Subscription Agreement

regarding

[Company Name]

Latest update: 10 November 2020, see [changelog](https://startuptools.org/fi/changelog/) for full history.

Release notes: In this first version, we've used the Nordic standard template from StartupTools.org, but taken most of the material clauses from SeriesSeed.fi. This way, the document still follows materially the established Finnish standard, while making it easier for founders and investors to make cross-border transactions within the Nordics. Many of the terms in this document are explained in the Term Sheet, available at [StartupTools.org](https://startuptools.org/fi/).

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This document is based on a cooperation between SeriesSeed.fi and the StartupTools.org documents (by Erik Byrenius and [Mattias Larsson](mailto:mattias.larsson@fylgia.se)).

*Disclaimer: This document contains general information, which is not advice, and should not be treated as such. The information is provided “as is” without any representations or warranties, expressed or implied.*

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Subscription agreement

This subscription agreement (the “Agreement”) has been made on [date] by and between:

Parties

1. [Name], company registration number [registration No.], whose registered office is at [Address], Finland (the “Company”).
2. The persons whose names and addresses are set out in Part 1 of Schedule 1 (the “Founders”, individually referred to as a “Founder”);
3. The persons whose names and addresses are set out in Part 2 of Schedule 1 (the “Investors”, individually referred to as an “Investor”);

Introduction

1. The Company is a private limited liability company incorporated in Finland.
2. Details of the ownership of the share capital of the Company, as of the date hereof, are set out in Part 1 of Schedule 2 (the “Capitalization Table”). [The parties understand that the Company, after the investment, will issue warrants and/or stock options to current and future key employees, corresponding to up to [10]% of the shares in the Company (on a fully-diluted basis).]
3. The parties wish to enter into a subscription agreement in connection with the subscription by the Investors of new shares issued by the Company on and subject to the terms of this Agreement, in accordance with the terms and conditions set out herein.
4. The parties shall also enter into a shareholders’ agreement regarding the Company, attached hereto as Schedule 4 (the “Shareholders’ Agreement”).
5. Definitions

In this Agreement the following words and expressions shall have the meaning given below:

|  |  |
| --- | --- |
| “Agreement” | means this subscription agreement including its schedules; |
| “Bank Account” | means the Company’s bank account [account No.], IBAN [IBAN No.], with [Bank] in [Bank Address], SWIFT/BIC [SWIFT Code]; |
| “Board” | means the board of directors of the Company as constituted from time to time; |
| “Business” | means the main business of the Company consisting of [business description]; |
| “Business Day” | means a day when commercial banks are open for general banking business (other than internet banking) in Finland; |
| “Claims” | means claims for breach of any Warranty, individually referred to as a “Claim”; |
| “Completion” | means completion by the parties of their respective obligations in accordance with Clause 3 (Completion); |
| “Completion Date” | means the date of this Agreement; |
| “Encumbrance” | means any mortgage, charge, security interest, lien, pledge, assignment by way of security, equity, claim, right of pre-emption, option, covenant, restriction, reservation, lease, trust, order, decree, judgment, title defect (including retention of title claim), conflicting claim of ownership or any other encumbrance of any nature whatsoever; |
| “Equity Instruments” | means options, warrants, convertible loans, subscription rights or any other securities or instruments of the Company, outstanding from time to time, which can be converted into Shares or carry or have attached thereto a right to subscribe for Shares; |
| “Loss” | means all loss, damage, cost and expense (including reasonable attorney’s fees), except for any indirect loss unless it is reasonably foreseeable; |
| “New Articles” | means the new articles of association of the Company in the agreed form to be adopted on or prior to Completion; |
| “New Shares” | means the new Shares subscribed pursuant to Clause 2.1; |
| “Original Subscription Price” | means the subscription price paid by the Investor for its New Shares as specified in Clause 2.1; |
| “Resolutions” | means the resolutions to be passed by the general meeting of the Shareholders, set forth in Schedule 3; |
| “Shareholders” | means all the shareholders of the Company; |
| “Shares” | means shares in the capital of the Company having the rights set out in the New Articles and in the Shareholders' Agreement, including any shares issued subsequent to the Completion; and |
| “Warranties” | means the warranties given pursuant to Clause 4, individually referred to as a “Warranty”. |

