This document constitutes a form of "Subscription agreement for future equity (the "**Form**") and is the result of the collaboration between startup founders, investors and legal and financial advisors active in the Italian venture capital market. Italian Tech Alliance, Linklaters Italia, Portolano Cavallo e Growth Capital thank for their valuable contribution JET HR, Bird & Bird and Club degli Investitori.

The Form is inspired by the "Simple Agreement for Future Equity" or "SAFE" (as elaborated by Y-Combinator https://www.ycombinator.com/) and in particular by the 'Discount Only' version.

However, the Form cannot be considered a reproduction of the SAFE as it has been drafted to reflect the peculiarities of our legal system and to be in line with the practices of the Italian venture capital market.

The Form has been drafted to offer startups in the initial stages of their growth (mainly pre-seed and seed stages) and investors wishing to invest in such startups an investment tool that is as simple and user-friendly as possible. Therefore, by its nature, it cannot be suitable for all fundraising stages.

The Form is designed to significantly reduce the time of an investment process as its use should only require a minimal negotiation of certain mainly economic terms.

The Form has been structured so that its contents are as balanced as possible taking into account the interests of the parties involved. The participants at the working table sought solutions that could meet the different needs of startups and investors.

In particular, with a view to safeguarding the interests of both startups and investors, the Form aims at:

1. facilitating investments at an initial stage of development by allowing to raise capital without referring to a predetermined fixed valuation of the startup, but postponing its valuation to a later stage (in this way, the parties do not have to negotiate the startup's valuation at the time of signing the Form);
2. allowing the startup to deal separately with each investor during the fundraising campaign, with the possibility to sign a Form with each investor with different economic terms from those agreed with other investors;
3. incentivising investments, either by granting investors who sign the Form a discount on the startup's valuation at the moment of their actual entry into the capital (on the assumption that this moment coincides with another investment round) or by pre-determining the value of the startup at the date of conversion (in the absence of a new round);
4. constituting an investment tool that is easy to understand and accept also by foreign investors who are interested in investing in Italian startups (so as to facilitate the entry of new players in the Italian venture capital market).

The drafting of the Form involved the participants at the working table in business and legal discussions and analyses and required operational choices that cannot be considered exclusive and comprehensive. We hope, therefore, that the presentation of the Form to the Italian venture capital market may stimulate a constructive discussion with all Italian venture capital players on the choices made in defining the structure and contents of the Form, with a view to helping the concrete growth of our ecosystem.

The Form, in any case, does not constitute a legal, accounting or tax advice or any other kind of professional advice. The provision of the Form, therefore, does not constitute or replace legal advice, nor does it give rise to a mandate relationship between the assisted party, lawyer, or other professional advisor. In order to keep the contents of the Form simple and streamlined, certain detailed explanations have been provided in the footnotes.

|  |  |
| --- | --- |
|  |  |
|  | Subscription agreement for future equity – Discount only |
|  |  |
|  |  |
|  |  |

**Table of Contents**

**Rule Page**

1 Definitions and interpretation 3

2 Future Equity 6

3 Issue of Relevant [Quota/Shares] 7

4 Dissolution Event 9

5 General 9

Schedule 1 Company Capitalisation as-is 12

Schedule 2 Form of Accession Letter 13

Schedule 3 Material [Quotaholders/Shareholders] 15

Schedule 4 Sample of Relevant [Quota/Shares] Formula 16

**Key terms of this subscription agreement for future equity** (the “**Agreement**”):

|  |  |
| --- | --- |
| **Investor[[1]](#footnote-1)** **\***See paragraph describing the Parties | [●] |
| **Future Equity Amount** \*Aggregate amount of euro that the Investor agrees to pay to the Company pursuant to Clause 2.1.1 | Euro [●] |
| **Discount Rate** \*See definition of Discount Rate | [●]% |
| **Longstop Date** \*See definition of Longstop Date | [●][*Note: it is suggested a term <= to 18 months*] |
| **Longstop Date Valuation** \*See definition of Longstop Date Valuation | Euro [●] |
| **Minimum ticket amount of the Investment Round** \*See definition of Investment Round | Euro [●]  |
| **Minimum amount injected by arm’s length third parties** \*See definition of Investment Round | [●]**%**[*Note: It is suggested that the amount paid by arm’s length third parties represents a substantial percentage of the total value of the Investment Round (e.g., 40%)*] |

