

CONVERTIBLE NOTE AGREEMENT

DATE

PARTIES

- 1 **AUCKLAND UNISERVICES LIMITED**, of Level 190, 49 Symonds Street, Auckland, New Zealand, company number 373821 (**Investor**)
- 2 **[INSERT NAME OF COMPANY] LIMITED**, of *[insert registered address]* company number *[insert company number]* (**Company**)

BACKGROUND

The Investor has agreed to provide to the Company an investment amount of up to *[\$insert total Investment Amount]* in *[first, second and third]* Tranches, on the terms set out in this Agreement.

SIGNED for and on behalf of)
AUCKLAND UNISERVICES)
LIMITED by:)

Signature of authorised signatory

Print full name of authorised signatory

SIGNED for and on behalf of)
[INSERT NAME OF COMPANY])
LIMITED by:)

Signature of authorised signatory

Print full name of authorised signatory

TERMS OF THE AGREEMENT

1 INTERPRETATION

1.1 **Definitions:** In the Agreement, unless the context requires otherwise:

Definition	Meaning
Agreement	this agreement, including any schedule attached to it.
Approved Business Plan	the Company's initial business plan set out in Schedule 2, as may be updated from time-to-time in accordance with clause 3.5.
Business Day	Any day, other than a Saturday, Sunday or public holiday in Auckland.
Condition Date	In respect of a Tranche, the date so stated for that Tranche as set out in Schedule 3.
Conditions Precedent	In respect of a Tranche, the conditions so stated for that Tranche as set out in Schedule 3.
Conversion	the conversion of the Investment Amount, together with all unpaid interest accrued on it (less any tax required to be withheld by law), into Conversion Shares under clause 4.
Conversion Price	<ul style="list-style-type: none"> ➤ for a conversion under clause 4.1, a price per Preference Share equal to the lowest price per Preference Share at which Preference Shares were issued under the Qualifying Capital Raise, less a discount of 20%; ➤ for a conversion under clause 4.3 or 4.4, at a price per share based on a pre-money valuation of [\$1M] calculated on a fully diluted basis.
Conversion Shares	<ul style="list-style-type: none"> ➤ for a conversion under clause 4.1, the highest class of Preference Shares issued or if no Preference Shares are issued the highest class of ordinary shares issued under the Qualifying Capital Raise;

- for a conversion under clause 4.3, ordinary shares in the Company; and
- for a conversion under clause 4.4, ordinary shares in the Company.

FMCA

Financial Markets Conduct Act 2013.

Insolvency Event

has the meaning given in clause 8.1.

**Intellectual
Property Rights**

includes copyright and all rights anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity.

Interest Rate

[6%] per annum.

Tranche

The first, second or third Tranche, as applicable.

Investment Amount

[\$[insert amount of the total investment] (being the sum of the first, second and third Tranches) or, where less than this amount is outstanding, the principal amount outstanding from time to time.

Liquidity Event

any of the following events:

- the Company or a shareholder (or shareholders) of the Company enters into a binding agreement with a third party (or a group of associated third parties) on arms' length terms under which the third party is to acquire (other than by way of a subscription for new Shares) 50% or more of the voting Shares of the Company, and that agreement becomes unconditional;
- the Company enters into a binding agreement to dispose of assets comprising more than half the value of the Company's assets, and the shareholders of the Company approve the disposition of those assets;
- the Company resolves to amalgamate with any other company (whether or not it is the

continuing company), in a transaction that is in substance the same as those described above; or

- the Company enters into a listing agreement with the New Zealand stock exchange, or other national stock exchange (which may be outside New Zealand) of similar or better standing.

Maturity Date the date that is 24 months following the date of the Agreement.

Preference Share a Share carrying preferential rights, including at least:

- a one times non-participating liquidation preference; and
- a broad based, weighted average, anti-dilution right.

Purpose meeting the Company's working capital requirements for the purposes of implementing the Approved Business Plan.

Qualifying Capital Raise the next issue or related series of issues by the Company of Shares for capital raising purposes after the date of the Agreement, under which the Company raises not less than **#[insert]** on arms' length terms from Qualified Investors.

