

## SAMPLE SHARE SUBSCRIPTION AGREEMENT – WEST VIRGINIA

This Share Subscription Agreement (the “Agreement”), dated \_\_\_\_\_ [insert date contract is signed] is entered into between \_\_\_\_\_ [Seller name] (“Seller”), a West Virginia [corporation/limited liability company] located at [insert address] and \_\_\_\_\_ [insert full legal name of shareholder] of \_\_\_\_\_ [insert buyer’s address], a West Virginia resident or a West Virginia [corporation/limited liability company/limited liability partnership/general partnership/cooperative] (“Subscriber”)(collectively, the “Parties”).

The Seller and the Buyer agree as follows:

### Article 1 – Purchase and Sale of Shares

1.1 The Agreement provides for the sale of \_\_\_\_\_ [insert number and type of shares] to the Buyer by the Seller at a price of \_\_\_\_\_ [insert price per share], par value per share (the “Shares”).

1.2 **Purchase and Sale.** The Seller agrees to sell and the Buyer agrees to buy the Shares.

1.3 **Delivery of Shares.** In connection with the purchase and sale, the Seller shall deliver to Buyer a certificate representing the Shares (the “Stock Certificate”).

1.4 **Purchase Price.** The purchase price for the Shares is \_\_\_\_\_ [insert total price], which the Buyer is paying contemporaneously with the execution of this Agreement.

1.5 **Seller Acknowledgement.** The Seller acknowledges that the purchase price listed in section 1.3 of this Agreement is the total compensation that the Seller, its directors, officers, employees, or agents is owed for the purchase of these Shares.

### Article 2 – Representations and Warranties

2.1 **Buyer’s Representations and Warranties.** The Buyer represents and warrants to the Seller as follows:

(a) Buyer is a legal resident of West Virginia or is a West Virginia entity organized under West Virginia law with its principal place of business in West Virginia.

(b) Buyer does not fall within the disqualification provisions of WV Code § 32-5-503(d).

(c) Buyer understands that the Shares have not been registered either with the Securities and Exchange Commission (the “SEC”) nor with the West Virginia Securities Division of the State Auditor’s Office (the “WV Securities Division”) and are being offered and sold pursuant to the intrastate offering exemption under Section 3(a)(11) of the Securities Act of 1933, as amended, (the “Act”), SEC Rule 147, promulgated by the SEC, and Article 5 of the West Virginia Code, as Amended (the “WV Small Business Capital Act”).

(d) Buyer recognizes that the Shares are a form of speculative investment which involves substantial risk of loss of Buyer’s entire investment, and that there can be no assurance that any tax benefits will result from an investment in the Seller. Buyer acknowledges that Seller has directed

Author

**Comment [1]:** To qualify for protection under the WV Small Business Capital Act the corporation must be a WV corporation whose principal place of business is in WV.

Author

**Comment [2]:** In this Agreement, a Buyer refers to a Buyer/Investor, and a Seller refers to a Business.

Author

**Comment [3]:** “Par Value Per Share” means the agreed upon price per Share.

Author

**Comment [4]:** “Total Price” means the total amount of money exchanged in the transaction.

Author

**Comment [5]:** Depending on the amount of the payment the Business may want to insist on a cashier’s check. If another method of payment (i.e., wire transfer) shall be used, the method of payment should be discussed in the agreement.

Author

**Comment [6]:** For more information on residency requirements, please refer to the “Residency Requirement Fact Sheet” available here: <https://www.law.wvu.edu/raising-capital-workshop/resources-for-entrepreneurs>

Author

**Comment [7]:** Under this provision a Buyer/Investor would not qualify for an exemption under the WV Small Business Capital Act if:

- in the past five years the Buyer/Investor has been convicted of a criminal offense relating to a security or to deceitful action or if the Seller has received a cease and desist order relating to a security.
- the Buyer/Investor is subject to any government enforcement in the last five years that keeps the Buyer/Investor from participating in any deceitful action involving a security.

