

[Disclaimer: This document is intended to serve as a starting point only. It should be carefully considered and tailored to meet your specific commercial requirements and circumstances. This document, and any guidance note within this document, must not be relied on as legal advice and we recommend that you seek professional legal advice to ensure that this document is suitable for your specific situation]

Simple Agreement for Future Equity¹²³

Date

Parties

1. [insert] ACN [insert] (Company)
2. The party set out in Schedule 1 (Investor)

Background

Agreed terms

1. Definitions and interpretation

1.1 Definitions

In this deed, unless context indicates a contrary intention:

Business Day means a day (other than a Saturday, Sunday or public holiday) on which commercial banks are open for business in [Sydney];

Corporations Act means *Corporations Act 2001* (Cth);

Discount Price means the price per share of the QF Shares issued in the Qualifying Financing multiplied by the Discount Rate;

Discount Rate has the meaning given in Schedule 1;

Exit Event means:

- (a) the sale of the whole, or substantially the whole, of the assets of the Company to a third party in a bona fide single transaction or series of related transactions;
- (b) the sale of all or substantially all the issued share capital of the Company to a third party in a bona fide single transaction or series of related transactions;
- (c) an IPO; or

¹ At its simplest, a SAFE enables the Investor to make a cash investment in the Company in exchange for shares in the Company on a future event occurring (ie a capital raising) on the terms of the SAFE.

² This SAFE does not contain a maturity date (which is customary). A key difference between a SAFE and a convertible note is that a convertible note will often include a maturity date (being the date upon which the note must either convert or be redeemed).

³ An Investor may want to enter into a separate side letter with the Company to secure pre-emptive rights and information rights during the period of the SAFE, given that the Investor may not be a shareholder during that time.

- (d) any other event or series of events that together have the effect of allowing a realisation of substantially all the Shares in, or substantially all of the assets of, the Company;

Exit Event Price means the price per share equal to the fair market value of the Ordinary Shares at the time of the Exit Event, as determined by reference to the purchase price payable in connection with such Exit Event, multiplied by the Discount Rate;

Fully Diluted means the total aggregate number of Ordinary Shares in the capital of the Company which would be on issue assuming all securities issued by the Company were exercised or converted in accordance with their terms, but excluding:

- (a) this instrument;
- (a) any other Safe financing instrument; or
- (b) any convertible notes;

IPO means an initial public offering of Shares (or shares in the Company's holding company) in conjunction with a listing or quotation of Shares (or shares in the Company's holding company) on a recognised stock exchange;

Insolvency Event means the occurrence of any one or more of the following events in relation to any person:

- (a) an application is made to a court for an order that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed, and the application is not withdrawn, struck out or dismissed within 21 days of being made;
- (e) a liquidator or provisional liquidator is appointed;
- (f) an administrator or a controller is appointed to any of its assets;
- (g) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors;
- (h) it proposes a winding-up or dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (i) it is insolvent as disclosed in its accounts, or otherwise states that it is insolvent, or it is presumed to be insolvent under an applicable Law;
- (j) it becomes an insolvent under administration or action is taken which could result in that event;
- (k) it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;
- (l) a notice is issued under sections 601AA or 601AB of the Corporations Act;

- (m) a writ of execution is levied against it or a material part of its property; or
- (n) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the above clauses of this definition;

Ordinary Share means an ordinary share in the capital of the Company;

Purchase Amount has the meaning given in Schedule 1;

QF Share means Shares in the class which are issued in connection with the Qualifying Financing;

Qualifying Financing means a bona fide equity fundraising event or series of events by the Company for the principal purposes of raising capital through the issue of QF Shares;⁴

Safe means an instrument containing a future right to Shares, similar in form and content to this deed, purchased by investors for the purpose of funding the Company's business operations;

Safe Price means the price per share equal to the Valuation Cap divided by the Fully Diluted share capital of the Company;

Shareholders Agreement means the shareholders agreement between the Company and its shareholders, as amended from time to time;

Shares means a share in the capital of the Company and includes Ordinary Shares and QF Shares;

Termination Date means the earlier of:

- (a) the issue of Ordinary Shares or QF Shares to the Investor in accordance with this deed; or
- (o) the payment of amounts due to the Investor in accordance with this deed; and

Valuation Cap has the meaning set out in Schedule 1.

1.2 General interpretation

In this deed, unless context indicates a contrary intention:

- (a) **(headings)** clause headings are inserted for convenience only and do not affect interpretation of this agreement.
- (b) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns.

⁴ The Qualifying Financing can be tied to a minimum fundraising round (ie a capital raising of \$X at a pre-money valuation of \$Y).

- (c) **(including)** including and includes (and any other similar expressions) are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind.
- (d) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning.
- (e) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.
- (f) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.
- (g) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in [insert city], Australia, even if the obligation is to be performed elsewhere.
- (h) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement.
- (i) **(Australian currency)** a reference to dollars or \$ is to Australian currency.

