

TERM SHEET

FOR ISSUE OF PREFERRED SHARES BY

[] LIMITED

(Company)

General notes: *This term sheet applies for an investment in preferred shares which confers preferential dividend rights and the right to return of capital in priority to the ordinary shares. Refer to alternative terms sheets if the investment is in ordinary shares or 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**).

Amount of investment: [Up to¹] \$ []
[(subject to achievement of milestones)] (**Investment Amount**).

[Minimum Available Investment: *The minimum amount available for investment by the Investors must be \$[]*².

Investors: [**Insert name(s) of Co-investor(s)**] or [The persons identified in Appendix 2 [and other members of the [] investment syndicate who agree to participate in the Investment]³] and NZVIF (Seed Fund) Limited (**Investors**).

Key People: [**Insert names of founder(s)/key people**] (**Key People**)⁴.

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

Type of Shares: Preferred voting shares (**Shares**).

Issue Price: \$[] per Share.

Number of Shares: [Up to] [].

Capital Structure: The capitalisation of the Company immediately prior to investment and after investment of the Investment Amount will be as set out in the table in Appendix 1 (**Capitalisation Table**).

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

² 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).

³ Applicable for a syndicate investment where all of the participants are yet to be confirmed.

⁴ The term "Founders" is more common than "Key People", but latter term may be more accurate in indicating the people who are important and who may not be limited to the original founders of the Company (see later provisions relating to conditions precedent and restrictions on share transfers).

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

- Due diligence being completed to the satisfaction of the Investors.
- Agreement to a business plan which comprises an agreed budget (**Agreed Business Plan**).
- *[Agreement on milestones which must be achieved for disbursement of post Settlement Date tranches of the Investment Amount (**Milestones**)].*
- Final approval of each Investor's *[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]* *[]* *[]* 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 precedents⁵].***

**Anticipated Settlement
Date:**

[Insert date] or *[5]* business days after satisfaction of all conditions precedent in the Investment Agreement (actual settlement date being referred to as **Settlement Date**).

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.

Disbursement of Investment Amount: *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 Investors)] or [as follows:*

- [\$] on Settlement 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.

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]⁷.*

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**)⁸. *[The ordinary shareholders will then receive an amount equivalent to \$[] per share]⁹ [and any balance available for distribution will be distributed pro-rata to [all shareholders including the Investors] [the ordinary shareholders]¹⁰.*

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]¹¹.*

Anti-dilution: The conversion price will be subject to a proportionate adjustment for any share splits, share dividends or similar capital adjustments and will be adjusted on a full ratchet basis for any share issue at an issue price less than the issue price for the Shares (other than pursuant to the approved ESOP)¹².

Board: The Board will initially consist of:

Chairperson [(no casting vote)] []

Investors' representative(s) []

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 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.

⁸ A one time preference is more usual. However up to 3 times is not uncommon, particularly if there is insufficient value in the existing business to justify the shareholding percentage being retained by the ordinary shareholders. Other relevant factors include the value add the Investors will provide and the counter-balancing effect of the ESOP.

⁹ 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.

¹⁰ 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) .

¹¹ The first option applies if 10(a) applies while the second option applies for 10(b).

¹² Anti-dilute protection is standard.



[Founders] [Other shareholders] []
representative(s):

Independent director(s) []

The Board will meet [monthly]

[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]¹³ [but otherwise attendance at Board meetings will not be remunerated].

Protective Provisions:

Prior approval of the Investor director(s) is required for any of the following in relation to the Company:

- issues of equity, options or any instruments convertible to equity (other than issues already contemplated by the Investment 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 Business Plan, the value of which is greater than [\$10,000];
- any other material departure from the Agreed Business Plan;
- any transactions with a related party of the Company or any shareholder or officer;
- any borrowings, guarantees, indemnities or other contingent commitments;
- appointment of removal of the CEO, CFO or any other Key Person [or any other employee];
- approval of subsequent budgets and business plans or any material amendments to or departures from the Agreed Business Plan; or
- any change to accounting policies [or the auditor].

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.

Pre-emptive rights and Drag and Tag along:

In addition to usual pre-emptive rights, drag and tag along rights will apply if any shareholder(s) wish to sell more than [50%] of the

¹³ Usually the only directors fees will be (at most) a modest meeting fee will be paid to the Investor directors only.

Company shares [including a majority of the Investors' shares]¹⁴ (in aggregate) to a third party [or if the Investors wish to sell all of their shares,]¹⁵ so:

- the selling shareholders may require the minority to sell all of their shares on the same terms; or
- 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.

Tag along rights will apply as between the Investors for any sale of Company's Shares by any one of them.

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 [3] years from Settlement 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) key man life insurance policies in the amount of [\$1,000,000] on the life of [each of the 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] will warrant that (except as disclosed [and to the best of their knowledge and belief]¹⁶)

- 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 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.

[The maximum liability of each individual warrantor will not exceed [\$50,000]¹⁷].

¹⁴ If Investors held less than 50%, may require this protection against being "dragged" by other shareholders.

¹⁵ Consider if Investors should have the right to "drag" other shareholders for desired exit, irrespective of whether they hold more than 50% of the shares or whether they need sufficient support from ordinary shareholders to achieve a 50% threshold. Also consider whether 50% is the appropriate threshold or whether it should be higher.

¹⁶ 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 basis in the Investment Agreement negotiation.

¹⁷ A dollar cap is usual if individuals are required to join in warranties.

Forced Liquidation Process/Redemption: If the Company has not carried out either an IPO or trade sale within 5 years from the Settlement Date (or such longer period as the Investors and the Company may agreed) 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.

[Broken Deal Fee: *If the Investment is offered 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) but is declined by the Company or if the Company breaches the preceding exclusivity requirement, the Company will pay [\$] to the Investors as [full] compensation for all 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].*

[Investors' Representative [] [and] *represent(s) [he/she has] [they have] authority to bind [insert relevant Investors they represent] in respect of all matters relating to the Investment]]¹⁸.*

The parties respectively acknowledge the intended investment terms described in Part A and agree to be bound by the terms in Part B.

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

Name: **Name:**

Date: **Date:**

Signature **Signature**

¹⁸ May be applicable for an investor syndicate.

Signed on behalf of [] 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	[]	[]%	[\$]	[]	[]	[]
Investors			Up to \$[]	[]	Up to []	[]
Options						
ESOP	[]	[]			[]	[]
Others?	[]	[]			[]	[]
Total fully-diluted		100%	[\$]			100%

APPENDIX 2
Committed Investors

Investor	Amount