**This Agreement** is made **between**[[2]](#footnote-2) [[3]](#footnote-3):

1. [●], domiciled in [●], fiscal code [●] and [●], domiciled in [●], fiscal code [●] (collectively, the “**Founders**”)[[4]](#footnote-4);
2. The persons/entities listed in Schedule 3 (*Material [Quotaholder(s)/Shareholder(s)]*) as Material [Quotaholder(s)/Shareholder(s)] (as defined below)[[5]](#footnote-5);
3. [●] acompany incorporated in Italy and having its registered office at [●], registration number with the companies register of [●]: [●] (the “**Company**”); and
4. [●],domiciled in [●], fiscal code [●] / [●] acompany incorporated in [Italy] and having its registered office at [●], registration number with the companies register of [●]: [●]] (the “**Investor**”),

each a “**Party**” and together, the “**Parties**”.

**BACKGROUND**:

1. the Company is existing, is a company duly incorporated and registered under applicable law as a *start-up innovativa* pursuant to Law No. 221 of 17 December 2012, as amended from time to time, or as a *PMI innovativa* pursuant to Law No. 3 of 24 January 2015, as amended from time to time[[6]](#footnote-6);
2. Schedule 1 (*Company Cap Table as-is*) sets out the list of the legal and beneficial holders of the corporate capital of the Company as at the date of this Agreement; and
3. the Investor intends to support the equity structure of the Company and, therefore, has agreed to make the Future Equity Amount (as defined below) available to the Company for the future issue of Relevant [Quota/Shares] (as defined below) and the Founders and the Material [Quotaholder(s)/Shareholders] have agreed to grant to the Investor the Relevant [Quota/Shares], on the terms more particularly described in this Agreement.

**IT IS AGREED** as follows:

1. Definitions and interpretation
	1. **Definitions**

“**Accession Letter**” means a document substantially in the form set out in Schedule 2 (*Form of Accession Letter*).[[7]](#footnote-7)

“**Asset Sale**” means a sale of all or substantially all the material Company’s assets carried out in any legal form (including by way of example, transfer of business unit, sale of single assets, etc.).

“**Business Day**” means any day which is not a Saturday, Sunday or a public holiday in Italy.

“**By-laws**” means the by-laws of the Company from time to time.

“**Change of Control**” means a transaction or series of related transactions in which any person becomes the beneficial owner, directly or indirectly, of more than 50 per cent. of the issued corporate capital of the Company or has the right to cast at least 50 per cent. of the votes capable of being cast in general meetings of the Company.

“**Discount Rate**” means [●] per cent.

“**Dissolution Event**” means a situation in which:

* 1. an order is made for the Company’s compulsory liquidation:
	2. an Insolvency Proceedings occurred; or
	3. the Company is placed into voluntary liquidation.

“**Future Equity Amount**” has the meaning given in Clause 2.1.

**“Insolvency Proceedings**" means (i) any *procedura concorsuale* or *pre-concorsuale* provided by Italian law and (ii) any similar arrangements provided by any applicable non-Italian law having similar effects to the proceedings provided by Italian law.

“**Investment Round**” means a transaction or series of related transactions pursuant to which the Company increases the capital and issues new [quota/shares] at a valuation fixed in good faith by the participants to the round, by receiving an amount (including nominal value and [quota/share] premium) of at least euro [●], of which at least [●]% is injected by arm’s length third parties[[8]](#footnote-8) (i.e., parties which are not already [quotaholders/shareholders] of the Company).

“**Issue**” means the issue of Relevant [Quota/Shares] by the Company pursuant to Clause 3.

“**Issue Date**” has the meaning given in Clause 3.1.

“**Liquidity Event**” means:

* 1. a Change of Control;
	2. an Asset Sale; or
	3. a Listing.