Author

**Comment [8]:** This term refers to an understanding between the Business and the Buyer/Investor that there is a risk associated with purchasing the Shares. “Speculative Investment” means an investment in which there is a substantial risk of losing all value, but with an expectation of significant gain.

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Buyer to seek independent advice regarding the tax consequences of Buyer’s purchase of the Shares and the Buyer has not relied on either the Seller or counsel to the Seller with respect to such tax consequences and the suitability of this investment for Buyer.

(e) The amount and nature of Buyer’s purchase of the Shares is suitable and consistent with the Buyer’s financial situation and Buyer is able to bear the risks of this investment.

(f) Buyer acknowledges that neither the Seller nor any other person has represented, guaranteed or warranted that any particular financial result will be achieved by the Seller.

(g) Buyer is purchasing the Shares in Seller solely for their own account, for investment purposes only, and with the intention of making a profit from the purchase.

(h) The Buyer is not purchasing the Shares with a view to distribute, sell, or subdivide the Shares with any other individual, corporation, firm, or person.

(i) The Buyer agrees to comply with the provisions of this Agreement, the Seller’s articles of incorporation, the Seller’s corporate bylaws, and all policies and procedures duly adopted by the Seller’s shareholders or the Board of Directors for the Seller. In addition, Buyer agrees to comply with the provisions of the Shareholders’ Agreement and agrees to execute and become a party to the Shareholders’ Agreement, attached as Exhibit A.

(j) Buyer recognizes that there is not and will not be a public market for the Shares in Seller and that the transferability of the membership interest in Seller is restricted under the terms of the Shareholders’ Agreement and applicable federal and state securities laws and regulations.

(k) Buyer represents and warrants that all action necessary for the authorization, execution, delivery of and performance of all obligations of Buyer under this Agreement has been taken. Buyer further represents that this Agreement is a legal, valid, and binding obligation of Buyer, enforceable in accordance with its terms, except as may be limited by:

- (1) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors’ rights generally, and;
- (2) the effect of rules of law governing the availability of equitable remedies.

(l) Buyer understands the meaning of the representations and warranties in this Agreement and acknowledges that the Seller is relying upon Buyer’s representations and warranties contained in this Agreement in determining whether the Seller is eligible for exemption from the registration requirements contained in the Act, the WV Small Business Capital Act, and in determining whether to accept Buyer’s subscription under this Agreement.

**2.2. Issuer’s Representations and Warranties.** The Seller represents and warrants to the Buyer as follows:

**Author**  
**Comment [9]:** Under certain West Virginia state laws and federal regulations, a Buyer/Investor may face certain restrictions when attempting to distribute, sell, or subdivide the Shares with any other individual, corporation, firm or person. Please work with a lawyer to determine the applicable laws and regulations.

**Author 10/3/2018 3:33 PM**  
**Comment [10]:** Most businesses have a Shareholder Agreement. It is a contract between a business and shareholders that describes how the company should be operated and outlines the shareholders’ rights and obligations. “Shareholder Agreement” means an arrangement among a company’s shareholders that describes how the company should be operated and outlines shareholders’ rights and obligations. The Business should work with a lawyer to draft a Shareholder’s Agreement, if they do not already have one.

**Author 10/3/2018 3:33 PM**  
**Comment [11]:** “Public Market” means the collection of markets and exchanges where the issuing and trading of equities or stocks of publicly held companies, bonds, and other classes of securities take place. This provision clarifies that these Shares cannot be traded on a public market like the New York Stock Exchange.

**Author**  
**Comment [12]:** Under applicable West Virginia state laws and federal regulations, a Buyer/Investor may face certain restrictions when attempting to transfer these shares. “Transferability of Membership Interest” means the ability to transfer or sell the shares purchased.  
  
When using a limited offering or investment crowdfunding, please work with an attorney to determine the applicable rules.

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(a) The Seller is a \_\_\_\_\_ [type of entity: LLC/Corporation/other], for-profit entity, duly organized under West Virginia law and with its principal place of business in West Virginia.

(b) The Seller does not fall within the disqualification provisions of WV Code § 32-5-503(d).

(c) This Agreement is part of a larger offering to duly qualified shareholders and as is memorialized by the Shareholders' Agreement (the "Offering").

