**Convertible Note Agreement**

This Convertible Note Agreement is made at Bangalore, on this \_\_\_\_\_ of\_\_\_\_, 2021 (“**Execution Date**”), by and between:

1. I, Mr. **\_\_\_\_\_\_\_\_\_**, having PAN as \_\_\_\_\_\_\_\_\_\_\_\_, currently residing at **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (hereinafter referred to as “**Investor**”, which expression shall, unless repugnant to the context to meaning thereof, mean and include his successors and permitted assigns);
2. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ PRIVATE LIMITED**, a company incorporated under the Companies Act, 2013 and having its registered office **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (hereinafter referred to as “**Company**”, which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors and permitted assigns);
3. **Mr \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_-**, son of \_\_\_\_\_\_\_\_\_\_\_, resident of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (hereinafter referred to as “**Founder 1**”, which expression shall, unless repugnant to the context or meaning thereof, mean and include his successors and permitted assigns); and
4. **Mr**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_- son of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, resident of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as “**Founder 2**”, which expression shall, unless repugnant to the context or meaning thereof, mean and include his successors and permitted assigns).

Each of Founder 1 and Founder 2 shall hereinafter be referred to individually as a “**Founder**” and collectively as “**Founders**”

Each of the Investor, the Founders and the Company shall hereinafter be referred to individually as a “**Party**” and collectively as “**Parties**”.

# WHEREAS:

* 1. The Company is a start-up company recognized by the by the Ministry of Commerce and Industry, Government of India, having recognition number as **\_\_\_\_\_\_\_\_\_\_\_-.**
  2. The Company is engaged, inter alia, in the business of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“**Business**”).
  3. The Investor is desirous of investing in the Company on the terms and conditions stipulated in this Agreement.
  4. Accordingly, the Parties are desirous of executing this Agreement to set out the agreement and relationship between the Parties and their rights and obligations in relation to the investment by the Investor in the Company and other matters in connection therewith.

**NOW THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and adequacy of which are hereby expressly acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

# DEFINITIONS

In this Agreement, the defined and capitalized terms, to the extent not inconsistent with the context thereof, shall have the following meanings assigned to them herein below.

* 1. “**Act**” shall mean the Companies Act, 2013 and shall include all amendments, modifications and re-enactments of the foregoing.
  2. “**Agreement**” shall mean this convertible note agreement entered into between the Parties hereto and includes any written modifications to the same including all annexures / schedules attached hereto.
  3. “**Applicable Laws**” shall mean and include all applicable statutes, enactments, acts of legislature or parliament, laws, ordinances, rules, by-laws, regulations, notifications, guidelines, policies, directions, directives, orders and administrative interpretations of any governmental authority, tribunal, board, court or stock exchanges on which the Equity Shares or other securities of the Company may be listed.
  4. “**Business Day**” shall mean any day, other than a Sunday or a public holiday, on which scheduled commercial banks in Bangalore, Karnataka, India are open for normal banking business.
  5. “**Confidential Information**” means any and all information disclosed by a Party (“Disclosing Party”) to the other Party (“Receiving Party”), whether orally or in writing, whether designated as confidential or not, that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information shall include (i) the terms and conditions of this Agreement (ii) all information relating to the transaction exchanged between the Parties in any manner whatsoever and (iii) business and marketing plans, technology and technical information, product plans and designs, and business processes relating to the business of the Disclosing Party.
  6. **“Closing”** shall mean issuance of the Note to the Investor in accordance with Clause 3.2 of the Agreement.
  7. “**Closing Date**” shall mean the date on which Closing as contemplated in Clause 3.2 shall take place, which shall be a date not later than \_\_\_\_\_\_\_\_\_\_\_\_\_.
  8. **“Designated Bank Account”** shall mean a bank account maintained by the Company into which the Investor shall remit the Note Amount in accordance with the terms of this Agreement, the details of which are as follows:

|  |  |
| --- | --- |
| Account Number: |  |
| Bank: |  |
| Branch Code: |  |
| Address: |  |
| Beneficiary Name: |  |
| IFSC Code: |  |

