

## Warning Statement About Crowd Funding

Equity crowd funding is risky.

Issuers using this facility include new or rapidly growing ventures. Investment in these types of businesses is very speculative and carries high risks.

You may lose your entire investment, and must be in a position to bear this risk without undue hardship.

New Zealand law normally requires people who offer financial products to give information to investors before they invest. This requires those offering financial products to have disclosed information that is important for investors to make an informed decision.

The usual rules do not apply to offers by issuers using this facility. As a result, you may not be given all the information usually required. You will also have fewer other legal protections for this investment.

Ask questions, read all information given carefully, and seek independent financial advice before committing yourself.

These Investor Terms are entered into between Crowdsphere Limited trading as Crowdsphere ("Crowdsphere") a registered company with the company number 5021681 and licenced and regulated by the Financial Markets Authority (the "FMA"), under the Financial Markets Conduct Act 1993 (the "Act") and any person (the "Investor") who is a member of Crowdsphere and wishes to consider subscribing for shares in an investee company (the "Investee") in response to an investment proposition ("Pitch") made by the Investee via the website located at [www.crowdsphere.co.nz](http://www.crowdsphere.co.nz) (the "Website"). Crowdsphere provides services relating to the arranging of the investment by the Investor in shares in the Investee (the "Investment").

By accepting these Investor Terms, an agreement will be created between Crowdsphere and the Investor.

These Investor Terms are in force from 1 September 2016.

### 1. Incorporation of other terms

1.1. By agreeing to these Investor Terms, the Investor acknowledges that they have also read, understood and agreed to:

1.1.1. the Crowdsphere Privacy Policy, accessible online at [www.crowdsphere.co.nz/privacy-and-cookie-policy](http://www.crowdsphere.co.nz/privacy-and-cookie-policy);

1.1.2. the registration form, accessible online at [www.crowdsphere.co.nz/membership-registration-2](http://www.crowdsphere.co.nz/membership-registration-2); and

1.1.3. The Website terms of use, accessible online at [www.crowdsphere.co.nz/website-terms-of-use](http://www.crowdsphere.co.nz/website-terms-of-use).

1.2. In order to become a registered user of Crowdsphere, the Investor acknowledges that they must successfully complete Crowdsphere's Investor Assessment Questionnaire.

## **2. Registration process**

2.1 In registering on the Website (the "Registration Process") the Investor represents that they are an individual who is at least 18 years old and is a resident of New Zealand.

2.2 During the Registration Process, the Investor must provide, and undertakes to provide Crowdsphere with:

2.2.1 full name;

2.2.2 current address;

2.2.3 email address, which will be verified by means of a verification email as part of the Registration Process; and

2.2.4 any other information requested by Crowdsphere and undertakes to keep the same up to date and notify Crowdsphere of any changes therein.

2.3 The act of complying with clause 2.2.3 above, shall constitute express written confirmation from the Investor to Crowdsphere that the email address they have provided to Crowdsphere may be used for the purpose of receiving notices or communications from Crowdsphere and any Investee in electronic form and to Crowdsphere or any Investee making information available on a website, and requesting that Crowdsphere provide a copy of this confirmation to the Investee.

2.4 The Investor shall comply with such identification and other anti-money laundering requirements that Crowdsphere may from time to time require. In particular, Crowdsphere may require identification of Investors and information about the sources of funds being provided by the Investor in investments Crowdsphere considers in its sole discretion to be substantial.

2.5 Crowdsphere reserves the right to refuse in its absolute and sole discretion to register an Investor as a member of Crowdsphere and/or to invest in an Investee.

2.6 In registering on the Website, the Investor confirms their consent to their username being publicised as an Investor in the Investee.

2.7 The Investor may only invest in an Investment for themselves in their own name and shall ensure that all orders for shares made through the Website are made exclusively on their own behalf.

