Elemental Impact

Practitioner Notes

A User Guide for the Development-SAFE and Development Support Agreement

In June 2024, Elemental Impact introduced the "**D-SAFE**" (Development Simple Agreement for Future Equity) in partnership with the law firm Wilson Sonsini Goodrich & Rosati (WSGR) to address a critical piece of the $150 billion climate financing "Scale Gap"—the shortage of development capital for first-of-a-kind (FOAK) and early-stage climate projects.

The significant inbound interest from the finance community—investors, companies, and catalytic funders seeking to adapt the D-SAFE—has prompted us to open-source the document templates and provide an implementation framework based on our learnings.

As with any tool, the value of the D-SAFE depends on it being used for the right purpose. The D-SAFE shines in small-dollar, early-stage financings designed to be catalytic—such as financing the development of a pilot or early commercial projects, or providing the working capital necessary to hit major commercial inflection points. The tool, designed to be simple and flexible, is lighter on covenants, governance rights, and structural protections than more traditional debt or equity instruments and may, therefore, be less suited for larger and market-rate investments.

In **Part 1** of this document, we provide an overview of the attributes that we, and our portfolio companies, have found advantageous about the D-SAFE. In **Part 2**, we describe the integral relationship between the D-SAFE and the Development Support Agreement that governs the project development milestones to be funded with the proceeds of the D-SAFE investments. **Part 3** is devoted to key D-SAFE variations, including D-SAFE conversion mechanisms and call features, as well as return enhancement variations based on our early learnings and experience with the D-SAFE. Finally, **Part 4** highlights cautionary factors you should consider with the advice of your legal, tax and accounting advisors.

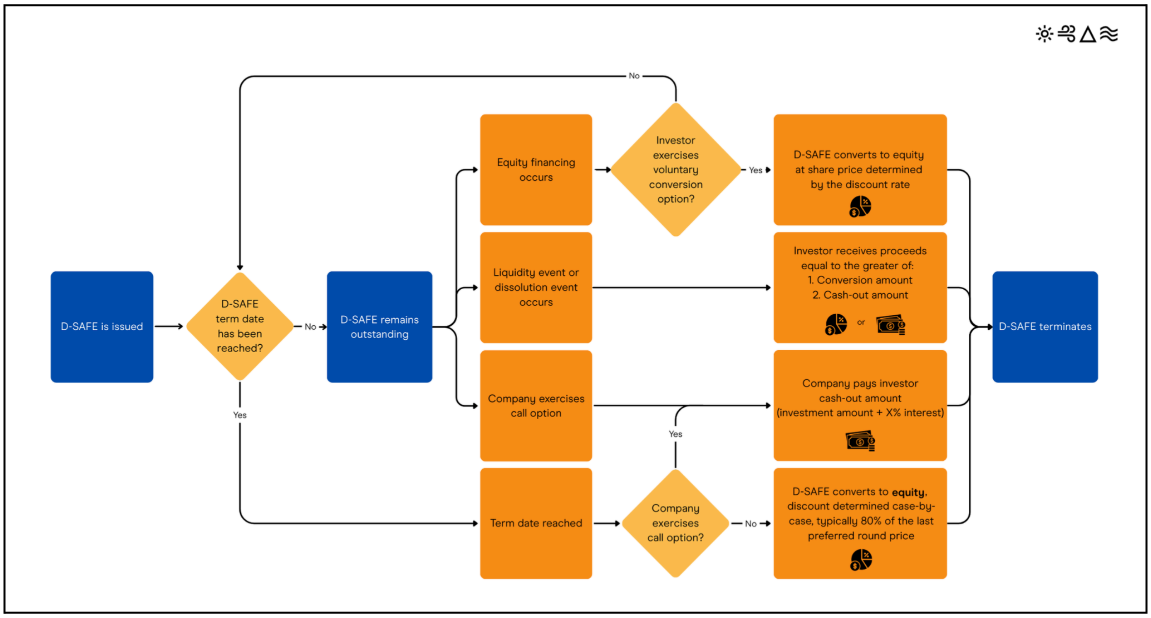
Part 1 | D-SAFE: Flexible Development Capital

