

# TERM SHEET

## FOR EQUITY INVESTMENTS IN [INSERT COMPANY NAME] (Company)

### Dated

This document summarises the principal terms upon which [insert names(s)](Founder) and [insert names(s)] [certain new investors to be identified] (collectively **Investors**) (the Founder and Investors being collectively **Shareholders**) will invest in [describe project or Company purpose] through the Company.

This term sheet is divided into 3 sections:

- Part A contains background;
- Part B sets out key investment terms intended to be incorporated in a detailed Subscription and Shareholders Agreement (**SSA**) to be entered into between the Shareholders (but which are not binding until a SSA is signed); and
- Part C sets out certain provisions which each prospective Investor agrees to be bound by if they engage with the Founder regarding a potential investment.

### PART A – BACKGROUND

[Project] **or** [Business]      **Describe project or business** [(Project)] **or** [(Business)]

[Project] **or** [Business]  
**Status**      A preliminary [feasibility study][business plan] for the [Project][Business] has been completed by the Founder[, indicating its financial viability]. The Founder now wishes to engage with potential equity partners to advance the [Project][Business].

**Company**      The [Project][Business] will be undertaken by a special purpose limited liability company to be established in [insert location].

**Establishment Cost and  
Timeframe**      The preliminary estimate of the total costs to [complete][establish] the [Project][Business] (inclusive of contingencies and pre-opening expenses) is \$[insert amount] and the [construction][establishment] period is estimated at [insert number] months.

### PART B – INVESTMENT TERMS (NON BINDING)

**Equity Requirement**      It is intended to fund [insert percentage]% of the [Project][Business] cost (currently estimated at \$[insert amount]) through the issue of the Company's shares (**Shares**).  
**Consider if all shareholder funds will be provided by way of share**

**subscription or whether some will be advanced as shareholder loans.**

#### Founder Shareholdings

The Founder intends to subscribe for **[insert percentage]**% of the Shares.

**Consider if there will be any 'Founder equity' will be issued on incorporation (or otherwise before other Investors come on board at nominal value or a cheaper price.**

**Also consider if Investors will pay a subscription or other transaction fee to the Founder or a related entity.**

#### Investors and Investor Shareholdings

The remaining **[insert percentage]**% of the Shares are available for subscription by Investors at a total estimated subscription cost of \$**[insert amount]**.

Each individual Investor will be expected to subscribe a minimum of \$**[insert amount]** for a minimum **[insert percentage]**% shareholding interest in the Company. It is envisaged that the Company will have no more than **[insert number]** shareholders.

#### Indicative Offers

[If an approved prospective Investor wishes to proceed with an investment in the Company it must deliver an indicative offer to [the Founder, care of .... ]in the form attached to this term sheet no later than **[insert date]**].

#### Conditions Precedent

The investment by prospective Investors will be conditional on the Investors completing satisfactory due diligence and the parties agreeing the terms of the SSA (by the SSA signing date specified below). **[Insert any other conditions]**

[To facilitate the conduct of due diligence by prospective Investors who are approved by the Founder it is proposed that:

- the Founder will provide access to documents relevant to the [Project][Business][and underlying the feasibility study undertaken by the Founder][through **describe process if applicable**];
- the Founder representatives will meet with representatives of the approved prospective Investors to help them develop a better understanding of the [Project][Business];
- [site visits by those parties will be facilitated under the control and supervision of the Founder.]

#### SSA Negotiations

Following consideration of the indicative offers the Founder anticipates negotiating the SSA with selected Investors, with a view to

finalising a SSA which reflects the terms contained in this term sheet by **[insert date]**. However it is acknowledged that the Founder may amend any terms and its process (including discontinuing negotiations with any party if it so chooses) as it sees fit at any time, without any liability to prospective Investors.

**Share Price**

[All] Shares will be issued at a price of \$[1] per Share. **Carve out Founder shares if applicable.**

**Investment Amounts**

The SSA will specify a maximum investment commitment for each Shareholder (**Maximum Investment Commitment**).

Any further investment by a Shareholder exceeding their Maximum Investment Commitment will be at that Shareholder's individual discretion.

All Shareholders will have pre-emptive rights to provide any additional funding which might be required by the Company, pro rata to their respective shareholdings (should the Company require shareholder funding exceeding the aggregate of the Maximum Investment Commitments of all Shareholders or to cover any default by a Shareholder in contributing their Maximum Investment Commitment).