### 3. Fees

- 3.1 Crowdsphere does not charge the Investor any fees for the services provided to the Investor in accordance with these terms.
- 3.2 Crowdsphere reserves the right to impose a fee or charge for its services upon the Investor in the future, and will do so by providing one months' advance written notice by email of the proposed charges or fees and any variation of the same, to the Investor whereupon the Investor may, by notice, terminate this agreement forthwith, if it so wishes, and any outstanding orders for shares in Investees will be cancelled.
- 3.3 The Investor acknowledges that ancillary charges or fees may be payable to third parties in connection with the Investment, and acknowledges that such charges or fees are not associated with these terms. If such charges or fees are to be paid by an investor this will be disclosed in an Investee Pitch. The Investor warrants to Crowdsphere that it shall pay such fees or charges and shall indemnify and hold Crowdsphere from against any loss, liability, cost or expense resulting from the same.
- 3.4 Should an Investee not ultimately attain the stated desired target level of investment as set out in its Pitch, through failure by other Investors to transfer the Subscription Price to the Investee as set out in clause 5.3 Crowdsphere will not charge the Investee for the completion fee being 6% of the amount raised via Crowdsphere. In such a case the Investee will remain liable to the third party payments provider, as set out in clause 4.5, for any fees payable to that party. If the Investee is unable to pay such a fee to the payments provider, Crowdsphere shall ensure that such fee is not deducted from the Investor Subscription Price. The Investor may be charged bank fees by their bank in respect of the repayment of their subscription monies.

### 4. Investment process

- 4.1 The Investor will be entitled to place an irrevocable order to subscribe for shares in an Investee in any Pitch on the Website for a period (the "Offer Period") ending on the earlier of:
  - 4.1.1 the Investee reaching its target level of investment as set out in its Pitch;
  - 4.1.2 the end of a period of 60 days (beginning with the date on which the Investee's Pitch becomes live on the Website); or
  - 4.1.3 the date upon which the Investee terminates its Pitch in accordance with its agreement with Crowdsphere.
- 4.2 If a Pitch is successful, the Investee will instruct Crowdsphere to circulate a copy of the Investee's proposed Constitution to each Investor by email, and to request that each Investor inform Crowdsphere by email within 7 working days if they no longer wish to proceed with the Investment. If Crowdsphere receives no response from the Investor within the 7 working day period, the Investor will in accordance with this clause 4.2, be deemed to have confirmed his order and his order will become an irrevocable firm order.

- 4.3 If for any reason the 7 working day confirmation email is not received by an Investor (whether this is known or notified to Crowdsphere or not), otherwise than as a result of fraud or gross negligence by Crowdsphere, Crowdsphere shall not be liable to the Investor or the Investee for any losses, claims, damages, etc suffered by the Investor, and Crowdsphere shall be entitled to proceed on the assumption that the Investor wishes to proceed with the Investment.
- 4.4 If a Pitch is successful, when the Investor places an order to subscribe for shares in an Investee, and subject to non-revocation at expiry of the 7 working day confirmation email, an agreement shall then subsist between the Investor and the Investee, or a third party on behalf of the Investee, to transfer the subscription price of the relevant shares (the "Subscription Price") to the Investee. Shares in the Investee will be issued to the Investor by the Investee and the Subscription Price will be transferred to the account of the Investee following the end of the Offer Period. If the Pitch is not successful, no such agreement between the Investor and the Investee shall arise.
- 4.5 If a Pitch is successful Crowdsphere instigates the capture of the funds from the investors either by direct debit or credit card via Link Market Services Limited (Link) a third party payment processor. Crowdsphere provides Link with an electronic list of investor names, bank account or credit card numbers and the amount to be debited. Link then processes the debits for the subscriptions to the investor's bank accounts and credit cards at the end of a nominated day. Link consolidates all Investor subscription money and holds these funds as bare trustee on behalf of the Investor in a bank account specifically established for Crowdsphere Investees. The following day Link then provides Crowdsphere, the Investee and the Investee's solicitor with a reconciliation of subscription monies captured and whether any debits have failed. Crowdsphere will follow up directly with investors whose debits have failed so they still have an opportunity to pay their subscription. On instruction from Crowdsphere and the Investee's solicitor the Investee shall issue the shares to the Investor and then the investment funds (after deduction of all fees) are passed to the Investee.
- 4.6 If the Pitch is unsuccessful or the order not completed for any reason, the Investor's order will not be transferred to another Pitch or Investee, and no substitute service will be provided.

## 5. Investments

- 5.1 The Investor acknowledges that Crowdsphere's affiliates, and/or the proprietors, officers or employees of Crowdsphere and/or such affiliates may consider expressing interest or subscribing for shares in an Investee. If the Investor becomes aware of this, they agree not to rely upon the same in making a decision whether to invest in an Investee, and confirms that any decision by them to invest in an Investee is not based upon any representation, information, action, omission or otherwise of Crowdsphere, its subsidiaries or affiliates or the proprietors or employees of Crowdsphere, its subsidiaries or its affiliates.
- 5.2 The Investor acknowledges that Crowdsphere approves each Pitch as a financial promotion. Crowdsphere's approval of the Pitch, or the investment in an Investee by

any person referred to in clause 5.1, should not be taken as an endorsement by Crowdsphere of the Pitch as an investment.

