

**General notes: This term sheet applies if the investment is in preferred shares conferring preferential dividend rights and the right to return of capital in priority to the ordinary shares. Adaptions of this term sheet are available if the investment is in ordinary shares or if the initial investment is structured as a convertible loan. The more optional provisions appear in square brackets and instructions are highlighted in bold italics. Refer to footnotes at the bottom of each page for comments on some of the optional provisions.**

## TERM SHEET

FOR ISSUE OF PREFERRED SHARES BY

[ ] LIMITED

(Company)

This document (**Term Sheet**) summarises the principal terms of a proposed investment in the Company (**Investment**). It is not legally binding except for the terms stated in part B of this Term Sheet and there will be no obligation to issue or subscribe for shares in the Company until a binding investment agreement (**Investment Agreement**) is signed by the parties.

### PART A: INVESTMENT TERMS (non-binding)

- Business:** The [proposed] business of the Company relating to [**describe business**] (**Business**).
- Investment Amount:** [Up to] \$[**insert amount**]  
[(subject to achievement of milestones)]<sup>1</sup> (**Investment Amount**)
- Investors:** [**insert investor name**] **or** [Those persons whose names are set out in Appendix 2] (**Investors**).
- Key People:** [**insert names of founder(s)/key people**] (**Key People**)<sup>2</sup>.
- Pre-money valuation:** The investment is based on a pre-financing valuation of \$[ ].
- Type of Shares:** [Series A<sup>3</sup>] preferred shares (**Shares**).
- Issue Price:** \$[**insert price**] per Share.
- Capital Structure:** The capitalisation of the Company immediately prior to investment and

<sup>1</sup> Applicable if investment is tranching and some tranches are contingent on milestones being achieved.

<sup>2</sup> The term "Founders" is more common than "Key People", but latter term may be more accurate in indicating the people and who are important, (they may not be limited to the original founders of the Company). The term is relevant to conditions precedent and restrictions on share transfers.

<sup>3</sup> It is common to label the first issue of investor shares as "Series A" to distinguish them from investor shares issued in future capital rounds with different preference rights.

after investment of the [maximum] Investment Amount will be as set out in the table in Appendix 1 (**Capitalisation Table**).

**Conditions Precedent:  
(for Investors' benefit)**

- Due diligence being completed to the satisfaction of the Investors.
- Agreement on a business plan which comprises an agreed budget (**Agreed Business Plan**).
- [Agreement on milestones which must be achieved for disbursement of post Completion Date tranches of the Investment Amount (**Milestones**)].
- Final approval of each Investors' [board] [or] [Investment Committee] (as applicable).
- Completion of the Investment Agreement and all existing holders of shares or options in the Company agreeing it supersedes any existing agreements between them.
- Capitalisation of all outstanding loans [other than the loan(s) of \$ [ ] from [ ]] and that capitalisation resulting in the pre-investment capitalisation shown in the Capitalisation Table.
- Completion of employment or contractor agreements(s) with the [Key People] **or [insert names]** on terms acceptable to the Investors (and which include suitable non compete covenants).
- All relevant officers, consultants and contractors (including all Key People) assigning (in a form acceptable to the Investors) all intellectual property linked to the Business or proposed future business.
- Agreement on the identity of **[insert number]** [an] [independent director[s] [and a chairman].
- [Agreement on the parameters of an employee share option plan for the key officers, employees and contractors of the Company (including the Key People) to purchase up to [ ] % of the Company's post money capital (**ESOP**)].
- Evidence that any third party consents or other authorisations required to complete the investment have been obtained.
- **[Insert any other specific conditions precedent<sup>4</sup>].**

**Anticipated Completion:  
Date:**

**[insert date]** or [5] Business Days after satisfaction of all conditions precedent in the Investment Agreement (actual settlement date being

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<sup>4</sup> Consider other specific conditions precedent which should be specified up front, (although there is sufficient protection for Investors in the general due diligence condition and the non-binding nature of Term Sheet).

referred to as **Completion Date**).

**Disbursement of Investment Amount:**

The Investment Amount will be subscribed for Shares [in one sum on the Completion Date] **or** [in the instalments as specified in the Agreed Business Plan (and applied solely to expenditure as specified in the Agreed Business Plan or otherwise approved by the Investors)] **or** [as follows:

- \$ [ ] on the Completion Date;
- \$ [ ] when [**describe Milestone etc**];

provided each instalment will be at the Investors' option if a Milestone due by the relevant date has not been achieved<sup>5</sup>.