How it Works

Modeled after Y Combinator's SAFE, the D-SAFE is a callable SAFE. Unless there is a liquidity event or a dissolution event, the D-SAFE is converted to equity or debt as follows:

- **Equity Conversion**: If there is an equity financing event, the investor has the voluntary right ("**Voluntary Conversion Option**") to convert the D-SAFE to preferred stock at a discount, typically 15-30%. Unlike in a traditional SAFE, this conversion is voluntary (at the investor's option), not automatic.
- **Debt Conversion:** At any time while the D-SAFE is outstanding, the company can exercise its call option ("**Company Call Option**") to repay the investment amount plus interest (typically 8% – 15%).

- **Milestone-Triggered Call Option:** At any time while the D-SAFE is outstanding, if the Company achieves one of the milestones set forth on Exhibit D to the DSA, the investor shall have the option to exercise its call option ("**Milestone Investor Call Option**") to have the company repay the investment amount plus interest (typically 8% – 15%).
- **Term Conversion:** If the D-SAFE remains outstanding for a set period of time (the period of time before the "**Term Date**"), the D-SAFE can, at the investor's option, convert to equity at a discount.



Why it Works

- **Speed & reduced risk:** The D-SAFE's likeness to the traditional SAFE makes it familiar enough to startups, investors, and legal teams to move through review and negotiations relatively quickly. Thus, it is a helpful tool to de-risk investments and catalyze funds, while avoiding the legal and financial hurdles of a loan approval process, or a more complex equity capital raise.
- **Founder friendly and with aligned incentives:** It is advantageous to startups to use debt, grants, and other catalytic capital to fund development work, rather than highly dilutive funding like venture capital. The D-SAFE allows startups and funders to align on and share risks and potential rewards—especially for investors with more patient capital. Founders note that the D-SAFE and venture capital tend to be highly complementary—both types of investors can get what they need, while supporting the goals of the other.
- **Flexibility:** It is useful to reduce the risk of early climate project investments, while retaining possible rewards for those risks and incentivizing the startup to pay back the D-SAFE. The D-SAFE can function as a market- or off-market-rate capital solution depending on the circumstances, with options to customize using creative structures such as agreeing to reduce the cost-of-capital and associated dilution as project and/or impact milestones are realized.

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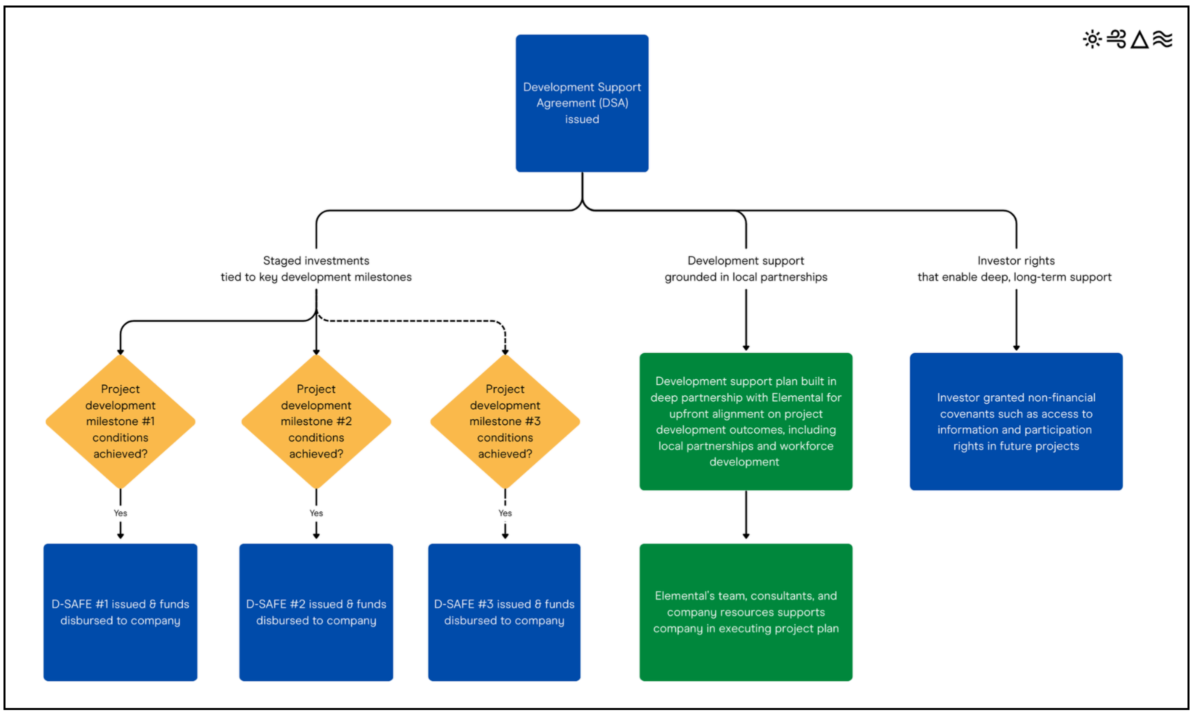
Part 2 | Development Support Agreement: Umbrella Support