“**Listing**” means (i) a successful application being made for the admission to listing of all or any part of the share capital of the Company on any regulated market or multilateral trading facility in any jurisdiction or country or (ii) a business combination or any other transaction (whether by way of share sale or asset sale or joint venture), pursuant to which the whole or part of the Company or the business of the Company and/or its subsidiaries is sold to or combined with one or more other persons and, as a result of such sale or combination, the whole or part of the Company or the business of the Company and/or its subsidiaries belongs to an entity listed or admitted to trading on any regulated market or multilateral trading facility in any jurisdiction or country.

“**Longstop Date**” means the date falling [●] months after the date of this Agreement.[[9]](#footnote-9)

“**Longstop Date Valuation**” means the post-money valuation of the Company as at the Longstop Date on a fully diluted basis equal to euro [●].

“**Material [Quotaholders/Shareholders]**” means:

* 1. any [quotaholder/shareholder] of the Company (existing as at the date of this Agreement) that have statutory or contractual veto rights in respect of the entering into and/or issuance of instruments for future equity subscription and/or in respect of capital increase transactions; and/or
	2. any [quotaholders/shareholders] of the Company holding beneficially at any time (whether alone or together with other existing [quotaholders/shareholders] of the Company) a percentage of the issued corporate capital of the Company having the right to cast, or controlling the casting of, votes capable of issuing and allotting the Relevant [Quota/Shares] as contemplated by this Agreement and that shall accede to this Agreement pursuant to Clause 3.5.2.

“**Next Round [Quota/Shares]**” means, in respect of an Investment Round, the highest-ranking class of preference [quota/shares], granted with the major governance and/or economic rights, issued in (or in existence immediately following) such Investment Round.

“**Other Investors**” has the meaning given in Clause 4.1.2.

“**Relevant Event**” means the earliest to occur of (i) an Investment Round; (ii) a Liquidity Event; and (iii) the Longstop Date.

“**Relevant [Quota/Shares]**” means the portion of the corporate capital of the Company as is determined by applying the following formula (a sample of calculation is attached under Schedule 4 (*Sample of Relevant [Quota/Shares] Formula*)):

* 1. if an Issue takes place either in connection with an Investment Round pursuant to Clause 3.1 or in connection with a Liquidity Event:

$$R=\frac{F}{\left(1-D\right)\*V}\*100$$

Where:

**R** = Relevant [Quota/Shares];

**F** = Future Equity Amount;

**D** = Discount Rate; and

**V** =

the Company post-money valuation as at the Investment Round

OR

the Company equity value at the time of the Liquidity Event, determined by reference to the purchase price payable in connection with such Liquidity Event (or the offer price in the context of a Listing); and

* 1. if an Issue takes place upon the Longstop Date:

$$R=\frac{F}{L}\*100$$

Where:

**R** = Relevant [Quota/Shares];

**F** = Future Equity Amount; and

**L** = Longstop Date Valuation.

* 1. **Construction**
	2. Unless the context otherwise requires:
		+ 1. references to one gender include all genders and references to the singular include the plural and vice versa; and
			2. the term “person” refers, as applicable, to an individual, company, partnership or unincorporated association (whether or not having separate legal personality).
	3. The Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement. References to this Agreement shall include any Recitals and the Schedules to it and references to any Clause or Schedules are to the relevant Clause of, and Schedules to, this Agreement.
	4. Headings shall be ignored in interpreting this Agreement.
	5. References to any document (including this Agreement), or to a provision in a document, shall be construed as a reference to such document or provision as amended, supplemented, modified, restated or novated from time to time.
	6. Any reference to a time or date shall be construed as a reference to the time or date prevailing in Italy.
	7. Reference to the Company’s corporate capital being on a fully diluted basis, means that in determining the number of [quota/shares] there shall be included all issued [quota/shares] and [quota/shares] issuable to holders of options, warrants, convertible loan notes or other securities convertible into or rights exercisable for [quota/shares] in the capital of the Company (including the Investor and Other Investors) in accordance with the terms of the relevant instrument or agreement.
	8. **General**