Qualified Investor a person who meets one or more of the following definitions:

- "investment business" as set out in clause 37, Schedule 1 of the FMCA;
- "large" as set out in clause 39(1), Schedule 1 of the FMCA;
- "government agency" as set out in clause 40, Schedule 1 of the FMCA; and/or
- meets one or more of the "investment activity criteria" set out in clause 38(1), Schedule 1 of the FMCA.

Shareholders' Agreement a shareholders' agreement (or subscription and shareholders' agreement) between the Company and all of the shareholders of the Company.

Shares shares in the Company.

1.2 Interpretation:

- a A reference to:
 - i a **clause** or a **schedule** is to a clause in or a schedule to the Agreement;
 - ii a **person** includes a body corporate, an association of persons (whether corporate or not), a trust, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal personality;
 - iii **including** and similar words do not imply any limitation;
 - iv a **statute** includes references to that statute as amended or replaced from time to time;
 - v a **party** is a reference to a party to the Agreement, and includes that party's permitted successors and permitted assigns; and
 - vi **\$** or **dollars** are to New Zealand currency.
- b The **headings** in the Agreement are for convenience only and have no legal effect.
- c The **singular** includes the plural and vice versa.

2 CONDITIONS

2.1 Conditions: The Agreement is conditional on:

- a the Company delivering to the Investor resolutions of the directors of the Company authorising:
 - i the execution of the Agreement; and
 - ii the issue of the Conversion Shares on conversion of the Investment Amount (and interest) in accordance with the Agreement; and
- b the Company being satisfied that a disclosure exclusion to the information disclosure requirements of the FMCA applies in relation to the execution of the Agreement by the Investor.

2.2 **Non-fulfilment:** If the conditions in clause 2.1 are not satisfied or waived by both parties in writing on or before the date that is 30 days following the date of the Agreement, the Investor or the Company may terminate the Agreement by notice to the other. If the Agreement is terminated in accordance with this clause 2.2, no party will have any obligation to any other party other than for a breach of the Agreement occurring before termination.

3 THE INVESTMENT AMOUNT AND TERMS OF THE AGREEMENT

3.1 **Investment Amounts:** Subject to clause 3.2, the Investor must make the first, second and third Tranches available to the Company in fixed drawings within 5 Business Days of the applicable Condition Date and in accordance with the terms set out in the Agreement.

3.2 **Conditions:** The obligations of the Investor under clause 3.1, in respect of a Tranche, are conditional on:

a the Company (acting reasonably) confirming in writing to the Investor by the relevant Condition Date that each Condition Precedent for that Tranche has been satisfied; and/or

b the Investor waiving (in writing) any outstanding Condition Precedent.

3.3 **Payment of Drawdown:** The Investor must pay each Tranche payable under clause 3.1 to the Company in cleared funds into the nominated account of the Company.

3.4 **Purpose:** The Company must use the Investment Amount only for the Purpose or for any other purpose approved by the Investor.

3.5 **Business Plan:** The Company must not revoke or vary its Approved Business Plan without the prior written consent of the Investor.

3.6 **Investor Director:** The Investor is entitled to appoint a director of the Company (**Investor Director**) and may remove or replace the Investor Director at any time on notice to the Company.

3.7 **Observer rights:** The Investor is entitled to appoint an observer (**Observer**) to attend meetings of the board of directors of the Company (**Board**). The Observer is entitled to receive all papers provided to the Board and to share those papers and any other information obtained in connection with Board meetings with the Investor, provided that the Observer is otherwise subject to obligations of confidentiality to the reasonable satisfaction of the Board.