- 5.3 The Investor confirms that should an Investee not ultimately attain the stated desired target level of investment as set out in its Pitch, through withdrawals after the expiry of the Offer Period, or failure by other Investors to transfer the Subscription Price to the Investee, neither the Investee nor Crowdsphere is required to inform the Investor of this failure, and the Investor may still be required to purchase the shares they ordered, provided that the level of investment received by the Investee is at least 90% of the desired target level of investment as set out in its Pitch. If the Investee ultimately attains less than 90% of the desired target level of investment as set out in its Pitch, Crowdsphere will use its reasonable endeavours to arrange for the Investee to cancel the Investment made by the Investor and return the Subscription Price to the Investor. The Investor consents to Crowdsphere releasing such information as is reasonably necessary, to the Investee to allow such return of the Subscription Price in full, and the Investor undertakes to co-operate with Crowdsphere and the Investee, including in relation to any transaction fees or charges, to facilitate the cancellation of the Investment and the return of the Subscription Price.
- 5.4 Investors are encouraged to ensure that arrangements are put in place for their next of kin to be informed of their order and the Crowdsphere process, and that instructions are provided to enable the member's order to be withdrawn before it is converted to a irrevocable order on the occurrence of the member's death, insolvency or incapacity. Crowdsphere accepts no responsibility or liability for orders not being withdrawn before being converted to a firm order through the failure of the member to put in place such an arrangement, or the failure of the next of kin to communicate a withdrawal.
- 5.5 Investors, or in accordance with clause 5.4, their next of kin, are entitled to withdraw their order at any time prior to it becoming a firm order upon the expiry of the 7 working day confirmation email.

## **6. Investee Constitution**

- 6.1 The Investor acknowledges that, as a consequence of becoming a shareholder of an Investee, the Investor will be subject to the provisions of the Investee's Constitution, which Constitution will include certain restrictions on the shares issued and certain rights and obligations which will attach to such shares, and any shareholders' agreement relating to the Investee, in each case as disclosed to the Investor in the Pitch.
- 6.2 The costs and expenses relating to changing an Investee's Constitution to accommodate investment via Crowdsphere, and any other pre-investment structuring required, will be borne by the Investee, and such Constitution will be in the form notified to the Investor by Crowdsphere in the 7 working day confirmation email.

## 7. Regulation and liability

- 7.1 The Investor as a registered user of Crowdsphere acknowledges and accepts that the Website includes a forum which is an integral part of an Investee's Pitch which is intended as a service to Investees to put them in contact with Investors, and thus that Crowdsphere's investigation of the Investees and the content of their Pitches has been very limited in accordance with its Issuer Fair Dealing Policy and Issuer Screening Process as summarised in Crowdsphere's Disclosure Statement. The Issuer Fair Dealing Policy and Issuer Screening Process have been designed to confirm that Investee Pitch Documents are not false, misleading, deceptive or likely to mislead or deceive and do not include unsubstantiated representations. Crowdsphere shall have no liability to any investor under or in connection with their decision (whether in contract, tort, including, without limitation, negligence, or under any other theory of law or cause of action howsoever arising) unless such liability arises out of the fraudulent actions of Crowdsphere or a breach by Crowdsphere of its obligations expressly provided for in its Investor Terms. The Investor must make their own assessment of the Investees, their Pitches, and any relevant investment propositions and should consult their professional advisers should they require any assistance in making such an assessment or should the Investor require any services whatsoever in connection with Crowdsphere. In particular, the attention of the Investors is drawn to the disclaimer, risk warning and regulatory notice on each Pitch.
- 7.2 The Investor warrants and represents to Crowdsphere that it shall comply with any terms and conditions associated with the use of the forums on the Website, and in particular undertakes not to post any illegal, defamatory or inappropriate material. Crowdsphere will in its absolute discretion have the power to determine whether posts by the Investor breach this clause 7.2 and to remove those posts.
- 7.3 The Investor acknowledges that Crowdsphere does not provide the Investor with any advice or recommendations in relation to investments.
- 7.4 The Investor acknowledges that in approving the Pitch as a financial promotion, Crowdsphere has concluded that the Pitch, taken as a whole in the context of the above, is fair, clear and not misleading. The Investor acknowledges that Crowdsphere has reviewed any factual statements included within the Pitch and obtained evidence of their accuracy from the Investee. However, the Investor's attention is drawn to the fact that the evidence is obtained from the Investee itself and has not been audited by Crowdsphere, which means that it may contain inaccuracies, be incomplete or be a forgery.
- 7.5 The Investor acknowledges that Crowdsphere has checked that aspirational statements contained within the Pitch are phrased appropriately in light of their speculative nature. Crowdsphere has used its best endeavours to check all references and sources included in a Pitch and to confirm that such references and sources are reasonable. However, the Investor acknowledges that the Investee is likely to be a start-up company and as such may have high ambitions which may be unachievable and exaggerated. The Investor acknowledges that a Pitch may contain statements that convey those ambitions where there is a risk that such ambitions will never be fully