This Agreement is a form available at http://growthcapital.it/ and the Parties represent and warrant that neither one has modified the form, except to fill in blanks and bracketed terms.[[10]](#footnote-10)

1. Future Equity
	1. **Future Equity Amount**
		1. Subject to the terms of this Agreement, the Investor agrees to pay to the Company funds in an aggregate amount of euro [●] (the “**Future Equity Amount**”) as an advance of the subscription price for the future issue by the Company of Relevant [Quota/Shares] in accordance with Clause 3.
		2. Each Party acknowledges and agrees that:
			1. the Future Equity Amount shall qualify as an advance payment of the subscription price for the future issue by the Company of Relevant [Quota/Shares] (*versamento in conto futuro aumento di capitale*); and
			2. no interest is payable on the Future Equity Amount in any circumstance in favor of the Investor.
		3. The Future Equity Amount will be recorded in an appropriate net asset reserve (*riserva di patrimonio netto*) of the Company (the “**Reserve**”)[[11]](#footnote-11). The Reserve cannot be consolidated with other reserves and cannot be distributed. If losses occur, the Reserve shall be used – to the maximum extent allowed by applicable law and regulations – to cover such losses subordinated to the Company's other reserves and after those other reserves, except the legal reserve, have been fully used to such purpose.
	2. **Purpose**

The Company will apply the Future Equity Amount towards its general working capital purposes and for such other business purposes as the Company’s directors may decide.

* 1. **Payment**

On the date of this Agreement, the Investor shall pay the Future Equity Amount by bank transfer to the Company’s bank account, details of which are set out below:

Bank : [ ]

IBAN : [ ]

Bank Transfer Description : Versamento in conto futuro aumento di capitale[[12]](#footnote-12).

1. Issue of Relevant [Quota/Shares]
	1. **Consequences of a Relevant Event**
		1. The Company (or the Founders, as the case may be) shall notify the Investor in writing regarding any contemplated Relevant Event as soon as possible and, upon the occurrence of a Relevant Event, the Company shall, and the Founders and any Material [Quotaholders/Shareholders] shall procure that the Company will, issue and allot to the Investor the Relevant [Quota/Shares]:
			1. in the event of an Investment Round, simultaneously with the date of unconditional completion of the closing (or of the first closing, in the event that there are more closings for the same Investment Round) of such Investment Round;
			2. in the event of a Change of Control or an Asset Sale, immediately prior to the date of unconditional completion of such Liquidity Event;
			3. in the event of a Listing, the Business Day immediately after the formal admission to the Listing; or
			4. on the Longstop Date (if no Investment Round or Liquidity Event has been unconditionally completed on or prior to the Longstop Date),

each such date being the “**Issue Date**”[[13]](#footnote-13).

* + 1. If the amount of the Reserve is lower than the overall par value of the Relevant [Quota/Shares] that should be issued to the Investor in accordance with Clause 3.1.1 (and to the Other Investors whose relevant future equity amount is registered in the same Reserve (if any)), the Founders and any Material [Quotaholders/Shareholders] shall procure that the Investor will receive the same rights that it would have received if the Reserve were not lower than the overall par value of the Relevant [Quota/Shares].
	1. **Effect of Issue**

In the event of issuance of the Relevant [Quota/Shares] in accordance with Clause 3.1 above:

* + 1. the Investor shall execute and deliver to the Company all documents to be executed by it pursuant to or in connection with the issuance of the Relevant [Quota/Shares] (including a deed of adherence to any relevant [quotaholders/shareholders]’ agreement) provided that, in the event of an Investment Round, such documents, with appropriate variations if applicable:
			1. are the same documents to be entered into with the subscribers of the Next Round [Quota/Shares]; and
			2. contain customary representations and warranties and other obligations (including liability and indemnification obligations);
		2. on or about the Issue Date, the Company, the Founders and any Material [Quotaholders/Shareholders] shall carry out any action necessary to register the Investor as a valid [quotaholder/shareholder] of the Company.
	1. **Relevant [Quota/Shares]**