4 CONVERSION

- 4.1 **Qualifying Capital Raise:** On the date of a Qualifying Capital Raise, the Investment Amount, together with all unpaid interest accrued on it (less any tax required to be withheld by law), is to automatically convert into Conversion Shares by applying that amount to subscribe for Conversion Shares at the Conversion Price.
- 4.2 **Conversion documentation:** The Investor must execute any agreements, resolutions and/or other documents that are reasonably required to be executed by the Investor in order to complete a Qualifying Capital Raise and/or record the Conversion contemplated by clause 4.1, provided that the Conversion Shares issued in accordance with clause 4.1 must rank pari passu with the highest class of Preference Share issued under the Qualifying Capital Raise.
- 4.3 **Liquidity Event:** If a Liquidity Event occurs, the Investor may elect to convert the Investment Amount, together with all unpaid interest accrued (less any tax required to be withheld by law), into Conversion Shares on the date of the Liquidity Event by applying that amount to subscribe for Conversion Shares at the Conversion Price. If the Investor does not elect to convert the Investment Amount to Conversion Shares, the Company must repay to the Investor the Investment Amount plus an additional amount equal to one times the Investment Amount, plus all unpaid interest accrued on the Investment Amount (less any tax required to be withheld by law) within 20 Business Days of the date of the Liquidity Event.
- 4.4 **Maturity conversion:** At any time on or after the Maturity Date, the Investor may elect, by notice to the Company, to convert the Investment Amount, together with all unpaid interest accrued (less any tax required to be withheld by law), into Conversion Shares by applying that amount to subscribe for Conversion Shares at the Conversion Price.
- 4.5 **Notice of Qualifying Capital Raise or Liquidity Event:**
- a The Company must provide the Investor with notice of:
 - i the terms of a Qualifying Capital Raise at least 10 Business Days prior to the closing of the Qualifying Capital Raise; and
 - ii a Liquidity Event at least 10 Business Days prior to the occurrence of the Liquidity Event.
 - b On receipt of a Company's notice under clause 4.5ai or 4.5aii prior to the Investor having provided its second/and or third Tranches, the Investor may, by giving notice to the Company within 5 Business Days of receipt of that notice, elect to provide its second and/or third

Tranches, to the Company on or before the proposed date for the closing of the Qualifying Capital Raise or Liquidity Event (as applicable), and the aggregate Investment Amount shall convert in accordance with this clause 4 as if made immediately prior to the Qualifying Capital Raise or Liquidity Event (as applicable).

- 4.6 **Governing documents following a Liquidity Event or the Maturity Date:** Any Conversion Shares issued in accordance with clause 4.3 or 4.4 are to be issued subject to the terms of any constitution of the Company and any Shareholders' Agreement in force as at the date of issue of the Conversion Shares. Immediately following the issue of any Conversion Shares, the Investor must execute either the in force Shareholders' Agreement or a deed of accession to the in force Shareholders' Agreement, agreeing to be bound by its terms.
- 4.7 **Fractional entitlements:** The number of Conversion Shares to be issued to the Investor must be rounded up to the nearest whole number if there is a fractional entitlement.
- 4.8 **Adjustment:** If there is any bonus issue, consolidation or subdivision of any Shares or any reduction or cancellation of share capital (or any similar reorganisation of the capital of the Company), the Conversion Price must be adjusted by the Company, if necessary, to ensure that the economic effect of the Conversion remains the same.

5 INTEREST

Interest on the Investment Amounts is to accrue and compound annually at the Interest Rate. The Company must pay the accrued interest on the Investment Amounts (less any tax required to be withheld by law) on the date of repayment of the Investment Amounts.

6 REPAYMENT AND PREPAYMENT

- 6.1 **Repayment of Investment Amount:** The Company must repay the Investment Amount to the Investor, together with all interest accrued on it (less any tax required to be withheld by law), within 5 Business Days after receipt of a written demand from the Investor, provided that the Investor must not make a demand under this clause before the Maturity Date.
- 6.2 **No prepayment of Investment Amount:** The Company may not prepay all or any part of the Investment Amounts prior to the date that is 5 Business Days following the Maturity Date. The Company may prepay all or any part of the interest accrued on the Investment Amount (less any tax required to be withheld by law) at any time.

7 COMPANY'S UNDERTAKINGS

- 7.1 **Undertakings:** While the Investment Amount is outstanding, the Company:
- a must notify the Investor promptly in writing upon the occurrence of an Insolvency Event and provide a statement of steps being taken to remedy the Insolvency Event; and
 - b must not, unless approved in writing by the Investor:
 - i make any material change to the business carried on by it at the date of the Agreement; or
 - ii pay any dividend or make any other distributions in respect of its Shares.
- 7.2 **Co-investment right:** If the Company issues any new Shares or other securities (including any security that may be converted into Shares or that gives the holder of the security the right to have Shares issued to it (including options and warrants); collectively, **Securities**), in one transaction or in a series of related transactions, to any person other than the Investor (**New Issue**) the Company must offer the Investor the right to subscribe for an equal number of additional new Securities of the same class, at the same price and on the same terms as the New Issue.