1. Subscriptions

Subject to the provisions of Clause 3, the Investors subscribe at Completion for the following Shares as set out in the table below and the Founders and the Company accept such subscriptions:

|  |  |  |  |
| --- | --- | --- | --- |
| Investor | No. of New Shares | Share class | Total subscription monies (EUR) |
| [X] | [X] | [X] | [X] |
|  |  |  |  |
|  |  |  |  |
| **TOTAL** | **[X]** |  | **[X]** |

Each of the parties (other than those Investors who do not already hold Shares) agrees to vote in favour of the Resolutions and hereby irrevocably waives all or any pre-emption rights it may have pursuant to the Finnish Companies Act (Fi. Osakeyhtiölaki (2006/624)), existing articles of association of the Company or otherwise so as to enable the issue of any Shares contemplated by this Agreement to proceed free of any such pre-emption rights.

1. Completion
   1. Completion of the subscription by the Investors of the New Shares shall take place at [11:00] EET on the Completion Date at the offices of [Name and Address] when the events set out in Clause 3.2 shall take place.
   2. The following events shall occur on Completion:
      1. A (extraordinary) general meeting of the shareholders shall be held at which the Shareholders shall resolve to adopt the Resolutions including:
2. issue the New Shares to be subscribed by the Investors,
3. adopt the New Articles; and
4. pass any such other resolutions as may be required to carry out the obligations of the Company under this Agreement.
   * 1. Each Investor shall:
5. subscribe for the number of the New Shares set out against its name in column 2 of the table in Clause 2.1 above; and
6. pay the sum set out against its name in column 4 of the table in Clause 2.1 above by transfer to the Bank Account within [five] Business Days, or on a later date as specified in the Resolutions.

Undertakings after the Completion

After the Completion, the Board shall procure the immediate filing of the adopted Resolutions with the Finnish Trade Register upon receipt of the entire subscription proceeds as set out in column 4 of the table in Clause 2.1. After the registration has been completed, the Board shall procure that the New Shares are entered into the Company's shareholder register.

1. Warranties

General

The Founders and the Company, severally and not jointly, warrant to the Investors that each and every Warranty set out below is correct and not misleading at the Completion, subject only to the exceptions and limitations expressly provided for (i) in this Agreement or (ii) in a separate disclosure letter issued by the Founders and the Company to the Investors.

Organization, Good Standing and Authorization

* + 1. The Company is a company duly organized and validly existing under the laws of Finland. No decision regarding the Company’s bankruptcy, restructuring, winding up or liquidation has been passed and no such application relating to the Company is pending or, to the knowledge of the Founders, threatening.
    2. Each of the Founders and the Company has the power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated herein. This Agreement has been duly executed and delivered by each of the Founders and the Company and constitutes legal, valid and binding obligations enforceable against each of the Founders and the Company in accordance with its respective terms.
    3. The Founders or the Company are not in any way restricted by any articles of association, constitutional document, law, statute or order, or by any other agreement to which any of them is a party, from entering into this Agreement.

Capitalization

* + 1. All the shares in the Company are fully paid up. No share certificates or interim certificates for the shares or any other securities in the Company have been issued.
    2. There are no outstanding obligations, warrants, options, special rights, subscriptions, rights of first refusal, pre-emptive rights, contracts or agreements to which the Company or the Founders are bound providing for the issuance of any additional shares or Encumbrance whatsoever or any other rights to the Shares in the Company except as disclosed in the capitalization table attached hereto as Schedule 2. There are no declared but unpaid dividends by the Company.

Liabilities

The Investors have been presented with a true and fair view of the financial condition, the assets and liabilities (including provisions for all warranty claims and for bad and doubtful debts) of the Company. There are no liabilities (whether actual or contingent and whether on- or off balance sheet) of the Company, which relate to any fact, occurrence or event before the date of this Agreement other than liabilities disclosed or provided for in the audited annual accounts of the Company and liabilities arisen in the ordinary course of business conducted in accordance with sound and prudent business practice taking into consideration the overall business environment and economic conditions and in compliance with the applicable laws, and always on an arm’s length basis.