(1) The sum of all cash and other consideration received from this Offering does not exceed \_\_\_\_\_ [\$1 million/\$2 million] annually.

(2) All funds received by the Seller from this Offering will be held in escrow by an attorney licensed to practice law in West Virginia who shall deposit the funds in a depository institution authorized to do business in West Virginia until such time as the Offering amount sought is attained or the time period for the Offering has elapsed, except:

(i) If the escrowed funds attain a balance of at least ten percent of the Offering amount sought, the attorney holding the money in escrow shall, upon written request of the Issuer, withdraw a portion of the money in escrow and deliver such portion of money to the Seller.

(ii) All funds received by the Seller under this Offering shall be used by the Seller in accordance with the Issuer's representations, as outlined in the Shareholders' Agreement, attached as Exhibit A.

Article 3 – Restrictive Legend

3.1 The Stock Certificate for all Shares shall bear the following legends, together with any other legend required by law:

“THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE “ACT”) OR UNDER ANY APPLICABLE STATE LAW, AND NO INTEREST OR PARTICAPTION IN THIS THESE SHARES MAY BE SOLD, DISTIBUTED, ASSIGNED, OFFERED, PLEDGED OR OTHERWISE TRANSFERRED UNLESS (A) THERE IS AN EFFECTIVE REGSTRAION STATEMENT UNDER THE ACT AND APPLICABLE STATE SECURITIES LAW COVERING AND SUCH TRANSACTIONS INVOLVING THESE SHARES OR (B) THE CORPORATION RECEIVES AN OPINION OF LEGAL COUNSEL FOR THE HOLDER OF THESE SECURITIES (CONCURRED

Author  
Comment [13]: Under this provision a Business would not qualify for an exemption under the WV Small Business Capital Act if:  
•in the past five years the Business has been convicted of a criminal offense relating to a security or to deceitful action or if the Seller has received a cease and desist order relating to a security.  
•the Business is subject to any government enforcement in the last five years that keeps the Buyer from participating in any deceitful action involving a security.

Author  
Comment [14]: This amount depends on whether you would like to provide audited financial statements.

Author  
Comment [15]: Please refer to Exhibit B to explain the Business' responsibility to provide a disclosure statement.

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INBY LEGAL COUNSEL FOR THE CORPORATION) STATING THAT SUCH TRANSACTION IS EXEMPT FROM REGISTRATION OR THE CORPORATION OTHERWISE SATISFIES ITSELF THAT SUCH TRANSACTION IS EXEMPT FROM REGISTRATION. NEITHER THE SHARES NOR ANY OTHER OFFERING MATERIALS HAVE BEEN REVIEWED BY AN ADMINISTRATOR UNDER THE ACT OR ANY APPLICABLE STATE LAW.”

“UPON WRITTEN REQUEST, THE CORPORATION WILL FURNISH TO ANY SHAREHOLDER, WITHOUT CHARGE, A FULL STATEMENT OF DESIGNATION, PREFERENCE, LIMITATIONS AND RELATIVE RIGHTS APPLICABLE TO THE SHARES OF EACH CLASS OF STOCK AUTHORIZED TO BE ISSUED AND, WITH RESPECT TO ANY PREFERRED OR SPECIAL CLASS THAT THE CORPORATION IS AUTHORIZED TO ISSUE IN SERIES, THE VARIATIONS IN RIGHTS, PREFERENCES AND LIMITATIONS FOR SHARES OF EACH SUCH SERIES, SO FAR AS THE SAME HAVE BEEN FIXED AND DETERMINED, AND THE AUTHORITY OF THE BOARD OF DIRECTORS TO FIX AND DETERMINE THE RELATIVE RIGHTS AND PREFERENCES OF SUBSEQUENT SERIES.”