**Preferred Dividend:**

The Shares will have priority for an annual dividend equivalent to [ ]% of the amount subscribed for the Shares (which will compound until paid) (**Preferred Dividend**) [and will also participate pro-rata in any further dividend paid on the ordinary shares]<sup>6</sup>.

**Liquidity Event Preference:**

If the Company is liquidated or a significant liquidity event occurs (including a merger or share issue resulting in a change of control or a sale of a majority of the Company's assets) the Shares will receive (in preference to any distribution to the ordinary shareholders and in addition to payment of any outstanding Preferred Dividends) [**insert number if multiple preference applies** times] the total amount subscribed for the Shares (**Preference Amount**)<sup>7</sup>. [The ordinary shareholders will then receive an amount equivalent to \$[ ] per share]<sup>8</sup> [and any balance available for distribution will be distributed pro-rata to [all shareholders including the Investors] [the ordinary shareholders]<sup>9</sup>.

**Conversion:**

The Shares may be converted on a 1 for 1 basis to ordinary shares (subject to any anti-dilution adjustment as below) at any time at the option of the holder(s) and will automatically convert [when the Preference Amount has been paid] [if the Investors would receive more than the Preference Amount in a distribution if the Shares were ordinary shares]<sup>10</sup>.

**Anti-dilution:**

The number of Shares held by the Investors will be increased (by the

<sup>5</sup> The latter 2 options allow for tranching with the third option allowing the Investors to limit their risk further by giving them the option to suspend further investment if any milestones are not met.

<sup>6</sup> A preferred dividend may apply in addition to, or in lieu of, the entitlement to participate in any ordinary dividends. However early stage companies will not usually pay dividends, this is largely academic and the accumulated preferred dividends will just be added to the liquidity event preference.

<sup>7</sup> A one time preference is more usual. However up to 3 times is not uncommon, particularly if the ordinary shareholders retain a higher proportion of the shares than is justified if a more robust pre-money valuation is adopted (often this is used to bridge any 'valuation gap'). Other relevant factors include the value add the Investors will provide and the counter-balancing effect of the ESOP.

<sup>8</sup> A catch-up for ordinary shareholders is usual if the preference shares also participate in the residue (see comment in 10), particularly if a multiple preference applies.

<sup>9</sup> The liquidity event preference will usually be structured so the preference shares either get:  
(a) the higher of the Preference Amount or the pro-rata distribution which would apply if all shares are treated equally; or  
(b) both (ie the Preference Amount and a pro-rata distribution of the residue) .

<sup>10</sup> The first option applies if 10(a) applies while the second option applies for 10(b).



issue of further shares at nominal consideration to the Investors) on a [full] **or** [weighted average] ratchet basis if any new shares are issued at a price less than the issue price for the Shares (other than pursuant to an approved ESOP).<sup>11</sup>

**Board:**

The Board will initially consist of:

Chairperson [(no casting vote)]

Investor Director[s] [ ]

Other Shareholders' Director[s] [ ]

[Independent Director[s]] [ ]

The Board will meet [monthly][bi-monthly][quarterly].

[The Chairman will be paid \$[ ] per annum/meeting], [any independent directors will be paid \$[ ] per annum/meeting] and [the [Investor] [other] directors will be paid \$[ ] per annum/meeting]<sup>12</sup> [but otherwise attendance at Board meetings will not be remunerated].

**or**

[No Directors' fees will be paid unless authorised by a special resolution of Shareholders (75%).]

**Protective Provisions:**

Prior approval of the Investor Director(s) will be required for key decisions, including any of the following in relation to the Company:

- approval of subsequent budgets and Business Plans or any material amendments to or departures from the Agreed Business Plan;
- any transaction or arrangement likely to have the effect of the Company acquiring rights or interests or incurring obligations or liabilities not specifically identified in the Agreed Business Plan, the value of which is greater than \$[ ];
- issues of Shares (including any IPO), options or any instruments convertible to equity (other than issues already contemplated by the Investment Agreement);
- any borrowings, guarantees, indemnities or other contingent commitments;
- any purchase by the Company of any securities of any other company;
- any change to accounting policies [or the auditor]; or

<sup>11</sup> Anti-dilution protection is common. Full ratchet protection adjusts the Investors' effective share price to the lower new issue price while a weighted average re-prices based on a weighted average of the original price and the new price.