8 INSOLVENCY EVENTS

- 8.1 **Default:** An **Insolvency Event** occurs if:
- a an order is made, resolution passed or legal proceedings issued (other than a proceeding which is vexatious or frivolous), or corporate action is taken, notice given or other step taken for the winding up or liquidation of the Company;
 - b a liquidator, receiver, manager, statutory manager, inspector, trustee or other similar person is appointed in respect of the Company or some or all of its assets;
 - c any distress, attachment, or execution is levied, issued, enforced or obtained on or against all or a material part of the Company's assets;
 - d any security over all of the assets of the Company is enforced;
 - e the Company suspends, stops, or threatens to suspend or stop payment of a material part of its debts;

- f the Company commences negotiations or takes any proceedings for the general deferral, readjustment or rescheduling of its indebtedness, or a material part of its indebtedness;
- g the Company makes, or proposes to make, any assignment, arrangement or composition for the benefit of its creditors generally;
- h the Company ceases or threatens to cease to carry on all or substantially all of its business or operations; or
- i any event occurs that is in substance the same as any of those in clauses 8.1a to 8.1h above.

8.2 **Acceleration:** The Investor may, by notice to the Company at any time after the occurrence of an Insolvency Event, declare the Investment Amount, together with all interest accrued on it (less any tax required to be withheld by law), due and payable. Following receipt of that notice from the Investor, the Company must immediately repay the Investment Amount together with all interest accrued on it (less any tax required to be withheld by law).

9 WARRANTIES

9.1 **Mutual warranties:** Each party represents and warrants to the other that the following is true as at the date of the Agreement:

- a if it is a company, it is duly incorporated and validly existing under the laws of New Zealand;
- b it has the power, and, if it is a company, has taken all necessary action (including the passing of all resolutions and obtaining any necessary consents) to enter into, execute and deliver, and exercise its rights, and perform its obligations, under the Agreement; and
- c it has validly executed and delivered the Agreement and its obligations under the Agreement are legal, valid and binding and the Agreement is enforceable against it in accordance with its terms.

9.2 **Company warranties:** The Company warrants to the Investor that the following is true as at the date of the Agreement:

- a as far as the Company is aware, the Company owns or is legally entitled to use all Intellectual Property Rights used in the conduct of its business;
- b as far as the Company is aware, the business of the Company 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 Rights used by the Company are pending or threatened by any third party;

- c the Company is not a party to any legal 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 the Company;
- d as far as the Company is aware, there is not any existing cause of action, or facts or circumstances that could be used for commencing legal proceedings, either civil or criminal, against the Company that could prevent or materially alter or delay any of the transactions contemplated by the Agreement; and
- e the Company has no actual or contingent liabilities greater than [\$XX,XXX].

9.3 **Exclusions from warranty claims:** No facts or circumstances will give rise to a claim by the Investor against the Company under clause 9.2 to the extent that those facts or circumstances:

- a were available on a public register, file or record maintained by the New Zealand Companies Office, the Intellectual Property Office of New Zealand or the Personal Property Securities Register as at the date of the Agreement; or
- b arose because of an action taken by the Company with the Investor's prior written consent.

9.4 **Timing:** The Company will have no obligation to the Investor in respect of any claim under clause 9.2 unless notice of that claim is given to the Company within 24 months of the date of the Agreement.

9.5 **Aggregate maximum liability:** The Company's aggregate liability to the Investor in respect of a breach of any of the warranties set out in clause 9.2 will be limited to the Investment Amount.

10 REPORTING

10.1 **Regular reporting:** The Company must provide the following high level reports to the Investor within 10 Business Days following the end of each quarter:

- a a summary financial report setting out the Company's revenue and cash expenditure for the most recently completed quarter and its remaining cash runway; and

- b a management report covering the key discoveries, successes and learnings of the Company.

