

FlexUp Investments – Additional Conditions (Investment-AC)

for private offerings in non-listed US companies
exempt from SEC registration under Rule 504 of Regulation D

Published by FlexUp on 27th September 2024

Notice Regarding Securities Law Compliance:

This instrument and any securities issuable pursuant hereto have not been registered under the Securities Act of 1933, as amended (the "**Securities Act**"), or under the securities laws of certain states. These securities may not be offered, sold or otherwise transferred, pledged or hypothecated except as permitted in this Contract and under the Securities Act and applicable state securities laws pursuant to an effective registration statement or an exemption therefrom.

The present FlexUp Investments Additional Conditions ("Investment-AC") outline specific terms applicable to investment agreements for private offerings in non-listed U.S. companies exempt from SEC registration under Rule 504. They form an integral part of the Contract and are incorporated by reference, as specified in the Investment-GC.

This document is distributed under the terms of the FlexUp Licence, available on the FlexUp website (www.flexup.org).

Article 1. Scope and Interpretation

- 1.1 In this Contract, capitalized words are Defined Terms, whose definitions are given in this document or, failing that, in the other documents composing the Contract, according to the order of priority established in the Investment-GC.
- 1.2 This Investment-AC uses terminology consistent with the Investment-GC and Charter-GC. For clarity within the context of a U.S. securities offering:
 - The term "**Company**" shall be used to refer to the entity issuing the Securities. This term corresponds to the "Project," "Client," and/or "Holder" as defined elsewhere in the Contract.
 - The term "**Funding Round**" shall be used to refer to the specific offering event governed by this Contract.

Article 2. Securities Act Compliance

This Contract is issued in the context of a Funding Round conducted in reliance on the exemption from registration provided by Rule 504 of Regulation D under the Securities Act of 1933, as amended. Under this exemption, the Funding Round is limited to raising an aggregate amount of up to \$10 million in any 12-month period. Depending on compliance with applicable state securities laws, the Company may engage in general solicitation and advertising in connection with this Funding Round.

Article 3. Company Representations and Warranties

The Company represents and warrants to the Investor that as of the date of the Contract:

3.1 Due Organization

The Company is a corporation duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation and has the right to operate its business.

3.2 Authorization and Enforceability

The Company has the full corporate power and authority to execute and deliver this Contract and to perform its obligations hereunder. This Contract constitutes a valid, legally binding, and enforceable obligation of the Company.

3.3 No Conflicts or Consents

The execution and performance of this Contract will not violate any provision of law, regulation, the Company's organizational documents, or any other agreement to which the Company is a party. No consent or approval is required for the Company to enter into this Contract, other than standard corporate procedures which have been completed.

3.4 Intellectual Property

To its knowledge, the Company owns or possesses adequate rights to use all intellectual property necessary for its current and planned business operations.

3.5 Rule 504 Eligibility

The Company is not a "blank check company" as defined in Rule 419 of the Securities Act and is not otherwise disqualified from using the Rule 504 exemption

3.6 Compliance with Rule 504 Cap

The Company represents that the aggregate amount raised by it under Rule 504 of Regulation D, together with this Funding Round, does not exceed the applicable monetary limit in any rolling 12-month period.

3.7 Optional Charter Compliance

If the Company has adopted a FlexUp Charter, it is in material compliance with its terms as of the date of this Contract. For Companies that have not adopted a FlexUp Charter, this Article 3.7 does not apply.

Article 4. Investor Qualification

The Investor represents and warrants to the Company, which representation and warranty the Company is relying upon, that the Investor meets one of the following qualifications, as selected in the Investment-SC:

4.1 Accredited Investor

"Accredited Investor" has the meaning set forth in Rule 501 of Regulation D under the Securities Act. The Investor confirms they meet one or more of the criteria specified therein.

4.2 Non-Accredited Sophisticated Investor

A "Non-Accredited Sophisticated Investor" is an investor who is not an Accredited Investor but who, either alone or with their purchaser representative, has such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of the prospective investment.