Nature of Disclosure

To the knowledge of the Founders, there is no material fact, occurrence or circumstance relating to the affairs or business of the Company, which has not been disclosed to the Investors and which might reasonably be expected to influence the decision of a prudent investor whether to enter into the Agreement, invest in the Company or the terms on which a prudent investor would enter into the Agreement or invest in the Company. The information provided by the Company and the Founders to the Investors has been true, complete and accurate in all material respects and no other matter which renders any such information misleading exists.

Intellectual Property Rights

* + 1. The intellectual property rights of the Company comprise all such rights necessary to permit the operation of the Business of the Company as now being conducted. The Company holds exclusive title and all the transferable rights (including rights to transfer, assign, modify and further develop such rights and create derivative works thereof) to the works performed by its employees and/or created by its subcontractors. The Company has no further financial obligation to such employees or subcontractors arising out of or in connection with such works or services performed for the Company.
    2. The intellectual property rights and the conduct of the Business and activities of the Company to the extent and in the manner it is, was, or is contemplated to be conducted did not, do not and will not, before or after the Completion (i) infringe or misappropriate the rights to intellectual property rights of any third party, (ii) violate the rights of any third party (including rights to privacy or publicity), or (iii) constitute unfair competition or trade practices under the laws of any jurisdiction, and the Company has not received notice from, including, but not limited to, any third party claiming or alleging any such infringement, misappropriation, or violation and there are no valid grounds for any bona fide claims by, including, but not limited to, third party alleging such infringement, misappropriation or violation. The Company has not in its possession any formal report or opinion indicating that, including, but not limited to, any third party is infringing or misappropriating the intellectual property rights of the Company.
    3. The business of the Company or products delivered or services rendered by the Company do not violate or infringe any open source licenses or free software licenses.
    4. The rights, interest and title in and to all the domain names used in the Business of the Company shall vest exclusively on the Company.
    5. All software and computer equipment used, possessed, owned, leased, or hired by the Company has the necessary and required software licenses. Such software licenses are valid, enforceable and binding on the Company and the Company is in compliance with all the terms and conditions of such license. No amount is outstanding or due and payable on any license on the date of this Agreement. No software or computer equipment used, possessed, owned, leased or hired by the Company is unauthorized or not validly licensed.

Contracts

* + 1. All transactions of the Company have been made on an arm’s length basis on sound commercial terms and bona fide for the operations of the Company.
    2. All agreements to which the Company is a party, written and/or oral, are in full force and effect with their respective terms and neither the Company nor, to the knowledge of the Founders, any of the counterparties is in material default thereunder. No event, occurrence, condition or act has occurred which, whether with or without notice, lapse of time or both, would constitute a default or event of default by the Company or, to the knowledge of the Founders, any of the counterparties with respect to any such term or provision of any such agreement. No notice of termination or of the intention to terminate has been received or given in respect of any agreements and, to the knowledge of the Founders, there are no grounds for prematurely terminating, rescinding, rendering void or adjusting any of such agreements.
    3. The Company is not, and will not be due to the investment contemplated under this Agreement, in breach or in default of any loan agreement including any financing agreement with any governmental financing agencies (such as Business Finland or Finnvera).

Compliance with Law

The Company has, in all material respects at all times, been in compliance with all laws and regulations applicable to it, in particular personal data protection laws. No notices or claims have been received by the Company or, to the knowledge of the Founders, are threatened against the Company, asserting the Company’s violation of, liability for or potential responsibility under any applicable law, regulations or any authorizations, approvals, consents, permits or licenses.

Employment Matters

The Company has at all times complied with all employment agreements (including with respect to terminations thereof) and any and all applicable laws, regulations, policies and collective bargaining agreements with respect to their employees, data protection and safety and health matters. The Company has not received notice, which notice remains current, of any claim that they have not complied with any employment, labour, data protection, safety and health regulations or related laws, regulations, policies or collective bargaining agreements.

Litigations

* + 1. There are no pending or, to the knowledge of the Founders, threatening claims, disputes, litigations or other proceedings involving the Company.
    2. There is no action, suit, investigation or proceeding before any court or by or before any governmental body or arbitration tribunal pending against the Company or, to the knowledge of the Founders, any proceedings threatened against the Company.