The Relevant [Quota/Shares] shall:

* + 1. in the event that the Company consummates an Investment Round before the Longstop Date, have identical rights and obligations of the Next Round [Quota/Shares], without prejudice, in any case, to the provision set out under clause 3.1.2 above;
		2. in case of any other Relevant Event (including in the event of a Liquidity Event or an Issue on the Longstop Date), have the governance and the economic rights of the most senior class of [quota/shares] (i.e., the class granted with major governance and/or economic rights than other classes), provided that it is granted to the Investor at least the economic right of a 1x non-participating liquidation preference, to be paid senior to the economic rights of the holders of any other outstanding [quota/shares] in the Company.
	1. **Issue costs and expenses**
		1. The Issue shall be effected at no cost to the Investor.
		2. The Company shall bear all costs and expenses (including any legal and notarial costs and stamp taxes) payable as a result of the transactions contemplated by this Agreement, if any.
	2. **Consents and Waivers**
		1. The Founders and any Material [Quotaholders/Shareholders] hereby undertake to procure:
			1. all consents, waivers and corporate resolutions necessary (pursuant to the By-laws or otherwise) for the issuance and allotment of the Relevant [Quota/Shares] as contemplated by this Agreement; and
			2. that, after the execution of this Agreement, any third party shall as soon as practicable and, in any event, within 10 (ten) Business Days of becoming a Material [Quotaholder/Shareholder], be bound by the terms and conditions of this Agreement by signing an Accession Letter.
		2. The Founders, the Material [Quotaholder(s)/Shareholder(s)] and Company represent and warrant that the entering into and the performance of the obligations under this Agreement, and any other documents to be executed pursuant to or in connection with this Agreement, will not result in a breach of any provision of the By-laws or any agreement or instrument binding upon any of them.
1. Dissolution Event
	* 1. If a Dissolution Event occurs prior to the issuance of Relevant [Quota/Shares], the Investor will be entitled to receive a cash payment in an amount equal to the Future Equity Amount (the “**Relevant Amount**”), subject to the liquidation priority set out in Clause 4.1.2 below and pursuant to applicable law.
		2. The Investor’s right to receive the Relevant Amount is:
			1. junior to the payment of outstanding indebtedness and creditor claims of the Company;
			2. *pari passu* with the payment to any amount due to other investors that have entered into arrangements similar to this Agreement (“**Other Investors**”) (it being understood that, if the applicable proceeds are insufficient to permit payment in full of the respective Relevant Amounts to the Investor and to the Other Investors, all of the Company’s available funds will be distributed with equal priority and pro rata to the Investor and to the Other Investors in proportion to their respective Relevant Amounts); and
			3. senior to payments to holders of any outstanding [quota/shares] in the Company.
2. General
	1. **Rights as [quotaholder**/**shareholder]**

The Investor is not entitled, as a party to this Agreement, to vote or receive dividends or be deemed the holder of any corporate capital of the Company for any purpose, nor will anything contained herein be construed to confer on the Investor, as such, any of the rights of a [quotaholder/shareholder] of the Company or any right to vote for the appointment of directors of the Company or upon any matter submitted to the [quotaholders/shareholders] at any meeting of the Company, or to give or withhold consent to any corporate action or to receive notice of meetings of the Company, in each case until the Relevant [Quota/Shares]have been issued and assigned to the Investor in accordance with the terms of this Agreement.

* 1. **Information Rights**

Until the Issue Date, the Founders shall supply to the Investor semi-annual reports setting out accurate information on the financial, accounting and strategic performance of the Company.

