

TERM SHEET

FOR ISSUE OF CONVERTIBLE LOAN TO

[] LIMITED

(Company)

General notes: *This term sheet applies if an investment is initially structured as a loan convertible to equity. Refer to alternative term sheets for ordinary or preference shares (one of which will usually be attached to describe equity terms which will take effect on conversion). The more optional provisions appear in italics and instructions appear in bold italics. Refer to footnotes at the bottom of each page for comments on some of the optional provisions.*

This document (**Term Sheet**) summarises the principal terms of a proposed loan to the Company (**Loan**). This Term Sheet is not legally binding except for the terms stated in part B of this Term Sheet and there will be no obligation to proceed with the loan until a binding agreement (**Loan Agreement**) is signed by the parties.

PART A: LOAN TERMS (non-binding)

Business: The [proposed] business of the Company relating to [**describe business**] (**Business**).

Amount of Loan: [Up to¹] \$[]
[(subject to achievement of Milestones)] (**Loan**).

Lenders: [**Insert name(s) of Co-Lenders(s)**] and NZVIF (Seed Fund) Limited (**Lenders**).

Key People [**Insert names of founder(s)/key people**] (**Key People**²).

Purpose of Loan: The purpose of the Loan is to [**describe purpose of Loan**]. The Company may only use the Loan for this purpose.

Term: The Loan (to the extent that it has not been converted to equity) is repayable on demand after [**insert number**] months from the Settlement Date.

Interest: Interest will only be payable if the Loan is not converted and if demanded by the Lender at the rate of [**insert rate**]³.

Conversion: The Loan may be converted [*in whole*] [*in part*] at the Lender's option at any time into [*preferred*] [*ordinary*] shares at the conversion rate (**Conversion Rate**) as set out below:

$$X = (1 + [\textit{insert fraction}]^4 / 12)^n \times y$$

¹ Words "up to" generally apply if loan is tranching and milestones or conditions apply for subsequent payments.

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

³ The conversion formula compensates the Lender for the time value of money if the Loan is converted. The Lender will prefer not to be treated as having derived interest income if conversion occurs, however tax advice should be sought whether this conversion treatment excludes this.

⁴ The fraction inserted will be equivalent to the interest rate percentage which applies if the Loan is repaid - e.g. if the

**TEMPLATE TERM SHEET
FOR CONVERTIBLE LOAN**

Where:

x is the number of shares to be issued

n is the number of months (rounded up to the nearest month) that the amount of principal of the Loan being converted has been outstanding

y is the amount of Loan principal being converted.

The *[preferred]* *[ordinary]* shares will be issued on the terms set out in **Appendix 2**⁵.

[The Conversion Rate is subject to adjustment as set out in the anti-dilution paragraph below.]

Security:

First ranking general security agreement over all of the Company's assets (including Intellectual Property) in the Lender's usual form (**Security**).

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

- Approval of an agreed budget for application of the Loan (**Agreed Budget**).
- Final approval of each Lender's *[board]* **or** *[Investment Committee]* (as applicable).
- Completion of the Loan Agreement and Security and all documents required to give full effect to these documents.
- *[Execution of a term sheet for *[preferred]* *[ordinary]* shares substantially in the form attached as Appendix 2].*
- *[Agreement on milestones which must be achieved for disbursement of post Settlement Date tranches of the Loan (**Milestones**)].*
- *Completion of employment or contractor agreements(s) with the *[Key People]* [] and [] on terms acceptable to the Lenders (and which include suitable non competition covenants).*
- *All relevant officers, consultants and contractors (including all Key People assigning (in a form acceptable to the Lenders) 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]* for the company.*
- *Evidence that any third party consents or other authorisations required to complete the Loan have been obtained.]*
- ***[Insert any other conditions precedent***⁶

interest rate is 15%, it will be 0.15.

⁵ Usually these terms will be set out in a term sheet for the relevant type of shares.

⁶ Consider other specific conditions precedent which should be specified (e.g. members of investment syndicate making commitments equivalent to at least the minimum required Loan). However there is sufficient protection for Lenders in the general due diligence condition and the non-binding nature of Term Sheet.