Taxes

* + 1. The Company has (i) filed all necessary tax returns by their required deadlines, (ii) paid or accrued all taxes shown to be due on such returns, and (iii) paid or accrued all taxes for which a notice of assessment or collection has been received and there are no pending tax audits of the Company and no tax authority has asserted any claim for taxes based on a tax audit.
    2. The Company has paid or withheld, collected and paid over to the appropriate authorities all taxes and similar payments (including but not limited to employer and pension insurance payments) required by law to be paid, withheld or collected.

1. Indemnity and limitations
   1. The Founders and the Company shall severally and not jointly, in proportion to their respective maximum liability and also otherwise subject to the limitations provided herein, indemnify and hold the Investors harmless from and against any Loss suffered or incurred by the Investors due to a breach of the Warranties or other breach of this Agreement.
   2. The Founders’ and the Company's liability under this Agreement shall be exclusively limited to liability for breach of the Warranties and the other provisions hereof, and the Founders and the Company shall have no other liability, expressed or implied, based on any covenant, undertaking or other warranty, or any other agreement, statute, including under the Finnish Sale of Goods Act (Fi. Kauppalaki (1987:355)), or legal theory or any other ground.
   3. Any Claim against the Founders and the Company shall be made in writing not later than [18] months after the Completion Date.
   4. The Founders and the Company shall not be liable in respect of any Claim unless the aggregate liability for all Claims exceeds EUR [20,000] in which case the Founders and the Company shall be liable for the entire amount and not merely the excess.
   5. In calculating liability for Claims for the purposes of Clause 5.4 above, any Claim which is less than EUR [5,000] shall be disregarded.
   6. The aggregate liability of the Company in respect of all Claims shall be limited to an amount of the aggregate Original Subscription Price. The aggregate liability of the Founders in respect of all Claims shall be limited on a pro rata basis to [30]% of the aggregate Original Subscription Price. A Founder’s liability hereunder shall in no event exceed the value of such Founder’s Shares at the time the Claim is settled, unless the Claim is based on circumstances which have been misstated or omitted by a Founder intentionally or through gross negligence.
   7. No liability of the Founders or the Company in respect of any breach of any Warranty shall arise for any Loss due to breach of the Warranties if the Loss is attributable to conditions which the Investors should have had knowledge of, provided that the information about the relevant conditions has been presented in reasonable detail (i) in this Agreement or (ii) in a separate disclosure letter issued by the Founders and the Company to the Investors.
   8. Notwithstanding any provision of the Shareholders’ Agreement or this Agreement, a Founder shall be entitled to sell such number of Shares as are required for the Founder to receive sufficient funds (after tax) to settle a Claim hereunder.
2. Confidentiality
   1. Each of the parties agrees to keep secret and confidential and not to use or disclose to any third party (except for the purposes of the Business) any confidential information relating to the Company or the Business. A party is not subject to this confidentiality undertaking if and only insofar as (i) the information is in the public domain (otherwise than through the wrongful disclosure of any party); (ii) the party or its affiliates have by reasonable proof already been in the possession of such information at the time of the receipt of the information; (iii) the information shall be disclosed to its professional advisors; and/or (iv) the disclosure of the information is required by law or by the rules of any regulatory body.
   2. The Shareholders shall be entitled to pass information to third parties (subject to the third party agreeing to suitable confidentiality restrictions) with a view to effecting or facilitating a transfer of Shares pursuant to the Shareholders’ Agreement.
3. [Costs and expenses
   1. The Company shall pay at Completion all legal, accounting and due diligence fees and disbursements of the Investors in relation to the negotiation, preparation, execution, performance and implementation of this Agreement and each document referred to in it and other agreements forming part of the transaction, however, such fees and disbursements not to exceed EUR [amount] (plus VAT, if applicable). If Completion does not occur due to reasons attributable to the Company and/or the Founders, the obligation to compensate the Investors pursuant to the above shall still apply, and payment shall be made upon demand.
   2. The Company and the Founders shall bear their own costs and disbursements incurred in the negotiations leading up to and in the preparation of this Agreement and of matters incidental to this Agreement.]
4. Entire agreement

This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement, and supersedes all previous and contemporaneous negotiations and understandings between the parties, whether written or oral.

