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| AANZ Template | **Term Sheet (equity investment)** |
| Release Date | Version 2 - August 2023 |
| AANZ Number | 405748.5 |
| Version 1 Notes | This template is an update to version 1 of the AANZ Term Sheet (equity investment) 4 February 2019. |
| Use Notes | This AANZ template term sheet applies if the investment is for shares.  Please use an alternative template term sheet if the investment is to be a loan convertible to equity or a SAFE. |

This template has been prepared by AANZ together with members of the NZ angel investment community and legal profession.

The aim of this template (and other template documents we make available) is to promote standardised legal documentation for use in NZ so investors, entrepreneurs, and companies can focus on deal-specific matters. It directly feeds into the template documents also available on the AANZ website – our hope is that if you have a well-defined term sheet, doing the full legal documents should be faster and less contentious for all involved.

Footnotes are intended to assist with completing this Term Sheet and all parties should:

* ensure they are aligned about the business outcomes, success, and the return on their investment;
* understand the appropriateness and implications of key terms; and
* seek their own legal advice when agreeing and documenting investments terms.

The various choices are based on what is most commonly seen on investment deals. There is no set of standard terms and they all inter-relate. You need to go through each of the options to ensure you are selecting what is best for the Company, Founders and Investors – if everyone succeeds everyone does well.

AANZ aims to coordinate updates of the template documents annually to keep up with market practice. Comments on the documents are welcome, and will be taken into account in the next review (or urgently should this be required). Comments can be sent to [templates@angelassociation.co.nz](mailto:templates@angelassociation.co.nz)

AANZ would like to thank Avid.legal, Chapman Tripp, Kindrik Partners, NZGCP, MinterEllisonRuddWatts, and Simpson Grierson who, among others, kindly provided support and expertise in the development of this template.

**Disclaimer**: Neither AANZ nor any contributors to this document take any responsibility for the content of template documents or the consequences of using them. You should take your own legal advice before using this template. This template is intended to serve as starting point only and should be tailored to meet your specific requirements. Nothing in this template should be construed as legal advice for any particular facts or circumstances.

**TERM SHEET**

**FOR ISSUE OF SHARES BY**

***[***●***]* LIMITED (Company)**

This document (**Term Sheet**) summarises the key terms of a proposed investment in the Company (**Investment**) by the Investors. It is not a legally binding document except for the terms stated in part B of this Term Sheet. There is no obligation to invest until legally binding investment documents are entered into.