* 1. “**Equity Shares**” shall mean the fully paid-up equity shares of face value of INR 10/- (Indian Rupees Ten only) each of the Company issued from time to time, together with all rights, obligations, title and interest in and to such shares.
  2. **“Liquidity Event”** means, in relation to the Company, one or more of the following events:
     1. A merger, acquisition, change of Control, consolidation or a transaction or series of transactions resulting in a corporate restructuring; (b) Any voluntary or involuntary dissolution, liquidation, or winding-up of the affairs of the Company; (c) sale, lease, license or other transfer of all or substantially all the Company’s assets or similar transaction.
  3. “**Note**” shall mean the instrument evidencing receipt of amounts paid by the Investor to the Company initially as debt, which is repayable at the option of the Investor, or which is convertible into Equity Shares in the manner detailed in **Schedule I** hereto and having the terms and conditions as set forth in Schedule I hereto.
  4. “**Note Amount**” shall mean an amount of Rs. **\_\_\_\_\_\_\_\_\_\_\_\_\_** (Rupees **\_\_\_\_\_\_\_\_\_\_** Only) to be paid by the Investor in a single tranche on or before the Closing Date to the Company as a consideration for the Note.
  5. “**Security**” or “**Securities**” shall mean all securities of the Company, whether in the form of Equity Shares, preference shares or any other instrument which may be converted into Equity Shares at a later date.
  6. “**Transfer**” shall mean transfer, sell, assign, pledge, hypothecate, create a security interest in or lien on, place in trust (voting or otherwise), transfer by operation of law or in any other way subject to any encumbrance or dispose of, whether or not voluntarily.
  7. “**Qualified Investment Transaction**” means a transaction by the Company wherein the Company raises from a single investor or multiple Investor a cumulative investment of minimum INR 75,000,000/- (Indian Rupees Seven Crore Fifty Lakhs Only) in the Company, either in one tranche or in multiple tranches (but at same valuation), which does not involve the conversion of the Investor Notes.

# ISSUANCE AND SUBSCRIPTION OF THE NOTE

* 1. The Investor agrees to subscribe to, and the Company agrees to issue to the Investor, the Note against the payment of the Note Amount by the Investor. On or before the Closing Date, the Note Amount shall be remitted by the Investor to the Designated Bank Account. The remittance of the Note Amount by the Investor in the manner set out in this Agreement shall constitute full payment of the Note Amount by the Investor in lieu of issuance of the Note to the Investor by the Company.
  2. The Parties agree that, notwithstanding anything contained in this Agreement, in the event that the Closing does not occur in the manner and time envisaged in this Agreement within 10 days after remittance of the entire Note Amount by the Investor, then, the Company shall forthwith refund the entire Note Amount to the Investor.
  3. The Parties agree and understand that the Note Amount received under the provisions of this Agreement is not a deposit, whether for the purpose of Sections 73 or 76 of the Act or under the Companies (Acceptance of Deposits) Rules, 2014. The Parties further agree that none of the Parties shall claim that the Note Amount relating to the Note issued by the Company is in the nature of a deposit and shall not resort to any provision under the Act or Companies (Acceptance of Deposits) Rules, 2014.

# CLOSING

* 1. The Closing shall take place at the registered office of the Company on the Closing Date or at such other place as the Parties may mutually agree.
  2. On or before the Closing Date, the Investor shall pay to the Company the Note Amount, by way of remittance to the Designated Bank Account. The Company shall, upon the receipt of such amount, issue the Note to the Investor.
  3. The Company shall be responsible for the payment of any stamp duties related to the issuance of the Note, as per the Applicable Law.
  4. The Company shall undertake all required compliances under the Act in connection with the issuance of the Note to the Investor.

