

TERM SHEET

FOR ISSUE OF ORDINARY SHARES BY

[] LIMITED

(Company)

General notes: *This term sheet applies if the investment is in ordinary shares. Refer to alternative term sheets if preferred terms required or if the investment is structured as a loan convertible to equity. 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 investment in the Company (**Investment**). 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 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: [Minimum Amount] \$[]
[Maximum Amount] \$[] (where the investment can proceed at any amount between the Minimum Amount and Maximum Amount specified by the Investors before the Completion Date and the final Investment Amount can be increased by the Investors at any time within [period] from the Completion Date to any amount not exceeding the Maximum Amount)¹
[such amount[s] being subject to achievement of milestones]²
(where the maximum amount payable by the Investors to the Company is the **Investment Amount**)

Investors: Those persons whose names are set out in Appendix 2 (**Investors**).

Key People: [**Insert names of founder(s)/key people**] (**Key People**)³.

Pre-money valuation: The investment is based on a pre-financing valuation of \$[].

Type of Shares: [Series A⁴][**or**][ordinary] shares (**Shares**).

Issue Price: \$[] per Share.

Number of Shares: [Up to] [].

¹ Applicable if investment is by a syndicate and either, indicative commitments are yet to be received for the full Investment Amount, or, there is potential for some Investors to withdraw while others proceed (eg if they are not happy with the outcome of due diligence etc). Allows investment to proceed at any amount more than the minimum and for Investors to increase the committed investment amount at any time prior to expiry of a specified period after settlement.

² Applicable if investment is tranching and milestones or conditions apply for subsequent payments.

³ 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).

⁴ May be appropriate to distinguish from other ordinary Shares to the extent Shares confer some special rights (eg anti-dilution, drag and/or forced liquidation).



Capital Structure:	The capitalisation of the Company immediately prior to investment and 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)	<ul style="list-style-type: none">• Due diligence being completed to the satisfaction of the Investors.• Agreement to a business plan which comprises an agreed budget (Agreed Business Plan).• <i>[Agreement on milestones which must be achieved for disbursement of post Completion Date tranches of the Investment Amount (Milestones)].</i>• Final approval of each Investor's <i>[board] [or] [Investment Committee]</i>(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 <i>[other than the loan(s) of \$ from []]</i> and that capitalisation resulting in the pre-investment capitalisation shown in the Capitalisation Table.• Completion of employment or contractor agreements(s) with the <i>[Key People][or][] and []</i> 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 <i>[insert number] [an] [independent director[s] [and] [a chairman]</i>.• 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.• <i>[Insert any other specific conditions precedent⁵].</i>
Anticipated Completion: Date:	<i>[Insert date]</i> or [5] Business Days after satisfaction of all conditions precedent in the Investment Agreement (actual settlement date being referred to as Completion Date).

Disbursement of The Investment Amount will be subscribed for Shares *[in one sum on*

⁵ Consider other specific conditions precedent which should be specified (eg. members of investment syndicate making commitments equivalent to at least the minimum required investment). However in this respect there is sufficient protection for Investors in the general due diligence condition and the non-binding nature of Term Sheet.

- Investment Amount:** *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 [**insert Milestone etc**]
- [provided each instalment will be at the Investors' option if a Milestone due by the relevant date has not been achieved]⁶.*
- Anti-dilution:** The number of Shares held by the Investors will be increased (by the issue of further shares at nominal consideration to the Investors) on a full 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.⁷
- 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][six weekly]
- [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]⁸ [but otherwise attendance at Board meetings will not be remunerated].*
- [or]
- [No Directors' fees will be paid [until at least [**insert number**] years after the Completion Date] unless authorised by a special resolution of Shareholders (75%);]*
- Protective Provisions:** Prior approval of the Investor Director(s) is required for 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 \$[];

⁶ Of the 3 variables, the latter 2 options which allow for tranching will usually be preferred with third option being most preferred from Investors' perspective as payments are contingent on milestones.

⁷ Anti-dilution protection is standard.

⁸ Usually the only directors fees will be (at most) a modest meeting fee to be paid to the Investor directors only.

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- 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
- 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%) 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 transaction between the Company and any holder of securities, 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*].

Investor Representative

NZVIF may appoint an Investor Representative to exercise NZVIF's rights under the Investment Agreement.

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 and as between the Investors for any sale of Investor Shares (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 Investors' Shares*]⁹ [*or if the Investors wish to sell all of their*

⁹ The Investors may require this protection against being "dragged" by other shareholders.

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Shares,]¹⁰, 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).

Investors' 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 and that offer has been available for acceptance by the other Investors for at least 10 Business Days.

[These rights will [also][not] apply to transfers of the beneficial ownership of Shares between members of [insert name of syndicate] investment syndicate which will be held by [insert name of trustee] as bare trustee.]

Key People Escrow: Except with the consent of the Investor Directors the Key People are not permitted to dispose of any Shares for a period of [5] years from Completion Date, with the exception of:

- a sale in an IPO or other transaction approved by the Investors where the Investors have the opportunity to sell on identical terms; or
- a transfer to their respective wholly owned and controlled entities or to immediate family.

Key Man Insurance: 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] [or] [each of the following] Key People:

Warranties: Without limiting usual warranties for similar investments as will be contained in the Investment Agreement, the Company [and [Key People] [or name warrantors] (in the case of the individual warrantors, to the best of their knowledge and belief [after due and careful enquiry]) will warrant that (except as disclosed):

- all intellectual property and other rights necessary to pursue the Business are the full legal, beneficial and unencumbered property of the Company;
- the Company is an "eligible" company in terms of VIF's investment mandate;
- 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
- all other information provided to the Investors is true, accurate and complete in all material respects.

Transaction Fees Immediately following subscription of [the first tranche of] the

¹⁰ Consider if the Investors should have the right to "drag" other shareholders for desired exit, irrespective of their percentage shareholding.

Investment Amount, the Company will pay a sum equivalent to **[insert number]**% (plus GST) of the Investment Amount to **[insert entity]**. For the avoidance of doubt, the Investment Amount is the amount assuming all tranches have been subscribed.

[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 [and Broken Deal Fee]:

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; *[and*
- *if the offer is declined by the Company or if the Company breaches the preceding exclusivity requirement, 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 Investment¹¹.*

¹¹ May be applicable for an investor syndicate.

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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**]

APPENDIX 1
Capitalisation Table

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

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>
NZVIF (Seed Fund) Limited	[\$250,000]