
* the Investor's own information needs in relation to the Transaction or those Transactions; and
* the adequacy of the information provided by any person involved in the Transaction or those Transactions.

**\*** **An independent certification (by an authorised financial adviser, chartered accountant or lawyer) is required. A form of certification is provided on the next page should it be needed.** |
|  | Please tick the box if a certificate less than 2 years old is included with this Safe Harbour Certificate, together with the appropriate independent certification (by an authorised financial adviser, chartered accountant, or lawyer). |
|  |  |

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**(Signature) (Name) (Date)**

**ELIGIBLE INVESTOR CERTIFICATION AND THIRD PARTY CONFIRMATION**

**ELIGIBLE INVESTOR CERTIFICATION**

This form relates to offers (an **Offer**) of equity securities or debt securities (**Financial Products**). It must be completed by an investor wishing to subscribe for the Financial Products as an “*Eligible Investor*” under clauses 3(3)(a), 36(b)(v), and 41 of Schedule 1 of the Financial Markets Conduct Act 2013 (**FMCA**) and the certification must be confirmed by an authorised financial adviser, a chartered accountant or a lawyer.

For your application under an Offer to be accepted you must provide the completed certificate below together with the confirmation attached as appendix one (signed by an authorised financial adviser, chartered accountant or lawyer) prior to acceptance.

|  |
| --- |
| **WARNING STATEMENT**New Zealand law normally requires people who offer financial products to give information to investors before they invest. This information is designed to help investors make an informed decision.If you give this certificate, the usual rules do not apply to offers of financial products made to you. As a result, you may not receive a complete and balanced set of information. You will also have fewer other legal protections for these investments.Make sure you understand these consequences.Ask questions, read all documents carefully, and seek independent financial advice before committing yourself.**Offence**It is an offence to give a certificate knowing that it is false or misleading in a material particular. The offence has a penalty of a fine not exceeding $50,000. |

**ELIGIBLE INVESTOR CERTIFICATE**

(Clause 41 to Schedule 1 of the FMCA)

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of investor), hereby certify that:

1 as a result of having previous experience in acquiring or disposing of financial products, I am able to assess:

1.1 The merits of Offers of Financial Products (including assessing the value and the risks of the Financial Products involved); and

1.2 My own information needs in relation to an Offer; and

1.3 The adequacy of the information provided by any person involved in an Offer.

2 I understand the consequences of certifying the matters set out in paragraph 1 above.

The grounds on which I make the certification in paragraph 1 above are:

|  |
| --- |
| **[**Set out grounds here**]** |

I also confirm that I understand that:

1 the usual legal rules that require information to be given to investors for offers of financial products do not apply to an Offer made to me; and

2 I may not receive a complete and balanced set of information about this investment; and

3 I have fewer legal protections for this investment; and

4 this investment is not suitable for retail investors; and

5 I have been advised to ask questions, read all documents carefully, and seek independent financial advice.

Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 **[**Name**]**

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPENDIX 1**

**THIRD PARTY CONFIRMATION**

(Clause 43 of Schedule 1 of the Financial Markets Conduct Act 2013)

The following form must be completed by an authorised financial adviser, a chartered accountant or a lawyer.

I,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(name of authorised financial adviser, chartered accountant or lawyer), hereby confirm that:

1 I am **[**an authorised financial adviser OR a chartered accountant OR a lawyer**]**; and

2 I have reviewed **[**name of Investor**]**‘s eligible investor certification (certification), a copy of which is attached to this confirmation; and

3 I have considered the grounds set out in the certification on which **[**name of Investor**]** believes that as a result of having previous experience in acquiring or disposing of financial products, **[**name of Investor**]** is able to assess:

3.1 the merits of an Offer (including assessing the value and the risks of the financial products involved); and

3.2 **[**name of Investor**]**‘s information needs in relation to an Offer; and

3.3 the adequacy of the information provided by any person involved in an Offer.

Having considered those matters, I certify that:

1 I am satisfied that **[**name of Investor**]** has been sufficiently advised of the consequences of the certification made; and

2 I have no reason to believe that the certification is incorrect or that further information or investigation is required as to whether or not the certification is correct.

Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 **[**Name**]**

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SCHEDULE 8**

**COMPLETION DOCUMENTS**

|  |  |
| --- | --- |
|  | Directors' resolutions to enter into the Subscription Agreement **[**and Shareholders' Agreement**]** and to take all actions required under those agreements (including the issue of the **[**Ordinary Shares**][**Preference Shares**]** to the Investor**[**s**]** and appointment of new Directors, if applicable). |
|  | Shareholders' resolutions (and if applicable, waivers) in relation to the above (including adoption of the Constitution, if applicable). |
|  | Shareholders’ Agreement duly signed by all parties to that agreement. |
|  | A copy of the Company's share register, showing the issue of **[**Ordinary Shares**][**Preference Shares**]** to the Investor**[**s**]**. |
|  | ***[Drafting note: insert any documents relevant to due diligence e.g. employment contracts or deeds of assignment of IP]*** |

**SCHEDULE 9**

**FORM OF MILESTONE CERTIFICATE**

**[**date**]**

To: **[**insert Investor[s]**]**

We, the Directors of **[**insert name of Company**]** (excluding the Investor Director**[**s**]**), hereby certify that the following Milestone**[s]** has been satisfied:

**[**insert description of relevant Milestones**]**

Accordingly, the amount of $**[**insert**]** is now payable in accordance with clause **[**insert**]** of the Subscription Agreement. Please pay your relevant Investor Investment Amount, to the following account:

**[**insert details**]**

Signed for and on behalf of the Board by:

Name of director

Signature of director