# RIGHTS OF THE INVESTOR

* 1. The Note shall have such rights as set forth in **Schedule I** (Terms and Conditions of the Note). The conversion of the Note shall be in accordance with the terms set out in **Schedule I** (Terms and Conditions of the Note).
  2. For so long as the Note is not converted in Equity Share, the Investor’s consent shall be required for any action or decision relating to the following matters:

1. any voluntary winding-up, liquidation, bankruptcy or dissolution of the Company;
2. sale of all or substantially all the Company’s assets or closure of an existing business;
3. grant of any loan by the Company to the Founders; and

# Liquidation Preference

* + 1. In the event of a Liquidity Event occurring post to conversion of the Note, the proceeds from the Liquidity Event (less any amounts required by Applicable Law to be paid or set aside for the payment of creditors of the Company, if applicable) shall be paid to the Investor, in preference to the Founders, such that Investor shall be entitled to such amount which is higher of: (i) total amount invested by the Investor in the Company, or (ii) *pro rata* entitlement of the Investor (the “**Preference Amount**”). In such a case, the other investors of the Company shall have preference over the Investor.
    2. The Parties agree that for the purpose of liquidation preference right granted to the Investor, all the holders of Note in the Company shall be treated at par and no Note holder shall have any priority over the other.

# Information Rights

* + 1. The Company shall supply to the Investor the final annual audited financial statements for the relevant financial year end, together with notes thereto in accordance with applicable accounting standards and any reports by auditors or directors in respect of such standalone statements for the Company in accordance with applicable law.
    2. The Investor agrees to provide all the information and documents as may be required by the Company for the purpose of various compliances under the applicable law.

# TRANSFER RESTRICTIONS

* 1. The Investor shall not be entitled to Transfer or assign the Note held by him to any Person without prior written consent of the Company.
  2. In the event the Founders desire to transfer all the Securities held by him in the Company to a third party, then the Founders shall have the right to require Investor to transfer the Note or the Equity Shares issued pursuant to conversion thereof, held by the Investor to the third party on the same terms and conditions agreed between Founders and the third party (“**Drag Right**”). For the avoidance of any doubt, the Parties agree that upon exercise of the Drag Right, the Founders shall have a right to negotiate transfer of hundred percent (100%) of the Securities of the Company. The Founders may exercise the Drag Right by issuing a written notice (“**Drag Notice**”) to Investor.
  3. Any attempt to Transfer any Securities which is not in compliance with this Agreement shall be null and void and neither the Company nor any transfer agent shall give any effect in the Company’s register and transfer books to such attempted Transfer.

# REPRESENTATIONS AND WARRANTIES

* 1. Each Party represents to the other Party that:
     1. it has power to execute, deliver and perform its obligations under this Agreement and all necessary corporate, shareholder and other action has been taken to authorize such execution, delivery and performance;
     2. this Agreement constitutes its legally, valid and binding obligation, enforceable in accordance with its terms;
     3. the execution, delivery and performance of its obligations under this Agreement does not and will not:
        1. contravene any Applicable Laws, or order of any Government Authority or any judgment or decree of any court having jurisdiction over it; or
        2. conflict with or result in any breach or default under any agreement instrument, regulation, license or authorization binding upon it or any of its assets.
  2. The Investor represents to the other Parties that the entire Note Amount invested by the Investor in the Company has been earned by the Investor from legitimate sources and duly accounted for and the investment by the Investor into the Company does not involve any money laundering activity.
  3. The Founders undertake and warrant that all opportunities for new projects and businesses relating to the Business that are developed or sourced by, or offered to, the Founders shall be referred exclusively to the Company.

# CONFIDENTIALITY

* 1. Each Party shall keep all Confidential Information including information relating to the other Parties and information relating this Agreement confidential. Except as provided in this clause 7, each Party agrees to hold in confidence and not use, disclose or reveal to any Confidential Information disclosed to it by the other Party. None of the Party shall issue any public release or public announcement or otherwise make any disclosure concerning this Agreement, and/or the transaction, without the prior approval of the other Parties.
  2. Nothing contained herein shall affect the right of a Party to disclose any Confidential Information to its investors/ prospective investors, employees, directors or professional advisers including to their affiliates or investors strictly on a need to know basis, subject to obligations of confidentiality substantially similar to those as applicable to the disclosing Party hereunder, and/or to any of the regulatory authorities or other person as required under Applicable Law.