**Equity Closing Date Investments**

On the equity closing date specified in the SSA for payment of initial subscriptions (**Equity Closing Date**) the Founder and the Investors will each invest (pro rata to their respective shareholdings) sufficient funds in the Company (as determined by the Board) to enable the Company to meet its initial expenses, including such amounts as are required to :

- contemporaneously reimburse to the Founder all legitimate expenses it has individually incurred prior to the Equity Closing Date) in developing the [Project][Business] and establishing the Company;
- meet all of the Company's expenses associated with the preparation and finalisation of the SSA and all associated documents;
- meet all other anticipated expenses of the Company through to the development phase of the [Project][Business] commencing and to make prudent allowance for other expenses which will be incurred before the next anticipated drawdown.

[All costs to be reimbursed to the Founder (in accordance with the first bullet point above):

- [must have been independently audited and approved by the

Board;]

- may be set-off against subscription payments for Shares.]

## Board

It is anticipated that the following provisions will apply relating to the Board composition (however such provisions will be reviewed to be appropriate for the final shareholding structure of the Company):

- the Board will comprise a minimum of [insert number] directors and a maximum of [insert number] directors;
- while the Founder holds more than [insert percentage]% of the Shares it will have the right to appoint [a majority of the Board] or (up to [insert number] directors) (each the Founder appointee being a **Founder Director**) and the Investors will be entitled to appoint up to [insert number] directors between them (where each Investor or Investor group may appoint a director for each parcel of Shares they hold comprising [insert percentage]% of the Shares on issue) (each Investor appointee being an **Investor Director**).

[It is expected that Board members will be appointed for a duration of [insert number] years (where each year will end upon approval of the annual financial statements), but without prejudicing a Shareholder's right to replace a director if there is a good reason to do so.

The Chairman of the Board will be appointed from the [Founder][Investor] Directors.

## Board Meetings' Quorum and Voting:

Board meetings will take place every [insert number] months during the [development] phase. Thereafter board meetings will be no more frequent than quarterly and in such locations as the Board determines. All meetings will take place in [insert location].

At least [10] business days written notice will be given for regular meetings provided that a meeting for urgent business may be convened by giving at least [3] business days' notice where circumstances prevent longer notice being given.

The quorum for each Board meeting will be at least [one] Founder Director and at least [one] Investor Director (provided that suitable provisions will be included in the SSA to allow a meeting to proceed if a quorum is still not present at a rescheduled meeting and each director has been given a full opportunity to attend by telephonic means if they cannot attend in person).

Except for "Super Majority Decisions" (as described below), Board resolutions will be passed by a simple majority of the directors present or represented at that meeting (where a director may

exercise the voting rights of any other director appointed by the same Shareholder who is not present at that meeting).

### **Shareholders' Meetings' Quorum and Voting**

The quorum for a Shareholders' meeting will be representatives of Shareholders holding at least [50.1]% of the Shares [comprising at least [one] representative of the Founder and at least [one] representative of the Investors].

Except for "Super Majority Decisions", shareholders' resolutions may be passed by a simple majority vote (where each Shareholder representative may exercise one vote for each Share held by the Shareholder they represent).

### **Super Majority Decisions**

Certain material decisions (**Super Majority Decisions**) will require the approval of Shareholders holding at least [75]% of the Shares (for shareholder decisions), directors representing Shareholders who hold at least [75]% of the Shares (for Board decisions) [and/ or an affected Shareholder] (as the case may be) (and where the applicable majority or approval is referred to as a **Super Majority**).

The decisions requiring Super Majority approval by the Shareholders will include:

- carrying on any new activity which is contemplated by the final [Project Feasibility Study][ Business Plan] or otherwise ancillary to the [Project][Business] and;
- any material alteration to the constitutional documents of the Company;
- selling substantially all of the Company's assets, liquidating the Company or ceasing to carry on the Business;
- [entering into, materially modifying, voluntarily terminating or cancelling any material related party transactions (including any agreement with a Shareholder or affiliate)].

The decisions requiring Super Majority approval by the directors will include:

- increasing borrowings in excess of borrowings contemplated in the SSA or guaranteeing the debts of any other party, otherwise than in the ordinary course of its business or as approved in any business plan/budget;
- [selling, transferring, leasing, assigning or in any other way disposing of the core assets of the Company or any integral part of its machinery or equipment otherwise than in the ordinary



course of its business, as approved in the business plan/budget;]

***Insert others as appropriate- such as approval of each annual business plan. This is a minimal list.***

**[Deadlock:**

If a decision requiring Special Majority approval is remains unresolved following attempts at good faith negotiations involving the Chairmen or CEOs of the relevant Shareholders, appropriate exit procedures will apply [allowing the Shareholders comprising a majority on any Super Majority Decision blocked by a minority to acquire the Shares of those minority Shareholders at fair market value as determined by a suitable independent international expert].