2. Right to be issued Shares

In exchange for the payment of the Purchase Amount, the Investor has the right to be issued Shares on and subject to the terms of this deed.

3. Qualifying Financing

- (a) If there is a Qualifying Financing before the Termination Date, the Company will automatically issue to the Investor that number of QF Shares equal to the **higher of**⁵
 - (i) the Purchase Amount divided by the Discount Price; or
 - (ii) **the Purchase Amount divided by the Safe Price**
rounded to the nearest whole number.
- (b) The Company must, not later than 3 Business Days after the issue of the QF Shares in accordance with clause 3(a), send to the Investor a certificate for the number of QF Shares issued to the Investor.

⁵ This agreement calculates the number of shares that the Investor would receive on a future capital raising (called a Qualifying Financing) on the higher of a formula that uses a pre-agreed valuation cap and a formula that applies a discount rate to the price per share issued in that priced round. It is not uncommon for the calculation to be done by reference only to a discount rate.

- (c) Prior to being issued with any QF Shares under clause 3(a), the Investor must, if it is not already a party to the Shareholders Agreement, provide the Company with a duly executed deed of accession to the Shareholders Agreement, if there is a Shareholders Agreement in existence at that point in time and if the Shareholders Agreement does not impose more onerous obligations on the Investor as compared to other purchasers of equity securities in the Qualifying Financing.

4. Exit Event

- (a) If there is an Exit Event before the Termination Date, the Investor will, at its election within 2 Business Days of receipt of notice of the Exit Event from the Company, either:
 - (i) receive a cash payment equal to the Purchase Amount; or
 - (ii) automatically receive from the Company (with effect immediately prior to the Exit Event) that number of Ordinary Shares equal to the higher of:
 - (A) the Purchase Amount divided by the Exit Event Price; or
 - (B) the Purchase Amount divided by the Safe Price,
 rounded to the nearest whole number.

If the Investor makes no election within 2 Business Days of notice of the Exit Event, it will be deemed to have elected to receive Ordinary Shares in accordance with clause 4(a)(ii).

- (b) If the Investor elects to receive cash under clause 4(a)(i), an amount equal to the Purchase Amount will be due and payable by the Company to the Investor concurrently with the completion of the Exit Event.
- (c) The Company must, not later than 3 Business Days after the issue of the Ordinary in accordance with clause 4(a)(ii), send to the Investor a certificate for the number of Ordinary Shares issued to the Investor.
- (d) Prior to being issued with any Ordinary Shares under clause 4(a)(ii), the Investor must, if it is not already a party to the Shareholders Agreement, provide the Company with a duly executed deed of accession to the Shareholders Agreement, if there is a Shareholders Agreement in existence at that point in time and if the Shareholders Agreement does not impose more onerous obligations on the Investor as compared to other holders of Ordinary Shares in the Exit Event.

5. Insolvency Event

If there is an Insolvency Event before the Termination Date, the Company will pay to the Investor a cash amount equal to the Purchase Amount immediately prior to, or concurrent with, completion of the Insolvency Event. The Purchase Amount will be paid in priority to any distribution of any of the assets of the Company to shareholders of the Company (in their capacity as shareholders). If the assets of the Company available for distribution to the Investor and all holders of all other Safes (**Dissolving Investors**) are insufficient to permit the payment to the Dissolving Investors of their respective Purchase

Amounts, then the entire assets of the Company available for distribution to the Dissolving Investors will be pro rata among the Dissolving Investors in proportion to the Purchase Amount they would otherwise be entitled to receive.

6. Termination

This deed will expire and terminate on the Termination Date. Termination of this deed does not relieve a party of any prior breach of this deed.

7. Waiver of pre-emptive rights

The Company must procure that any entities or persons that become new shareholders in the Company after the date of this deed and before the Termination Date must immediately waive any rights in their favour that they may have in respect of any Shares issued by the Company in accordance with this deed (including, without limitation, any pre-emptive rights or any contractual rights) whether arising under, or in connection with, the Shareholders Agreement or otherwise.

8. Adjustments

If, prior to the issue of Shares in accordance with this deed, the Company makes any reconstruction of its share capital, including without limitation a consolidation, share split, share dividend, bonus issue or capital reduction, the number of Shares which may be issued to the Investor must be reconstructed in the same manner so that the Investor is entitled to receive the same proportion of total shares of the Company on issue or the paid up capital of the Company as would have been the case but for the reconstruction of the Company's share capital. The Company must take all necessary or desirable actions to ensure that the Investor is not disadvantaged or advantaged by the operation of this clause 8 if the Company makes any reconstruction of its share capital.

9. Voting and other rights

Until Shares are issued in accordance with this deed, the Investor (in its capacity as an investor) has no rights as a shareholder of the Company, including any voting, dividend or any related rights or the right to participate in any issue of Shares by the Company.