<sup>12</sup> For an early stage company, usually the only directors' fees will be (at most) a modest meeting fee to be paid to the Investor directors only.

- appointment of removal of the CEO, CFO or any other Key Person [or any other employee];
- the appointment of any additional director(s).

Prior approval of a special resolution of Shareholders ([75%]<sup>13</sup>) is required for the following:

- any Major Transaction or transaction involving the disposal of a material proportion of the Company's assets;
- any significant change in the nature of the Company's business (whether by acquisition or otherwise);
- any material related party transaction (eg. between the Company and any shareholder, Director, officer or employee of the Company or any associate of any of them) [unless that transaction has been approved by a unanimous resolution of the Board (including at least one Director who is not interested in the transaction)].

**Financial Statements, Reporting:**

[Monthly cashflow statements], quarterly statements and [un]audited annual accounts, accompanied by reports covering all material aspects of the Company's progress [in the case of the quarterly and annual statements].

**Pre-emptive rights and Drag and Tag along:**

In addition to usual pre-emptive rights:

- tag along rights will apply where Shareholder(s) wish to sell more than [20%] of the Shares in the Company to a third party so that the Shareholder(s) wishing to sell must procure the buyer to make a binding offer to other Shareholders who wish to sell on the same terms, (on a pro rata basis if the buyer does not wish to buy all of the available Shares); and
- drag along rights will apply where Shareholder(s) wish to sell more than [60%] of the Shares [including a majority of the Investor Shares]<sup>14</sup> [or if the Investors wish to sell all of their Shares,]<sup>15</sup>, to a third party (so that the Shareholders selling their Shares may require the other Shareholders to sell all of their Shares on the same terms).

**Investor Co-Sale Rights**

Co-sale rights will apply such that an Investor may only sell some or all of its Shares if each of the other Investors has been offered an opportunity to sell the same proportion of their respective Shares on the same terms.

<sup>13</sup> This threshold will usually be set at a level which will provide the Investor(s) with an effective veto power. Alternatively it can be stipulated that the Investors must support the resolution (which may be preferable to setting a higher threshold than 75%, which might provide other minority shareholders with an effective veto as well).

<sup>14</sup> The Investors may require this protection against being "dragged" by other shareholders.

<sup>15</sup> Consider if the Investors should have the right to "drag" other shareholders for desired exit, irrespective of their percentage shareholding.

<b>Key People Lock-in:</b>	<p>Except with the consent of the Investor Directors the Key People may not dispose of any Shares for a period of [5] years from Completion Date, with the exception of:</p> <ul style="list-style-type: none"><li>• a sale in an IPO or other transaction approved by the Investors where the Investors have the opportunity to sell on identical terms; or</li><li>• a transfer to their respective wholly owned and controlled entities or to immediate family (who enter into a similar lock-in covenant).</li></ul>
<b>Key Man Insurance:</b>	<p>The Company will procure and maintain (for the Company's benefit), and at least once annually review, key man life insurance policies in such amounts and on such terms as the Board determines is prudent, based on advice from a suitably qualified risk adviser, on the lives of [the Key People] <b>or [insert names of relevant Key People]</b>.</p>
<b>Warranties:</b>	<p>Without limiting usual warranties for similar investments as will be contained in the Investment Agreement, the Company [and [Key People] <b>or [name warrantors]</b>] will warrant that (except as disclosed):</p> <ul style="list-style-type: none"><li>• all intellectual property and other rights necessary to pursue the Business are the full legal, beneficial and unencumbered property of the Company;</li><li>• the Company has no actual or contingent liabilities not specified in the statement of financial position provided to the Investors and such statement provides a true and fair view of the Company's position; and</li><li>• all other information provided to the Investors is true, accurate and complete in all material respects.</li></ul> <p>[(but in the case of the individual warrantors, [their liability will be limited to [\$x] each][all warranties will be qualified to the best of their knowledge and belief after due and careful enquiry]]<sup>16</sup>).</p>
<b>[Transaction Fees:</b>	<p>Immediately following subscription of [the [first][each] tranche of] the Investment Amount, the Company will pay a sum equivalent to <b>[insert number]</b>% of the [Investment Amount][the amount invested by the Investors on that date] (plus GST) to <b>[insert entity]</b>.]</p>
<b>[Investors Further Investment Rights:</b>	<p>The Investors will have first option to provide any additional capital sought by the Company or, where it is necessary or desirable to introduce new investors, the right to participate in any subsequent capital round.]</p>

<sup>16</sup> It is usual to limit the liability of individual warrantors to a capped amount or to knowledge where they will not derive any cash from the investment transaction. However the Investors still want individual warranties rather than relying solely on warranties from the Company they will be a shareholder of.