How it Works

The Development Support Agreement ("**DSA**") serves as an umbrella support structure for a climate startup navigating the complexities of developing first commercial scale projects. When one or more D-SAFEs are paired with a DSA, funders and companies align early on how funding will be used to achieve concrete development benchmarks. This allows investors to fund discrete project development activities while providing capital directly to the parent company. The DSA also creates a broad framework that includes milestone-based capital disbursements, non-financial investor rights and covenants spanning multiple investments.



Mechanically, the DSA comes first and contractually defines the core pieces of development support:

- **Payment Milestones:** The DSA defines the milestone conditions that trigger fund disbursement via separate D-SAFEs, the funding amount tied to each milestone, and the uses that are permitted for the funds. We have found it effective to be specific but not overly prescriptive when defining milestone conditions and uses of funds, as early-of-a-kind projects require greater flexibility than is typical in later-stage financings.

  Below are some example payment milestones. These are illustrative only—actual milestones should be tailored to the specific project development under consideration, the company's needs, and the investor's goals and risk tolerance.

Milestone	What it Could De-Risk	Example Language
Project site secured	• Binary risk of site availability • Regulatory jurisdiction uncertainty	[Company] or an Affiliate has entered into definitive, binding agreements, in form and substance reasonably satisfactory to [Investor] to lease and/or purchase the property at [address or substantially similar location], for the purpose of producing [product to be produced].
Engineering design complete	• Technical feasibility uncertainty • Cost and timeline uncertainty (Investor can streamline diligence by making funding contingent on final designs that reasonably match the cost, timing, and technical assumptions from their initial evaluation)	[Company] has completed engineering design for the Project, to an extent reasonably satisfactory to [Investor]. The project costs, timeline, and pro forma assumptions implied by the final design align with those shared by [Company] during the diligence process, to an extent reasonably satisfactory to [Investor].
Financing committed	• Capital availability (funding into a capital gap) • Uncertainty around market validation and investability	[Company] or an Affiliate has entered into definitive, binding agreements, in form and substance reasonably satisfactory to [Investor], with one or more third-party lenders, investors, or equity providers, sufficient for the development and construction of the Project facility.
Permits & approvals secured	• Binary regulatory approval risk • Community acceptance of Project (to the extent permits or approvals require community buy-in or support)	Requisite permits and approvals for development, construction, and operation of the Project facility have been obtained, or [Company] can show they are on track and highly likely to receive them, to an extent reasonably satisfactory to [Investor].
Offtake agreements signed	• Revenue uncertainty • Uncertainty around market need, customer demand, or willingness to contract with a new provider or technology	[Company] has entered into one or more binding offtake agreements, in form and substance reasonably satisfactory to [Investor], with counterparties reasonably likely to perform, for [XX%] of the Project's expected output, for at least [Y] years upon commercial operation of the facility.
Construction initiated	• Contractor or supply chain uncertainty • Final cost validation	[Company] has issued full notice to proceed to a qualified EPC contractor, and construction activities have commenced on site, to an extent and with documentation reasonably satisfactory to [Investor].