#### **Article 4 – General Provisions**

- 4.1 **Representation by Independent Counsel.** The Parties agree that they have been represented by or had the opportunity to be represented by, independent legal counsel of their choice for the purposes of advising them in connection with the negotiation, preparation and execution of this Agreement.
- 4.2 **Total Agreement.** This Agreement constitutes the entire Agreement between the Parties. This Agreement supersedes all prior agreements or understandings of any kind with respect to the specific subject matter of the Agreement.
- 4.3 **Severability.** In any provision of this Agreement is illegal or unenforceable, that provision is severed from this Agreement and the other provisions remain in effect only if the essential business and legal provisions are legal and enforceable.
- 4.4 **Assigns.** This Agreement binds and benefits the Parties and their respective permitted assigns.
- 4.5 **Applicable Law.** This Agreement shall be in accordance with the laws of the State of West Virginia.
- 4.6 **Mediation.** Any issue, claim, or dispute that may arise out of or in connection with this Agreement and which the Parties are not able to resolve themselves by negotiation, shall be in the first instance submitted to mediation. The Parties agree to use mediation to attempt to resolve such

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issue, claim, or dispute prior to filing any legal proceedings in court. The mediation will be conducted in a manner agreed to by the Parties subject to the following provisions:

- (a) The Parties will select an agreed upon independent mediator. The mediator will communicate with the Parties to arrange and convene the mediation process that will be most efficient, convenient and effective for the Parties.
- (b) The Parties will cooperate with the mediator in coming to a reasonable agreement on the mediation arrangements which will include the time and place for conducting the mediation, who will attend or participate in the mediation and what information and written material will be exchanged before the mediation. The mediation will be conducted at a place agreeable to the Parties.
- (c) The costs of the mediation and fees of the mediator will be borne equally by the Seller and Buyer.

To evidence the Parties' agreement to this Agreement, they have executed and delivered it on the date in this preamble.

[insert name of company]

By: \_\_\_\_\_  
[signed by a duly authorized representative with name and title present]

Dated: \_\_\_\_\_

\_\_\_\_\_  
Buyer[if an entity rather than a person, follow the format above]

Dated: \_\_\_\_\_

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## EXHIBIT A

[Insert Shareholders Agreement]

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## EXHIBIT B

In addition to the SSA, the Seller is responsible for providing a disclosure statement on the crowdfunding portal that includes the following:

(f) A disclosure statement must be made readily available and accessible to each prospective purchaser at the time the offer of securities is made to the prospective purchaser on the crowdfunding portal. The disclosure statement must contain at a minimum all of the following:

(1) A statement that there is no ready market for the sale of the securities acquired from this offering, that it may be difficult or impossible for an investor to sell or otherwise dispose of this investment, and that a purchaser may be required to hold and bear financial risks of this investment indefinitely;

(2) A statement that the securities that are the subject of the offer have not been registered under federal or state securities law or regulation, and therefore cannot be resold unless the securities are registered or qualify for an exemption from registration under federal or state law;

(3) A statement that in making an investment decisions, purchasers must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved;

(4) A statement that no federal or state securities commission or regulatory authority has confirmed the accuracy or determined the adequacy of the disclosure statement or any other information on the crowdfunding portal; and

(5) All information material to the offering, including, where appropriate, a discussion of significant factors that make the offering risky or speculative, including, but not limited to:

(A) A description of the Seller's business;

(B) The history of the Seller's operations and organization;

(C) A list of executive directors, directors or managers of the Seller and any individual or entity holding more than twenty percent of the outstanding equity of the Seller;

(D) A description of how the proceeds from the offering will be used;

(E) Financial information about the Seller;

(F) A detailed description of securities offered; and

(G) A complete list of any legal proceedings or litigation affecting the offering.

(g) Prior to the offering of securities to residents of West Virginia under this article, the crowdfunding portal shall conduct a reasonable investigation of the background of each Seller whose securities are offered on the crowdfunding portal's website, and of each of the Seller's issuer's executive officers, directors or managers or any individual or entity holding more than twenty percent of the outstanding equity of the Seller. The crowdfunding portal shall deny an Seller access

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to its internet website if the crowdfunding portal has a reasonable belief that the Seller or its executive officers, directors or managers or any individual or entity holding more than twenty percent of the outstanding equity of the Seller are precluded from the exemption under this article.

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