**[Forced Liquidation  
Process/Redemption:**

If the Company has not carried out either an IPO or trade sale within **[insert number]** years from the Settlement Date (or such longer period as the Investors and the Company may agree) the Investors may require the Company to commence a liquidation process by way of public offering, trade sale or liquidation.]

**[Other Key Terms:**

**Insert other key terms as required e.g. will Investors have rights relating to further capital raisings?**

**PART B: LEGALLY BINDING TERMS**

**Exclusive Period:**

For a period of [90] days from the date of signing this Term Sheet, **(Exclusivity Period)** none of the Company, its shareholders, directors, officers, contractors or employees will conduct any discussions whatsoever with any third party regarding any investment in the Company, except as may be approved by the Investors in their discretion.

**Legal costs:**

Provided that the Investment is offered to the Company within the Exclusivity Period pursuant to an Investment Agreement which contains the terms of this Term Sheet (and is otherwise in the Investors' usual form) the Company will pay all legal and professional costs incurred by the Investors relating to the Investment Agreement and related documentation [up to a maximum of \$**[insert amount]**] (plus GST), whether or not an Investment Agreement is entered into.

**Broken Deal Fee:**

If the Investment Agreement is not completed because:

- the Company fails to negotiate in good faith to complete the Investment Agreement;
- the Company breaches the preceding exclusivity requirement; or
- the Investors withdraw because the information relied upon by the Investors when entering into this Term Sheet (as provided by or on behalf of the Company) was not true and accurate;

the Company will pay a further \$**[insert amount]** to the Investors as full compensation for all other costs (including opportunity costs) incurred by the Investors.

**Confidentiality:**

The contents of this Term Sheet, and the fact that one has been issued, may only be disclosed by the Company to its shareholders, directors and advisers or other person(s) approved by the Investors (on a need to know basis).

**[Guarantee:**

[ ] [and [ ]] guarantee the Company's obligations in this Part B].

**[Investor Representative:**

[ ] represents [he/she] has authority to bind **[insert relevant Investors]**



**they represent**] in respect of all matters relating to the Investment]]<sup>17</sup>.

To confirm your acceptance of this Term Sheet, please sign and date the duplicate of this Term Sheet and return it to me.

**SIGNED on behalf of the Investors [by the Investor Representative]:**

Name: ..... Name: .....

Date: ..... Date: .....

Signature ..... Signature .....

**SIGNED on behalf of **insert name of Company** Limited by:**

Director ..... Director: .....

Date: ..... Date: .....

Signature ..... Signature .....

**[SIGNED on behalf of **insert Guarantors****

Name: ..... Name: .....

Date: ..... Date: .....

Signature ..... Signature .....]

<sup>17</sup> May be applicable for an investor syndicate.



APPENDIX 1  
Capitalisation Table

Class of Security	Pre-money (Term Sheet signing)		Post-money at Target			
	Shares	%age	Cash-in	\$ per share	Share	%age
<b>Shares</b>						
Founders -ord	[ ]	[ ]%	[\$ ]	[ ]	[ ]	[ ]
Investor- pref			Up to \$[ ]	[ ]	Up to [ ]	[ ]
<b>Options</b>						
ESOP Others?	[ ]	[ ]			[ ]	[ ]
	[ ]	[ ]			[ ]	[ ]
<b>Total fully-diluted</b>		<b>100%</b>	<b>[\$ ]</b>			<b>100%</b>



APPENDIX 2  
Committed Investors

Investor	Amount
<i>[insert investor details]</i>	<i>[\$[insert amount]]</i>
<i>[insert investor details]</i>	<i>[\$[insert amount]]</i>
<i>[insert investor details]</i>	<i>[\$[insert amount]]</i>
<i>[insert investor details]</i>	<i>[\$[insert amount]]</i>
<i>[insert investor details]</i>	<i>[\$[insert amount]]</i>