* 1. **Transfer of the Agreement**
		1. The Investor may not transfer any of its rights and obligations under this Agreement to another party without the prior written consent of the Company provided, however, that any of the rights and obligations under this Agreement may be transferred without the Company’s consent by the Investor to any other entity who directly or indirectly, controls, is controlled by or is under common control with the Investor, including any fund that is managed or advised directly or indirectly by the same management company that manages or advises directly or indirectly the relevant Investor.
		2. The Company, the Material [Quotaholders/Shareholders] and the Founders may not transfer any of their respective rights or obligations under this Agreement.
	2. **Notices**
		1. Any communication to be made or delivered under or in connection with this Agreement (each a “**Notice**”) shall be in writing, made in English or in Italian, and shall be deemed to have been duly and validly given (i) in the case of Notice sent by letter, upon receipt of same, and (ii) in the case of Notice sent by email, at time of sending, provided that receipt shall not occur if the sender receives an automated message indicating that the message has not been delivered to the recipient
		2. The address and email address of each Party for any Notice are that identified in the relevant signature page, or any substitute address and/or email as a Party may notify to the other Parties by not less than 5 (five) Business Days' notice.
		3. A Notice that is deemed by Clause 5.4.1 to be received on a day that is not a Business Day or after 5.00 p.m. on any Business Day shall be deemed to be received at 9.00 a.m. on the next Business Day.
	3. **Whole Agreement**
		1. This Agreement contains the whole agreement between the Parties relating to the subject matter of this Agreement at the date of this Agreement and supersedes any previous written or oral agreement between the Parties in relation to the matters dealt with in this Agreement.
		2. The Investor acknowledges that it has not been induced to enter into this Agreement by any representation, warranty or undertaking not expressly incorporated into it.
	4. **Severability**

If any term or provision of this Agreement shall be held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity or enforceability of the remainder of this Agreement shall not be affected.

* 1. **Amendments**

Any variation of this Agreement is valid only if it is signed by all the Parties (where signatures by all Parties can take place also with electronic signatures in accordance with Legislative Decree No. 82/2005 (as amended from time to time) and EU Regulation No. 910/2014 (as amended from time to time)).

* 1. **Governing Law and Jurisdiction**
		1. This Agreement and the rights and obligations of the Parties arising out of or in connection with it shall be governed by and construed in accordance with Italian law.
		2. The Courts of Milan have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement).
1. Company Cap Table as-is

| [Quotaholder/Shareholder] | Percentage |
| --- | --- |
|  | % |
|  | % |
|  | % |

1. Form of Accession Letter

[*to be entered into by way of exchange of correspondence*]

|  |  |
| --- | --- |
| To: | [●] and [●] as Founders under the Agreement (as defined below)[●] as Material [Quotaholder(s)/Shareholder(s)] under the Agreement[●] as Company under the Agreement[●] as Investor under the Agreement |
| From: | [*new quotaholder*/*shareholder*]  |
| Dated: | [                   ] |

Dear Sirs

* + 1. I/We refer to the subscription agreement for future equity – discount only (the “**Agreement**”) dated [●] and entered into between [●] and [●] (the “**Founders**”), [[●] (the “**Material [Quotaholder/Shareholder]**”),] [●] (the “**Company**”) and, among others, [●] (the “**Investor**”).
		2. This letter is an Accession Letter for the purposes of the Agreement.
		3. Terms defined in the Agreement have the same meaning in this Accession Letter unless given a different meaning herein.
		4. [*New quotaholder*/*shareholder*] agrees to become a Material [Quotaholders/Shareholders] and to be bound by the terms of the Agreement in order to effect clause 3.5.2 of the Agreement as if it had been an original party to the Agreement.
		5. Material [Quotaholder’s/Shareholder’s] administrative details for the purposes of the Agreement are as follows:

Address:
 Email:

* + 1. This Accession Letter is governed by Italian law.

**MATERIAL QUOTAHOLDER/SHAREHOLDER**

By
 Name:
 Address:
 Email:

1. Material [Quotaholders/Shareholders]

[None at the date of this Agreement]

OR

[[●], domiciled in [●], fiscal code [●]/ [●] acompany incorporated in Italy and having its registered office at [●], registration number with the companies register of [●]: [●]]

1. Sample of Relevant [Quota/Shares] Formula

**SIGNATURE PAGE**

**FOUNDERS**

By
 Name:
 Address:
 Email:

By
 Name:
 Address:
 Email:

**[MATERIAL [QUOTAHOLDER(S)/SHAREHOLDER(S)]**

By
 Name:
 Address:
 Email:]