- **Investor Rights:** The DSA establishes non-financial covenants that span across multiple D-SAFEs, such as information rights, and rights to participate in subsequent equity rounds or the financing of future projects (e.g. a right of first offer, negotiation, or refusal). These strategic investor rights facilitate deep, ongoing collaboration that aligns investor support with company success, providing the investor with project visibility and preferential access to future development opportunities while incentivizing continued strategic support throughout project development and scaling. Please reference the DSA template language and footnotes for additional context.

The DSA terminates once all associated D-SAFEs have been converted and repaid, or when the commitment period ends, though some strategic partnership provisions and investor rights may survive to support ongoing collaboration.

Why it Works

- **Project funding directed to the parent company:** The DSA allows investors to evaluate, fund, and support concrete project development outcomes while maintaining exposure to the parent company's upside. Given the potential to convert to equity should the project not come to fruition, financier outcomes are not linked to any sole project and its distinct risks.
- **Milestone-based support:** Tying funding to key steps in project development progressively de-risks investments for both parties: investors only disburse capital as key development milestones are achieved—such as securing permits, completing engineering designs, or establishing community partnerships—while companies gain upfront certainty that funding for subsequent development phases will be available once they hit agreed-upon benchmarks. Each successfully completed milestone validates the project's viability and de-risks the next funding tranche.
- **Comprehensive development support:** Developing a first-of-a-kind project means not just navigating a funding gap, but also a knowledge and experience gap. Elemental leverages its expertise and resources to help companies develop and execute focused plans for their first commercial projects—providing hands-on support across workforce development, communications, finance, regulatory approval, and policy and local engagement. Elemental companies shared that the expert coaching was just as valuable as the financial aspect of our investment.

Part 3 | Key D-SAFE Variations

The D-SAFE can be customized across several dimensions to match specific project needs, risk profiles, and investor preferences. These variations allow funders and companies to tailor the instrument to the unique characteristics of their development timeline, cash flow expectations, and market conditions.

Call Option & Repayment Variations

These options provide different pathways for how and when investors can exit their investment, offering flexibility around timing and triggering events. Companies can structure optional call options tied to project success milestones, revenue-based call options that scale with project performance, or optional call options that activate under specific conditions.

Option	Description	Potential Use Case
Fixed Maturity Repayment	If the D-SAFE has not been converted by the Term Date, it may (at investor's option) be repaid for principal plus a pre-agreed return amount.	Companies or projects that have a solid project timeline and will predictably generate sufficient cashflow to facilitate repayment.
Milestone-Triggered Call Option	To align incentives, there is an opportunity to add a call option upon achievement of certain milestones (e.g. revenue targets, fundraising targets, unit deployment). This can be negotiated upfront.	Circumstances where it's possible to more closely align outcomes without creating a fixed debt-like obligation on day one, such as: • A startup may lack sufficient cash flows for repayment unless the project meets certain operational or performance targets; therefore, repayment is only triggered if the project achieves those success conditions. • A project developer or company developing a novel project may need upfront capital for permitting or site control; if the project advances to financing, the instrument can be then repaid from closing proceeds.

While the following options aren't provided for in the Development Agreements, Elemental has also used these tools in some cases and is including them below so that investors and companies can determine whether they want to employ them to better align incentives:

Option	Description	Potential Use Case
Optional Investor Call Option Right	The Investor may elect to exercise its option after a certain pre-determined date or in the case in which there is no qualified financing event (i.e. the right is not held by the investor at the outset but perhaps materializes at a later date).	The company is likely to be well positioned for repayment at a future date, even in the absence of a financing event, and the Investor has a preference for repayment in the absence of timely qualifying financing.

Cash Flow-Backed Repayment	If the Investor funds a specific project or portfolio of projects, or some other cashflow-generating activity, it also receives a portion of project- or product-level cash flows until the return threshold is met.	There is an upside case where meaningful project cash flows are projected.
Revenue-Based Repayment	The Investor receives a fixed share of gross revenue until a capped return or IRR is reached.	There are stable, predictable, and/or growing parent company revenues.