realised. Crowdsphere strongly advises the Investor to make its own investigations in order to satisfy itself as to any of the statements set out in a Pitch, before placing any reliance on those statements.

- 7.6 During the Pitch period Crowdsphere monitors Investees use of the forums on the Website and retains the right to request Investees withdraw post that do not fairly and accurately represent the Investee and may determine in its sole discretion to withdraw an Investee Pitch prior to completion of the investment process.
- 7.7 The Investor acknowledges that Crowdsphere does not provide ongoing monitoring services of an Investee after the successful completion of an investment process as set out in clause 4 for an Investee.

## **8. Termination**

- 8.1 Subject to clause 8.2, the Investor may terminate this agreement on 7 days' written notice to Crowdsphere.
- 8.2 If an Investor has an outstanding or incomplete order for investment in any Investee which has not been resolved in accordance with clause 4.1, the Investor may only terminate this Agreement if they have firstly served written notice by email on Crowdsphere and secondly, has withdrawn his order from the ongoing Pitch either via the Pitch, or by responding to the 7 working day confirmation email confirming his withdrawal.
- 8.3 Once a Pitch reaches its target level of investment in accordance with clause 4.1.1, and following the expiry of the 7 working day confirmation email to the investor during which time the Investor has not withdrawn its order to subscribe for shares, the Investors' order to subscribe for shares in an Investee shall form a contract with the Investee on such terms as are offered by the Investee in the Pitch, and Crowdsphere shall have no further obligations or involvement in the Investment.
- 8.4 Crowdsphere may terminate this agreement at any time by notice to the Investor in the event that:
- 8.4.1 the Investor breaches these Investor Terms; or
  - 8.4.2 Crowdsphere suspects that the Investor has been involved in any criminal or otherwise improper activities,
- following which the Investor's membership in Crowdsphere will be terminated in accordance with these Investor Terms.
- 8.5 If Crowdsphere terminates this agreement in accordance with clause 8.4 whilst the Investor has placed an order that has not been completed by the issue of shares in the relevant Investee, Crowdsphere reserves the right to inform the Investee of the termination and take such steps as are necessary to ensure that the Investor's order is not completed.

## **9. Complaints and queries**

- 9.1 Should an Investor have any complaints or queries about the services provided by Crowdsphere or this agreement, he/she should contact Crowdsphere's Compliance Officer on 04 974 9269 or by writing to Crowdsphere, PO Box 3156, Wellington 6140 or by email to support@crowdsphere.co.nz. If the Compliance Officer is unable to resolve the problem you can contact the directors.
- 9.2 You may address complaints to Crowdsphere's disputes resolution service, Financial Services Complaints Limited on 0800 347 257 or by email to info@fscl.org.nz.
- 9.3 Communications with, to or from Crowdsphere shall be in the English language.

## **10. Waiver**

- 10.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## **11. No partnership or agency**

- 11.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

## **12. Assignment and variation**

- 12.1 An Investor's membership in Crowdsphere is non-transferable, and the provisions of this agreement shall not be assigned, transferred, mortgaged, charged or otherwise encumbered without the written consent of Crowdsphere.
- 12.2 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **13. Notices**

- 13.1 Any notice or other communication required to be given to a party under or in connection with this contract shall be in writing and shall be delivered by hand to its registered office (if a company) or (in any other case) its principal place of business or residential address, or sent by email to the email address notified to the other party in accordance with this agreement. The email address for the service of notices on Crowdsphere is support@crowdsphere.co.nz.

13.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address, or if sent by email, at 9.00 am on the next working day after transmission.

#### **14. Governing law and jurisdiction**

14.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of New Zealand.

14.2 The parties irrevocably agree that the courts of New Zealand shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).