**COMPANY**

By
 Name:
 Address:
 Email:

**INVESTOR**

By
 Name:
 Address:
 Email:

1. The Contract is structured to be signed by one Investor only, in order to allow the Founders to negotiate and enter into an Agreement with different terms and conditions with each Investor involved (such as, for example, the Future Equity Amount and the Discount Rate). [↑](#footnote-ref-1)
2. It is suggested that the Agreement be signed by exchange of correspondence. Generally speaking, documents “signed by exchange of correspondence” are those acts or agreements that are not signed simultaneously by the parties, but are entered into by the exchange of a contractual proposal and its acceptance. [↑](#footnote-ref-2)
3. If signed electronically, the Agreement may be signed with a so-called simple electronic signature, since for the sole purpose of the Agreement's validity it does not need to be signed with an advanced electronic signature or a qualified (or digital) electronic signature. [↑](#footnote-ref-3)
4. It is assumed that the Founders, even jointly, represent a sufficient percentage of [quotaholders/shareholders] with voting rights in the [quotaholders/shareholders]' meeting to approve the capital increase for the purpose of issuing the Relevant [Quota/Shares] in favour of the Investor. [↑](#footnote-ref-4)
5. The Agreement shall also be signed by those [quotaholders/shareholders] (the Material [Quotaholders/Shareholders]) who have statutory or contractual veto rights in connection with the conclusion of this Agreement and the capital increase for the purpose of issuing the Relevant [Quota/Shares] in favour of the Investor. [↑](#footnote-ref-5)
6. The conclusion of this Agreement does not entail any obligation for the Company to file an application pursuant to the Ministerial Decree 28 December 2020 for "de minimis" aid at the Ministry of Economic Development / Ministry of Enterprise and Made in Italy. [↑](#footnote-ref-6)
7. The signature of an Accession Letter will be required when, following the signing of the Agreement, a third party becomes a Material [Quotaholder/Shareholder], i.e. a [quotaholder/shareholder] of the Company who holds (alone or jointly with other existing [quotaholders/shareholders] of the Company), at any time, directly or indirectly, such a percentage of the corporate capital of the Company as to have the right to cast, or to control the casting of, votes capable of issuing and allocating the Relevant [Quota/Shares] (see definition of "Material [Quotaholder/Shareholder]"). [↑](#footnote-ref-7)
8. It is suggested that the amount paid by arm’s length third parties represent a substantial percentage of the total value of the Investment Round (e.g., 40%). [↑](#footnote-ref-8)
9. It is suggested a term <= to 18 months. [↑](#footnote-ref-9)
10. Should the Parties negotiate terms other than merely filling in blanks and bracketed terms, Clause 1.3 shall be deleted. [↑](#footnote-ref-10)
11. This provision assumes that the Company drafts its financial statements in accordance with the provisions of the Italian Civil Code, interpreted and supplemented by the Italian accounting standards issued from time to time by the Italian Accounting Organisation ("OIC").

In any event, the accounting representation of the events related to the signing of this Agreement is the sole responsibility of the directors of the Company, supported, if necessary, by their advisors. [↑](#footnote-ref-11)
12. Despite the existence of contrary opinions, both case law (Supreme Court of Cassation section I - 14/04/2006, no. 8876, Court of Milan - 07/02/2017, no. 1468) as well as notarial scholarship (*Massime del Comitato Regionale dei Consigli Notarili delle Tre Venezie* H.L.2 and I.K.2) admit that even third parties who are not [quotaholders/shareholders] may make "advance payments for the subscription of future capital increases”. [↑](#footnote-ref-12)
13. Recently, the Supreme Court of Cassation (Section VI - 16/11/2021, no. 34503) clarified that advance payments for the subscription of a future capital increase do not have an objective credit function “*given that, where the capital increase takes place, they automatically flow into it, whereas, where the capital increase does not take place, they must be repaid, but not because they were made as financing, but simply because the event actually planned - the capital increase - did not take place*”. [↑](#footnote-ref-13)