- Anticipated Settlement Date:** *[Insert date]* or [5] business days after satisfaction of all conditions precedent in the Loan Agreement (actual settlement date being referred to as **Settlement Date**).
- Drawdown of Loan Amount:** The Loan Amount will be drawn down *[in one sum on the Settlement Date] or [in the instalments as specified in the Agreed Budget (and applied solely to expenditure as specified in the Agreed Budget or otherwise approved by the Lenders)] or [as follows:*
- [\$] on Settlement Date;
 - [\$] when *[insert Milestone etc]*
- [provided each instalment will be at the Lenders' option if a Milestone due by the relevant date has not been achieved]*⁷.
- [Anti-dilution:** *The conversion price of the Loan will be subject to adjustment on a full ratchet basis for issues of new equity in the Company at an issue price less than \$[] per share (other than pursuant to an approved ESOP)⁸.*
- [Directors:** *The Lenders will be entitled to appoint [2] directors (Lender Directors).[Only applicable if Lenders will have board rights, otherwise observation rights below will apply]*
- [Observation Rights:** *[Each Lender] [The Lenders] shall be entitled to send an observer to attend meetings of the Company's Board (and to receive all information provided for, or at, such meeting).*
- Protective Provisions:** Prior approval of the [Lenders] [Lender Directors] is required for any of the following in relation to the Company:
- any change to the Company's constitution;
 - issues of equity, options or any instruments convertible to equity (other than issues already contemplated by the Loan Agreement);
 - any [major] transaction or transaction involving the disposal of a material proportion of the Company's assets;
 - 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 Budget, the value of which is greater than [\$10,000];
 - any material change in the Company's share ownership or control;
 - any material transaction with a related party of the Company or any shareholder or officer;

⁷ Of the 3 variables, the latter 2 options which allow for tranching will usually be preferred with third option being most preferred from Lenders' perspective as payments are contingent on milestones.

⁸ Anti-dilution protection is standard.

**TEMPLATE TERM SHEET
FOR CONVERTIBLE LOAN**

- any borrowings, guarantees, indemnities or other contingent commitments or the granting of any security over the Company's assets;
- appointment or removal of the CEO, CFO or any other Key Person [*or any other employee*];
- approval of any material amendments to or departures from the Agreed Budget, subsequent budgets and business plans;
- any change to the size or composition of the Board; or
- any change to the nature of the Company's principal business, or any addition of any new business.

Financial statements, reporting:

Unaudited [*monthly and*] quarterly statements and [*un*]audited annual accounts, in all cases accompanied by reports covering all material aspects of the Company's progress.

Warranties:

Without limiting usual warranties for similar loans as will be contained in the Loan Agreement, the Company [*and [Key People]*] [***or name warrantors***] will warrant that (except as disclosed [*and to the best of their knowledge and belief*]⁹):

- all intellectual property and other rights necessary to pursue the Business are the full legal, beneficial and unencumbered property of the Company;
- the Company has no actual or contingent liabilities not specified in the statement of financial position provided to the Lenders and such statement provides a true and fair view of the Company's position; and
- all other information provided to the Lenders is true, accurate and complete in all material respects.
- the Company is not engaged in any VIF Ineligible Business (ie. property development, hospitality or mining).

[The maximum liability of each individual warrantor will not exceed \$50,000]¹⁰.

[Subsequent Rounds

The Lenders will have first right of refusal to arrange subsequent capital raisings.]

[Other key terms:

Insert other key terms as required]

PART B: LEGALLY BINDING TERMS

Exclusive Period:

For a period of [30] days from the date of signing this Term Sheet

⁹ Consider carefully whether a knowledge qualifier is acceptable for all 3 warranties mentioned. Preference is to leave this out of term sheet and deal with the issue on a warranty by warranty basis in the Investment Agreement negotiation.

¹⁰ A dollar cap is usual if individuals are required to join in warranties.

**TEMPLATE TERM SHEET
FOR CONVERTIBLE LOAN**

(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 Lenders in their discretion.

Legal costs [and Broken Deal Fee]:

If the Loan is offered within the Exclusivity Period pursuant to a Loan Agreement which contains the terms of this Term Sheet (and is otherwise in the Lenders' usual form) but is declined by the Company, or if the Company breaches the preceding exclusivity requirement, the Company will pay all legal costs incurred by the Lenders relating to the Loan Agreement and related documentation [up to a maximum of **\$insert amount**] [and up to a further **\$insert amount** to the Lenders as full compensation for all other costs (including opportunity costs) incurred by the Lenders].

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 Lenders (on a need to know basis).

[Guarantee:

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

[Lenders' Representative

[] [and] represent(s) [he/she has] [they have] authority to bind [**insert relevant Lenders they represent**] in respect of all matters relating to the Loan¹¹.

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 Lenders [by the Lenders' Representative]:

Name: Name:

Date: Date:

Signature Signature

Signed on behalf of [] Limited by:

Director Director:

Date: Date:

Signature Signature

¹¹ May be applicable for an investor syndicate.

[Signed on behalf of *[insert Guarantors]*]

Name:

Name:

Date:

Date:

Signature

Signature

APPENDIX 1
Committed Lenders

Lender	Amount

APPENDIX 2
[Preferred] [Ordinary] Share Terms

(See attached Term Sheet)