***[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.]***

**SAFE Side Letter[[1]](#footnote-2)[[2]](#footnote-3)**

[Investor Name]

[Investor Address]

[insert date]

Dear Sir / Madam

**Side Letter**

In consideration of the agreement by [Investor] (**Investor**) to enter into a simple agreement for future equity (**Investor SAFE**) with [Company name] (ACN [insert]) (**Company**) on or around the date of this letter, the Company agrees to the terms set out in this letter.

Unless the context otherwise requires, capitalised terms in this letter have the meaning given in the Investor SAFE.

1. **Most Favoured Nation**
	* 1. The Company represents to the Investor that the Company has not entered into a SAFE (or similar agreement) with any person in relation to the current round of fundraising on terms more favourable (individually or when taken as a whole) than those set out in the Investor SAFE.
		2. The Company agrees that if it enters into a SAFE (or similar agreement) with any person on terms more favourable (individually or when taken as a whole) than those set out in the Investor SAFE (including, but not limited to, in respect of the Valuation Cap or Discount), it will:
			1. notify the Investor without undue delay of the terms of such SAFE (or similar agreement); and
			2. at the request of the Investor amend the Investor SAFE so as to provide the Investor with such more favourable terms.
2. **Pre-emption rights**
	1. Subject to paragraph 2.5, the Company agrees to provide the Investor with a right to purchase its Pro Rata Share (as defined below) of the QF Shares being sold in any Qualifying Financing.
	2. For the purposes of this letter:

### **Pro Rata Share** means the ratio of (i) the number of QF Shares to be issued on the conversion of the Investor SAFE to (ii) the Company Capitalisation.

* 1. The Company must notify the Investor in writing as soon as reasonably practicable (and in any event no later than 15 Business Days prior to the Company's entry into definitive documents in relation to any Qualifying Financing) of its entitlement to purchase QF Shares, specifying:
		1. the number, price and class of the QF Shares and the terms on which they are offered (which must be no less favourable to the Investor than the terms offered to other investors participating in the Qualifying Financing);
		2. the Investor's Pro Rata Share (together with details of the calculation thereof);
		3. the time and place for completion; and
		4. the date (being not less than 10 Business Days after the date of the notice) by which the Investor must notify the Company if it wishes to purchase its entitlement or some lesser number of QF Shares.
	2. If the Investor does not notify the Company by the date set out in paragraph 2.3(d) of its intention to purchase some or all of its entitlement, the Investor will be deemed to have waived its rights under paragraph 2.1.
	3. The Investor's rights under paragraph 2.1 are subject to any pre-emption rights granted by the Company to its shareholders prior to the date of this letter.[[3]](#footnote-4) If following the exercise of any such pre-existing rights by the Company's shareholders the number of unallocated QF Shares is insufficient to allow the Investor to purchase its full Pro Rata Share, the Company may reduce the number of QF Shares that the Investor is entitled to purchase accordingly. If the Company has granted pre-emption rights to other investors on the terms (or substantially the same terms) set out in this letter and, following the exercise of pre-existing rights by the Company's shareholders, the number of unallocated QF Shares is insufficient to allow such other investors and the Investor to purchase their respective Pro Rata Shares, the Company may reduce the number of QF Shares each such investor (including the Investor) is entitled to purchase, provided that all investors are treated fairly.
1. **General**
	1. This letter agreement will automatically terminate and cease to have any effect on the earlier of:
		1. the date the Investor ceases to hold the Investor SAFE (including as a result of the Investor SAFE terminating in accordance with its terms); or
		2. such other date as the Company and the Investor may agree in writing.
	2. This letter may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
	3. This letter is governed by and must be construed in accordance with the laws of [insert state]. To the extent permitted by law, such governing law governs all matters arising out of or relating to this letter or its performance or subject matter, including its execution and formation.
	4. The parties submit to the exclusive jurisdiction of the courts of [insert same state as previous clause] and the Commonwealth of Australia in respect of all matters arising out of or relating to this letter, its performance or subject matter.

Yours faithfully

|  |  |  |
| --- | --- | --- |
| **Executed** by the **Company** 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) |

We agree to the above terms.

|  |  |  |
| --- | --- | --- |
| **Executed** by the **Investor** 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) |

1. This side letter is intended to sit alongside a SAFE between the Company and an Investor. It may not be appropriate to grant the rights under this side letter (e.g. Most Favoured Nation and Pre-emption rights) to all investors and careful thought should be given to whether such rights should be granted. [↑](#footnote-ref-2)
2. Investors may also request information rights, particularly where the investor may have reporting obligations (eg as an early-stage venture capital limited partnership). [↑](#footnote-ref-3)
3. If the Company has granted pre-emption rights to its existing shareholders (or others), it is possible that the right granted to the Investor under this letter might conflict with those existing rights. For example, if existing shareholders wish to take up all of the QF Shares under their pre-emption rights - the Company would not be able to satisfy its obligations to existing shareholders and also issue QF Shares to the Investor. This clause is intended to address that conflict and provides for the Investor's pre-emptive rights to rank behind any existing pre-emptive rights held by shareholders. [↑](#footnote-ref-4)