4.3 Non-Accredited Financially Capable Investor

A "Non-Accredited Financially Capable Investor" is an investor who is not an Accredited Investor but who represents that they have the financial capacity to afford a complete loss of the Investment Amount specified in this Contract, without such a loss materially impacting their financial condition.

Article 5. Investor Representations and Warranties

The Investor represents and warrants to the Company that:

5.1 Authorization and Capacity

The Investor has the full legal capacity, power, and authority to execute and deliver this Contract and to perform their obligations hereunder.

5.2 Investment Experience

The Investor has sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of this investment and is able to bear the economic risks of the investment for an indefinite period, including the risk of a complete loss.

5.3 Investment Intent

The Investor is acquiring the Securities for their own account for investment purposes only, and not with a view to, or for sale in connection with, any distribution thereof in violation of the Securities Act.

5.4 Bad Actor Disqualification

The Investor represents and warrants that they are not subject to any of the "bad actor" disqualifying events listed in Rule 506(d) of Regulation D, as applicable to Rule 504 offerings.

Article 6. Access to Information

The Company shall provide the Investor with all material information required under applicable federal and state securities laws to make an informed investment decision. The Company shall also afford the Investor a reasonable opportunity to ask questions of, and receive answers from, the Company's officers concerning the terms and conditions of the Funding Round and to obtain any additional information necessary to verify the accuracy of the information furnished.

Article 7. Restricted Securities and Transfer Limitations

The Investor understands and acknowledges that:

- 7.1 The Securities have not been registered under the Securities Act and are "restricted securities" within the meaning of Rule 144 promulgated thereunder.
- 7.2 The Securities may not be sold, transferred, or otherwise disposed of without such registration or the availability of a valid exemption therefrom, such as Rule 144.
- 7.3 In addition to the legal restrictions above, any transfer of Securities must also comply with the specific transfer restrictions set forth in the Project's Charter, if applicable, which may include pre-emption rights or other required approvals.

Article 8. SEC and State Law Compliance

8.1 Form D Filing

The Company shall file a Form D with the SEC no later than 15 calendar days following the first sale of securities in this Funding Round.

8.2 Integration

The Company represents that this Funding Round is not integrated with any other offering of securities by the Company that would render the Rule 504 exemption unavailable.

8.3 State Securities Law Compliance

The Company acknowledges that securities issued under Rule 504 are not "covered securities" under federal law and are therefore subject to state registration requirements unless a state-level exemption is available. The Company shall comply with all applicable state securities ("Blue Sky") laws in each state where securities are offered or sold.

Article 9. Investor Rights and Company Obligations

9.1 Right of Rescission

The Investor may rescind their investment for any reason by providing written notice to the Company within 48 hours of executing the Investment Agreement.

9.2 Ongoing Reporting

The Company shall provide periodic financial and operational updates to the Council and as deemed necessary by the Company in its reasonable discretion, to Investors, in accordance with the FlexUp Charter, if applicable, and any requirements under Delaware law or other applicable state laws.

Article 10. General Provisions

10.1 Governing Law and Jurisdiction

This Investment-AC shall be governed by and construed in accordance with U.S. federal securities laws and the internal laws of the Company's state of incorporation. Any disputes arising hereunder shall be resolved exclusively in the federal or state courts located within the Company's state of incorporation.

10.2 Amendments to SEC Rules

If the SEC amends any rules or regulations affecting this Funding Round, the Company may amend this Investment-AC as reasonably necessary to comply with such changes, with such amendments becoming effective upon written notice to the Investor.

10.3 Tax Treatment

For U.S. federal and state income tax purposes, the parties agree to treat this investment as the acquisition of stock and shall not take any inconsistent position on their respective tax returns or in any official statements.

10.4 Electronic Records

The Company shall maintain appropriate electronic records noting the restricted nature of the Securities, which shall serve as the equivalent of restrictive legends on physical certificates.