1. Changes and additions

Changes and additions to this Agreement, including to this provision, must be in writing and duly executed by all parties.

1. Severance

If any provision of this Agreement is held to be invalid or unenforceable by any judicial or other competent authority, the remainder of that provision and all other provisions of this Agreement will remain in full force and effect and will not in any way be impaired. The parties agree to substitute the invalid or unenforceable provision by a provision which will come as close as possible to the intended economic effect of the invalid or unenforceable provision.

1. Notices

Notices shall be delivered to a party’s address in accordance with the Agreement (or in each such case such other address as the recipient may notify to the other parties for such purpose). The notices shall be deemed to be duly received:

1. if delivered by hand or sent by reputable international overnight courier (with return or delivery receipt obtained) on the date of receipt by the recipient thereof (as set out in the courier receipt) if received prior to 5 pm (EET) and such day is a Business Day, and otherwise on the next Business Day;
2. if sent by email if and when the other party notifies the receipt of the email, which shall not be unreasonably withheld; or
3. if sent by registered mail, on the third day after posting.
4. Disputes and governing law
   1. Any dispute, controversy or claim arising out of, or in connection with, this Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Finland Chamber of Commerce. The seat of arbitration shall be Helsinki, Finland. The language to be used in the arbitral proceedings shall be English, unless the parties have agreed otherwise.
   2. The arbitral tribunal shall be composed of one or three arbitrators as decided in accordance with the Arbitration Rules of the Finland Chamber of Commerce.
   3. The parties undertake and agree that all arbitral proceedings conducted with reference to this arbitration Clause will be kept strictly confidential. This notwithstanding, a party shall not be prevented from disclosing such information in order to safeguard in the best possible way its rights vis-à-vis the other parties in connection with the dispute, or if such a right exists pursuant to statute, regulation, a decision by an authority, a stock exchange rules or similar.
   4. Any party, before or during any arbitral proceedings, may apply to a court having jurisdiction for a temporary restraining order or preliminary injunction where such relief is necessary to protect its interests pending completion of the arbitral proceedings.
   5. This Agreement shall be governed by and construed in accordance with the laws of Finland, without regard to its choice of law provisions.

[SIGNATURE PAGE TO FOLLOW]

[This Agreement has been signed digitally.][This Agreement has been duly executed in [number] original copies, of which the parties have taken one copy each.]

[Place] on [date] [Place] on [date]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
[Name Founder 1] [Name Founder 2]

[Place] on [date] [Place] on [date]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
[Name Investor 1] [Name Investor 2]  
[Name Representative] [Name Representative]

[Place] on [date]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
[Name Company]   
[Name Representative]

Schedule 1

Part 1: The Founders

[Note: Only include shareholders. Exclude physical founders who own shares through a company (but include their company).]

|  |  |  |  |
| --- | --- | --- | --- |
| Name and registration No./personal No. | Address | E-mail | Fully owned by (name and personal No. of physical founder) [Note: Only used when a founder owns shares through a company.] |
|  |  |  |  |
|  |  |  |  |

Part 2: The investors

|  |  |  |
| --- | --- | --- |
| Name and registration No. | Address | E-mail |
|  |  |  |
|  |  |  |

Schedule 2

Part 1: Shareholders – pre-Completion

Capitalization Table prior to the investment.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Shareholder | *Excl. Equity Instruments* | | *Incl. Equity Instruments (as if converted to Shares)* | |
| Shares | Ownership | Equity Instruments | Ownership |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
| **TOTAL** | **[X]** | **100%** | **[X]** | **100%** |

Part 2: Shareholders – post-Completion

Capitalization Table after the investment.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Shareholder | *Excl. Equity Instruments* | | *Incl. Equity Instruments (as if converted to Shares)* | |
| Shares | Ownership | Equity Instruments | Ownership |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
| **TOTAL** | **[X]** | **100%** | **[X]** | **100%** |

Schedule 3

[THE RESOLUTIONS]

Schedule 4

[THE SHAREHOLDERS’ AGREEMENT]