# MISCELLANEOUS

* 1. Notices

Each notice, demand or other communication given or made under this Agreement shall be in writing and delivered or sent to the relevant Party at the address mentioned in this Agreement (or such other address as the addressee has by five (5) Business Days' prior written notice specified). Any notice, demand or other communication so addressed to the relevant Party shall be deemed to have been delivered (a) if delivered in person or by messenger, when proof of delivery is obtained by the delivering Party, (b) if sent by post within the same country, on the fifth (5th) Business Day following posting, and (c) if given or made by email, upon dispatch / delivery.

* 1. Amendment

This Agreement shall not be amended, modified or supplemented except by a written instrument executed by each of the Party hereto.

Each Party acknowledges and undertakes to the other that if on account of any legal requirement including change in Law, this Agreement becomes unenforceable or causes any adverse tax implications on the Company, all Parties shall take best efforts to agree to such modifications to the Agreement so as to as to make this Agreement operative and enforceable in accordance with the intention of the Parties and spirit of this Agreement or minimize any adverse tax impact on the Company.

* 1. Counterparts

This Agreement may be executed in one (1) or more counterparts including counterparts transmitted by facsimile, each of which shall be deemed to be an original, but all of which signed and taken together, shall constitute one document.

* 1. No Assignment

Subject to the provisions of this Agreement, this Agreement shall not be assigned by a Party without the prior written approval of all the Parties.

# DISPUTE RESOLUTION

* 1. This Agreement shall be governed in accordance with the laws of India.
  2. If a dispute in relation to this Agreement is not resolved through discussions within thirty

(30) Business Days, then such dispute shall be referred at the request in writing of any Party to the dispute to binding arbitration by sole arbitrator in accordance with the Arbitration and Conciliation Act, 1996. The sole arbitrator shall be mutually decided by the disputing Parties. All arbitration proceedings shall be conducted in the English language and the place and seat of arbitration shall be Bangalore.

For \_\_\_\_\_\_\_\_\_\_\_\_ Investor

\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Co-Founder Bangalore

Date: Date:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Co-Founder

Date:

# SCHEDULE I

**TERMS AND CONDITIONS OF THE NOTE**

1. **DEFINITIONS**

For the purpose of this Schedule I, the following terms shall have the meaning assigned to them herein.

* 1. “**Conversion**” means issuance of Equity Shares in accordance with the provisions contained herein and the terms “**Convert**” and “**Converted**” shall be construed accordingly.
  2. “**Conversion Date**” shall mean any of the following dates on which the Note shall convert into Equity Shares, upon exercise of the right to convert by the Company: (i) any date on or after the completion of a Qualified Investment Transaction by the Company; or (ii) the Long Stop Conversion Date.
  3. “**Conversion Shares**” means the common Equity Shares to be issued by the Company upon conversion of Note.
  4. “**Long Stop Conversion Date**” means the date falling immediately prior to expiry of 5 years from the date of issuance of the Note.
  5. “**Repayment Date**” means any date falling prior to the Long Stop Conversion Date, on which the Company, at its discretion, repays the Note Amount to the Investor.
  6. “**Qualified Investment Transaction**” means a transaction by the Company wherein the Company raises from a single investor or multiple investors a cumulative investment of minimum INR 75,000,000/- (Indian Rupees Seventy five million Only) in the Company, either in one tranche or in multiple tranches (but at same valuation), at an identified valuation determined mutually between the Company and the investor(s).

# INTEREST

* 1. The Note shall be entitled to simple interest at the rate of 0.001% per annum, on the Note Amount. The interest shall be payable to the Investor only in case the Note Amount is repaid by the Company to the Investor. In case the Note is Converted, no interest shall be payable to the Investor.
  2. The interest shall be payable on the Repayment Date long with the Note Amount.
  3. All payments made by the Company to the Investor shall be subject to withholding and deductions required under the Applicable Laws.