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

Usual pre-emptive rights will apply upon any issue and transfer of Shares so existing shareholders will have the first right to acquire any Shares on offer.

In addition to the pre-emptive rights:

- drag along rights will apply if Shareholders [including the Founder] holding more than ***insert percentage%*** of the Shares (in aggregate) wish to sell to a third party so that the selling Shareholders may require the other Shareholders to sell all of their Shares on the same terms [(provided [that the Shareholders being dragged will, following exit, have received an IRR of at least ***insert percentage%*** on their investment][at least ***insert number***] years have lapsed since the Equity Completion Date); and
- tag along rights will apply in respect of any proposed sale (in one or more related transactions) which will result in any Shareholder (and associated parties) acquiring more than [25%] of the Shares or effective control of the Company, so the other Shareholders may require the selling Shareholder(s) to obtain an equivalent offer from the purchaser to acquire the Shares of the other Shareholders.

**Key Managers:**

The management structure of the Company will include the following key positions (**Key Managers**):

- Managing Director;
- Chief Financial Officer;
- ***Describe other Key Manager roles***

Key Managers will have specific powers delegated to them by the



Board connected with their ambit of activities.

The Managing Director will report directly to the Board at the frequency and in the manner as determined by the Board from time to time (including by way of written reports where applicable).

All Key Managers (other than the Managing Director) will report to the Managing Director and, to the extent the Board deems this appropriate, the Board (again at such frequency and in such manner as determined by the Board in each case and from time to time).

**Auditors:** The Company will **[name firm]** as the Company's auditors.

## **PART C – BINDING ACKNOWLEDGEMENTS**

**Good Faith** Prospective Investors who choose to negotiate with the Founder agree to negotiate in good faith to finalise detailed terms for an investment in the Company based on the terms in Part B of this term sheet and other usual terms for a similar investment.

**Confidentiality** Without limiting the terms of any Non-Disclosure Agreement signed by a prospective Investor the contents of this term sheet, the fact that one exists and all information provided to a prospective Investor regarding the [Project][Business] may only be disclosed by a prospective Investor to its shareholders, directors and advisers or other person(s) approved by the Founder (on a need to know basis).

**Expenses** Each prospective Investor will bear its own costs associated with this term sheet and negotiation of the SSA, (where the Company will reimburse the costs of drafting the SSA if the investment is completed).

**Information Acknowledgement** Each prospective Investor acknowledges that, in the interests of expediting the [Project][Business] and their investment, the Founder has provide a [Project Feasibility Study][Business Plan] which is preliminary in nature and may provide further [feasibilities, market studies...] and other information in preliminary draft form, as such documents and information become available. Such documents and information may be subsequently corrected or otherwise amended and, in respect of projections and forward looking statements contained in those documents, are based on assumptions and predictions which may not prove to be correct. In any event no warranty or representation is given by the Founder in respect of the accuracy or completeness of any information and each Investor acknowledges that it proceeds with any investment based on its own



judgement.

**Governing Law**

This term sheet and documentation arising from this term sheet (including the SSA) will be governed by [New Zealand] law [and any dispute arising from any such documents will be determined by [arbitration] in [**insert arbitration details if applicable**]].



**ANNEXURE**  
**Form of Indicative Offer**  
**[Investor Name & Address]**

*Insert address details*

[Date]

Dear Sirs,

**Indicative offer for investment in *insert company name* (Company)**

We refer to the term sheet dated [*insert date*] setting out key terms for an investment in the Company (**Term Sheet**).

Subject to the conditions outlined in this letter and satisfactory due diligence we would like to indicate our strong interest in making an investment in the Company based on the Term Sheet and as follows:

**Investment Range:** Between \$[●] and \$[●]  
*[Indicate minimum and maximum investment amounts where minimum must be at least \$[] for []% shareholder interest]*

**Conditions:** [In addition to completion of due diligence to our satisfaction] our investment would be conditional on:  
*[List conditions including any board or regulatory approvals required.]*

We will require [*indicate timeframe*] to satisfy these conditions.

**Additional Terms** *[Indicate any additional terms which would apply to an investment]*

**[Debt Financing:** *[Indicate whether any related parties would wish to participate in the debt financing associated with the [Project][Business] and potential amount of, and key terms for, such financing]*

**Agreement and Acknowledgement** We acknowledge and agree to comply with the binding provisions set out in Part C of the Term Sheet.

Yours sincerely,

[Signature]

[Name of Company]