10. Compliance with law

Notwithstanding any other provision of this deed, the Company may not issue Shares in accordance with this deed if:

- (a) the Company would be required to issue a disclosure document under Chapter 6D of the Corporations Act in connection with the issue of such Shares; or
- (b) the Company would become subject to the takeover provisions set out in Chapter 6 of the Corporations Act following the issue of such Shares.

11. Representations

11.1 The Company's representations⁶

The Company represents to the Investor that as at the date of this deed and at any time during the continuance of this deed:

- (a) (**corporate status**): the Company is a corporation duly incorporated and validly existing under the law of the country or jurisdiction of its incorporation or registration;
- (b) (**corporate powers**): the Company has full corporate power to perform its obligations as contemplated by this deed;
- (c) (**corporate consents**): the Company has procured any corporate consent necessary for the execution and performance of this deed in compliance with its provisions;
- (d) (**document validity**) this deed has been executed in compliance with its constituent documents and constitutes an unconditional, valid and enforceable legal liability of the Company in compliance with its provisions; and
- (e) (**Insolvency Event**): no Insolvency Event has occurred and remains current in respect of the Company, and there are no circumstances which could reasonably be expected to give rise to an Insolvency Event in respect of the Company..

11.2 Investor's representations

The Investor represents to the Company that as at the date of this deed, and any time during the continuance of this deed:

- (a) (**powers**): the Investor has full power to perform its obligations as contemplated by this deed;
- (b) (**consents**): the Investor has procured any consent for the execution and performance of this deed in compliance with its provisions and local regulations and approvals;
- (c) (**document validity**): this deed has been executed and constitutes an unconditional, valid and enforceable legal liability of the Investor in accordance with its provisions;
- (d) (**Sophisticated Investor or Professional Investor**): it is a 'Sophisticated Investor' or 'Professional Investor' (as those terms are defined in the Corporations Act); and
- (e) (**advice**): it has obtained independent advice on its investment in the Company pursuant to this deed, or it has waived its right to independent advice, and has not

⁶ Note: some investors may require more substantive warranties from the Company, such as the status of the Company's intellectual property rights, financial accounts and so on.

relied on any representations or warranties made by the Company, its directors, officers, agents, employees and advisers.

12. General

12.1 Notices

- (a) All notices in connection with this deed must be:
 - (i) in legible writing and in English; and
 - (ii) addressed, marked to the attention of the person specified and sent to the receiving party at the address or email set out in this deed or otherwise as notified by that party from time to time.
- (b) A notice will be considered to have been received:
 - (i) if sent to the address, three Business Days after posting (or seven Business Days after posting if sent from one country to another); or
 - (ii) if sent by email, four hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an email in response specifying that the email did not reach the intended receiving party or the receiving party is out of the office,

but if a notice is delivered to the address, or is received by the receiving party's email, on a day that is not a Business Day, or after 5:00pm (local time) on a Business Day, the notice will be considered to have been received by the receiving party at 9.00 am on the next Business Day.

12.2 Variation

The terms of this deed may only be amended, waived or modified with the written consent of the Company and the Investor.

12.3 Governing Law

- (a) The laws of [New South Wales] govern this deed.
- (b) The Company irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of [New South Wales] or the courts of the Commonwealth of Australia.

12.4 Waiver

- (a) No waiver of a right or remedy under this deed is effective unless it is in writing. A written waiver is only effective in the specific instance and for the specific purpose for which it is granted.
- (b) Failure to exercise or a delay in exercising a right or remedy under this deed does not operate as a waiver.

12.5 Severability

Any term of this deed which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this deed is not affected.

12.6 Further Assurances

Except as expressly provided in this deed, the Company will, at its own expense, do all things reasonably necessary (including executing documents) to give full effect to this deed and the matters contemplated by it.

12.7 Assignment

- (a) Neither party may assign, transfer or in any other manner deal with its rights under this deed without the prior written agreement of the other party.
- (b) Any purported assignment, transfer or dealing in contravention of clause 12.7(a) is ineffective.

12.8 Costs and expenses

The Company and the Investor shall each bear their own costs and expenses associated with the negotiation and execution of this deed.

Schedule 1 - Safe details

	or Safe Details
or Name, ACN, trust details (if applicable), address and email	: [] (if applicable): [] ss: [] : []
ase Amount]
unt Rate	
tion Cap	

Executed as a deed

Executed by **[insert Company Name]** ACN **[ACN]**)
 in accordance with section 127(1) of the)
Corporations Act 2001 (Cth):)
)

Signature of director

Signature of director or company secretary*
 *delete whichever does not apply

Name (please print)

Name (please print)

Executed by **[insert Investor Name, if a company]** ACN **[ACN]** in accordance with
 section 127(1) of the *Corporations Act 2001*
(Cth):

Signature of director

Signature of director or company secretary*
 *delete whichever does not apply

Name (please print)

Name (please print)

Signed Sealed and Delivered by **[insert Investor Name, if individual]** in the presence
 of:

.....
 Signature

Signature of witness

Name of witness
 (please print)