# REPAYMENT AND CONVERSION

* 1. The Investor shall have the right, to demand the entire Note Amount, along with the interest outstanding thereon, anytime on or before the Long Stop Date.
  2. Unless repaid, the Note shall be converted into Equity Shares of the Company on the Conversion Date, upon exercise of the right to convert by the Company.
  3. Unless repaid by the Company, subject to compliance with Applicable Laws, the Note shall automatically be converted into Equity Shares upon the earlier of: (i) Long Stop Conversion Date; or (ii) in connection with an initial public offer, prior to the filing of a prospectus (or equivalent document, by whatever name called) by the Company with the competent authority or such later date as may be permitted under Applicable Laws.
  4. The terms and conditions of conversion of Note shall be based on the pre-money valuation of the Company as on the Conversion Date. The Conversion of Note shall be done in accordance with the following criteria:
     1. In case the Conversion Date occurs on or anytime after the date of completion of a Qualified Investment Transaction by the Company, then the Notes held by the Investor shall convert into Equity Shares at a discount to the per share price (including premium) paid by the new investor(s) in the Qualified Investment Transaction, calculated at the rate of 12% (twelve percent) (“**Discount**”) if converted within 12 months from closing date, 24% discount if converted within 12 month to 24 months and 36% discount if anytime after 24 months. In case the Qualified Investment Transaction involves issuance of convertible instruments to the investor, with a floor on valuation, then the said floor valuation shall be considered as valuation of the Company as on that date or Rs 150,000,000 (Indian Rupees One Hundred and Fifty Million) whichever is higher for the purposes conversion of the Note held by the Investor.
     2. In case the Company raises any further funds after the Closing Date, other than as a Qualified Investment Transaction, and the investor in such fund raise round is granted conversion rights more favorable than those granted to the Investor pursuant to this Agreement, then the terms of Conversion of Notes shall be aligned with the terms of conversion of the Share issued to such investor.
     3. In no case shall the valuation of the Company (upon application of Discount) for Conversion of Convertible notes be considered to be higher than Rs. 450,000,000 (Indian Rupees Four Hundred and Fifty Million Only). In case the valuation of the Company for the Conversion based upon the above-mentioned formula is more than Rs. 450,000,000 (Indian Rupees Four hundred and Fifty million Only), then the Conversion shall happen at the lower of: (i) Rs. 450,000,000 (Indian Rupees Four hundred and fifty million Only), or (ii) the pre-money valuation of the Company, less the Discount.
     4. In case the Conversion happens (i) before the date of completion of a Qualified Investment Transaction by the Company, or (ii) on the Long Stop Conversion Date and no Qualified Investment Transaction has taken place by such date, then the Note shall convert into Equity Shares at post money valuation of INR 150,000,000 million (Indian Rupees One Hundred and Fifty Million only) or fair value as on the date of such Conversion, whichever is higher

# MANNER OF CONVERSION

* 1. At the time of conversion of the Note, the Investor shall surrender the certificate representing the Note at the address of the Company either at the time the Conversion to the Company or, if the conversion is subject to receipt of authorizations, then after receipt by the Company of all requisite authorizations (the date of such surrender, the “Surrender Date”), provided that if the Note certificate is received by the Company on a day which is not a Business Day or after the close of business on a Business Day, the Surrender Date shall be deemed to occur on the Business Day following the date such certificate(s) are received. Failure to surrender such certificate shall not affect the conversion of the Investor’s Note, provided that if the Investor fails to surrender its certificate, the Investor shall instead deliver to the Company a duly executed declaration cum indemnity of lost certificate.
  2. New Certificates: As soon as practicable after the Surrender Date, and in any event within 30 days thereafter, the Company shall, at its expense cause to be issued in the name of and delivered to the Investor, a certificate or certificates for the number of Conversion Shares to which the Investor shall be entitled upon such exercise. The Investor shall be deemed to be the holder of the Conversion Shares on the Conversion Date, notwithstanding that the register of members of the Company shall then be closed or that certificates representing such Conversion Shares shall not then be actually delivered to the Investor/ its nominee.
  3. Stamp Taxes: The Company shall pay any and all documentary stamp or similar issue taxes payable in respect of the issue of the Conversion Shares as per the Applicable law.
  4. No fractional share shall be issued upon the conversion of any Note, and the number of Conversion Shares to be issued shall be rounded to the nearest whole share.