Return Enhancement Features

These options can better align incentives between companies and investors and allow investors to capture additional project upside or recurring cash flows. ***While these options aren't provided for in the Development Agreements, Elemental has used them in some instances and the parties can consider including these terms to better align incentives.***

Option	Description	Potential Use Case
PIK (Payment-in-Kind) Interest	Interest accrues and compounds into principal rather than being paid currently, and the voluntary conversion option triggers repayment of the principal rather than the initial investment amount.	Situations where a valuation cap is not possible to provide the investor with additional upside.
Cash Pay Interest	Interest is periodically repaid rather than accruing and compounding into principal.	The Investor has a preference for predictable cash payments.
Warrant Coverage	Investor receives warrants for common or preferred stock as additional upside, with fixed or variable strike price. This can be upfront or perhaps vest over time to encourage earlier repayment.	Often preferred over other approaches, as it may be less likely to trigger anti-dilution provisions.
Escalating Coupon or IRR Hurdle	The return rate increases annually or on a stepwise schedule (e.g. 8% in year 1 and 12% in year 2) to encourage early repayment and or conversion.	The Investor has a preference for early repayment and/or conversion.
Discount Step-Up	The conversion discount rate increases the longer it takes to trigger conversion, incentivizing timely fundraising.	The Investor has a preference for early conversion.

Conversion & Structure Options

These options alter how the D-SAFE converts to equity or gets repaid, providing creative solutions for complex development scenarios or to address specific dilution concerns or valuation uncertainties. ***While these options aren't provided for in the Development Agreements, Elemental has used them in some instances and the parties can consider including these terms to better align incentives.***

Option	Description	Potential Use Case
Hybrid Convert-and-Repay Model	The D-SAFE converts partially into equity, with the remaining principal repaid in cash.	Investor has a preference for repayment, but the company may not have certainty around its ability to fully repay at a future date.
Contingent Conversion Structure	Conversion only occurs upon a priced round above a minimum valuation; otherwise, redemption applies.	The company has the potential to meet its redemption obligations at a future date.
SAFE Converts into Loan	If not converted by maturity, SAFE transforms into a term loan with repayment schedule.	The company has the potential to meet its redemption obligations at a future date.

Part 4: Considerations

Elemental Impact ("Elemental") and the law firm Wilson Sonsini Goodrich & Rosati ("WSGR") do not assume responsibility for the contents of, or the consequence of using, the D-SAFE or DSA (together, the "Development Agreements"). Before using the Development Agreements, you should consult with your lawyer, tax advisors and accountants. In using the Development Agreements, you acknowledge that you are not a client of WSGR (for conflict of interest or any other purpose) and that use of the Development Agreements does not give rise to an attorney-client relationship or contract between you and WSGR, nor will it give rise to any duty or obligation on WSGR's part to you. Neither of the Development Agreements represents legal advice to either you or your counsel. You agree that neither Elemental nor WSGR will have any responsibility or liability to you or your affiliates and your officers, directors, partners, employees, and advisers, whether in contract, tort (including negligence) or otherwise, as a result of your use of the Development Agreements.

All users of the Development Agreements should consult with their counsel, tax advisors, and accountants prior to their use of the Development Agreements. In particular, users of the D-SAFE should consult with their tax return-preparers regarding any reporting and/or withholding requirements arising from the D-SAFE.

Additionally, all users of the D-SAFE should consult with their counsel and tax advisors to discuss the tax treatment of the D-SAFE and, in particular, its potential impact on qualified small business stock (QSBS) eligibility. All users of the D-SAFE should also discuss the treatment of the D-SAFE with their accountants.

Please note that the Development Agreements are modified by footnotes which provide additional context and background. Please read the Development Agreements in connection with their respective footnotes.

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By open-sourcing our D-SAFE tools, Elemental and WSGR aim to make it easier for startups and funders to align on development support and unlock catalytic capital for critical projects to bridge the scale gap. If these tools are useful to you, please reach out to portfolio@elementalimpact.com and tell us more!