10.2 **Financial statements:** The Company must ensure that it provides to the Investor, within 60 Business Days from the end of the Company's financial year, financial statements for that year prepared in accordance with accounting principles, standards and practices generally accepted in New Zealand.

11 GENERAL

11.1 **Confidentiality:** Each party must keep the Agreement and information it receives about the other party and its business in connection with the Agreement (**Confidential Information**) confidential, and must not use or disclose that Confidential Information without the prior written consent of the other party except to the extent that:

- a disclosure is required by law;
- b the relevant information is already in the public domain;
- c it is reasonably required to obtain professional advice; or
- d it is reasonably necessary in connection with any proposed:
 - i. financing of that party;
 - ii. sale of that party's interest in the Company; or
 - iii. sale of all or part of the business of, or the shares in, that party, and the party receiving the Confidential Information has entered into confidentiality undertakings substantially the same as those set out in this clause.

11.2 **Publicity:** Neither party may use the names, trade marks or logos of the other party, its affiliates or their personnel in any publicity or marketing without the other party's written consent.

11.3 **Notices:** All notices and communications given under the Agreement must be in writing and must be delivered personally, sent by post or sent by email to the address or email address set out in Schedule 1 (or at such other address as notified from time to time by the party changing its address). Where any notice of termination is sent by email, a copy of that notice must promptly be delivered personally or sent by post to the address set out in Schedule 1 (or such other address as notified from time to time by the party changing its address).

11.4 **Time of service:** Any notice given under the Agreement will be deemed to be validly given:

- a in the case of delivery, when received;
- b in the case of posting, on the second day following the date of posting; or
- c if emailed, at the time the email is sent, provided the sender does not receive notice of non-delivery of that email,

and provided that any notice received after 5 pm on a Business Day or on any day that is not a Business Day will be deemed to have been received on the next Business Day.

11.5 **Entire agreement:** The Agreement contains all of the terms, representations and warranties made between the parties relating to the matters dealt with in the Agreement and supersedes and cancels all prior discussions and agreements covering the subject matter of the Agreement. The parties have not relied on any representation, warranty or agreement relating to the matters dealt with in the Agreement that is not expressly set out in the Agreement, and no such representation, warranty or agreement has any effect from the date of the Agreement. Without limiting the previous sentence, the parties agree that sections 9, 12A and 13 of the Fair Trading Act 1986 do not apply.

11.6 **Further assurances:** The parties must each sign all further documents, pass all resolutions and do all further things as may be necessary or desirable to give effect to the Agreement.

11.7 **Amendment:** The Agreement may only be amended by agreement of the parties in writing.

11.8 **Waiver:** No waiver by a party of any right or remedy in connection with this Agreement is:

- a effective unless in writing and signed by that party; or
- b a waiver by that party of any other right or remedy available to it.

11.9 **No assignment:** No party may assign any of its rights or obligations under the Agreement without the prior written consent of the other party, provided that the Investor may assign or novate some or all of its obligations under the Agreement to any successor arising as a result of any restructuring of the Investor, without the consent of the Company.

- 11.10 **Costs:** Except as otherwise provided in the Agreement, the parties will meet their own costs relating to the negotiation, preparation and implementation of the Agreement.
- 11.11 **Partial invalidity:** If any provision of the Agreement becomes invalid or unenforceable to any extent, the remainder of the Agreement and its application will not be affected and will remain enforceable to the greatest extent permitted by law.
- 11.12 **Signature:** The Agreement may be executed in two or more counterparts, each of which is deemed an original and all of which constitute the same Agreement. A party may enter into the Agreement by signing and sending (including by email) a counterpart copy to each other party.
- 11.13 **Governing law and jurisdiction:** The Agreement will be governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

SCHEDULE 1

Details for notices

Company	
Contact Name:	[Insert]
Address:	[Insert]
Email address:	[Insert]

Investor	
Company Name:	Auckland UniServices Limited
Contact Name:	[Insert]
Address:	Level 10, 49 Symonds Street, Auckland 1010
Email address:	[Insert]

SCHEDULE 2

Business Plan

[Insert]

SCHEDULE 3

Conditions Precedent for each Tranche

Tranche	Conditions Precedent	Condition Date	Amount
First			
Second			
Third			