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| **PART A: INVESTMENT TERMS (non-binding)** | | | | |
| **Parameters of the investment round** | | | | |
| **Investment Round** | ***[Minimum Round Size]*** | $ ***[****insert amount****]*** | | |
| ***[Maximum Round Size]*[[1]](#footnote-1)** | $ ***[****insert amount****]*** | | |
| ***[Rolling Close]*[[2]](#footnote-2)** | **Permitted?** | | ***[****Yes / No****]*** |
| **Rolling Close** | | Up to ***[****insert date****]* *[*OR *[****insert****]*** months from Completion***]*** |
| **Investors and Investment Amounts** | The persons identified at the end of this Term Sheet, and the Investment Amounts set out beside their names*.*  ***[****together with other investors identified by the Company****]***  ***[****together with anyone else agreed by the Investors and Company (both acting reasonably)****]*** | | | |
| **Investor Majority** | *Holders of* ***[****a majority (by number of Shares held)/75% or more* ***[****but which must include* ***[****insert****]]***of the ***[***Investors Shares**]*[***relevant class of preference shares on issue**]**.[[3]](#footnote-3)  If the Investor already holds (or acquires in the future) additional shares (that are not ***[***the relevant class of preference shares**]** ***[***Investor Shares**]**), those shares will be excluded from determining an Investor Majority. | | | |
| **Pre-Money Valuation**  (*agreed Company value before Investment*) | $ ***[****insert amount****]*** | | | |
| **Issue Price**  (*price per Share payable by Investors*) | The Issue Price will be calculated by dividing the Pre-Money Valuation by the total number of shares and shares issuable on conversion/exercise of any options, convertible loans/notes, SAFEs, warrants, and other securities currently issued or otherwise reserved for issue in the Company (**a fully-diluted basis**) ***[****but in respect of the ESOP Pool*, *excluding***[[4]](#footnote-4)** ***[****any allocation/vested allocations****]*** for the ESOP Pool. | | | |
| **Investor Shares**  (*type of shares being issued to Investors*) | ***[****Ordinary Shares****]***  ***[***OR***]***  ***[****Preference Shares, being 1x non-participating preference shares***[[5]](#footnote-5)***. Prior to any liquidity event, Preference Shares will reclassify/be converted into Ordinary Shares on a 1:1 basis in the following events:*   1. *at the election of the holder;* 2. ***[****where an Investor Majority agrees to reclassification/conversion****]****;* 3. *on an IPO approved by* ***[****an Investor Majority/the board with support of the Investor Director****]*[[6]](#footnote-6)**.***]*** | | | |
| ***ESOP (Employee Share Ownership Plan)*** | ***ESOP pool*** | ***[[****insert number****]*** *will be reserved for a Share Scheme****]***  ***[****OR****]***  ***[[****insert % of the****]*** *issued shares in the Company* ***[****from time to time****][****OR****][****post-investment****]*** *will be reserved for a ESOP (with such calculation being done on a fully diluted basis).****]*** | | |
| ***Existing allocations*** | The ESOP currently has ***[****insert number***]** options/shares allocated under it. At Completion, there will be ***[****insert number***]** unallocated options/shares reserved for future use.[[7]](#footnote-7) | | |
| **Capitalisation Table** | Refer to Appendix 2. It shows **all** shares, options, convertible loans/notes, SAFEs, warrants, and other securities currently on issue or otherwise reserved in the Company before the Investment.[[8]](#footnote-8) | | | |
| **Investment terms and conditions** | | | | |
| **Securities law compliance** | Each Investor receiving this offer in New Zealand must fall within an exclusion in Schedule 1 of the Financial Markets Conduct Act 2013. Each Investor receiving this offer outside New Zealand must be able to invest without requiring the Company to provide regulated disclosure materials under the laws of the country, the jurisdiction or the place where that Investor receives the offer. | | | |
| **Conditions[[9]](#footnote-9)**  (for Investors' benefit) | 1. ***[***Due diligence being completed to the satisfaction of the Investors.***]*** 2. ***[***Agreement to a business plan including an agreed budget (**Agreed Business Plan**).***]*** 3. ***[***Entry into the Investment Documentation, and the Company obtaining all necessary approvals from existing shareholders (and those shareholders entering into a shareholders’ agreement consistent with these terms).***]*** 4. ***[***The Company having a pre-investment capitalisation as shown in the Capitalisation Table, with any outstanding loans ***[***other than from ***[*** **]]** converted to equity.***]*** 5. ***[***The Company signing employment or contractor agreements(s) with the ***[****Founder(s)****][AND/OR][****insert names****]]*** on terms acceptable to the Investors (and which include suitable non-competition and non-solicitation covenants).***]*** 6. ***[***The Investors being satisfied that relevant officers, consultants and contractors (including all Founders) have assigned to the Company (in a form acceptable to the Investors) all intellectual property linked to the Business.***]*** 7. ***[***Evidence that any third party consents or other authorisations required to complete the Investment have been obtained.***]*** 8. ***[***Any notifications (whether mandatory or voluntary) to the Overseas Investment Office under the national security and public order (NSPO) notification regime are made, and a direction order being issued for the proposed Investment.**]** 9. ***[****Insert any other specific conditions precedent****]*** | | | |
| **Target Completion Date** | ***[****Insert target date****]*** or if later, 5 business days after satisfaction of all conditions precedent in the subscription agreement (actual completion date being referred to as the **Completion Date**). | | | |
| ***[Anti-dilution][[10]](#footnote-10)*** | *Standard broad based weighted average anti-dilution protection in respect of down-rounds will apply. The protection does not apply to allocations under the ESOP.* ***[****The protection will only last for* ***[****insert number****]*** *months following Completion.****]*** | | | |
| **Warranties** | * Customary warranties from the Company will be contained in the subscription agreement, and will be based on those set out in the standard AANZ template subscription agreement. | | | |
| **Warranty Limitations** | * Matters fully and fairly disclosed in a disclosure schedule to the subscription agreement. * Maximum aggregate liability of the Company will be capped at the Investment Amount. Such limitation does not apply in the case of any fraud or dishonest concealment. * Any claims must exceed at least $***[****25,000***]** in order to be brought as a warranty claim. * Claims must be notified within ***[****12/18****]*** months of the Completion Date. | | | |
| **Angel Club Transaction Commission[[11]](#footnote-11)** | Immediately following Completion, the Company will pay a sum equivalent to ***[****insert number****]***% (plus GST) of the Investment Amount invested by ***[****insert names of relevant Angel Club investors****]*** to ***[****insert Angel Club entity****]***. ***[****Insert Angel Club entity****]*** may choose to pay its Investment Amount net of its transaction commission. | | | |
| **Governance terms** | | | | |
| **Business** | The ***[****proposed****]*** business of the Company relating to***[****describe business****]*** (**Business**).  The Company will not carry on any business other than the Business without ***[***the prior written consent of an Investor Majority**]*[***the approval of Shareholders by a Special Resolution**]**. | | | |
| **Board Composition[[12]](#footnote-12)** | The Board may consist of a maximum of ***[****insert number****]*** Directors, including up to:   * ***[****insert number****]*** Founder Director***[****s****]*** ***[****for so long as* ***[****the/each****]*** *Founder holds at least* ***[****10****]****% of the issued shares and remains engaged in the Business***]**. * ***[****insert number****]*** Existing Shareholders Director***[***s**]** (outside of Founders) ***[****for so long as the Existing Shareholders hold at least* ***[****insert****]****% of the issued shares****]****.* * ***[****insert number****]*** Investor Director***[****s****]* *[****during any period the Investors hold at least* ***[****insert****]****% of the issued shares in the Company****]***   Founder/Existing Shareholders Director***[****s****]*** may be appointed, removed, replaced by a majority of Founder/Existing Shareholders (based on shares held).  Investor Director***[****s****]*** may be appointed, removed, replaced by an Investor Majority.  Additional Directors may be appointed, removed, replaced:   1. where they are considered an independent Director; and 2. ***[****with the support of the Board* ***[****but which must include support from* *an Investor Director****[****s****]*** *and an Founder/Existing Shareholders Director****[****s****]]******[****OR****]*** *ordinary shareholder resolution****]***.   The Chairperson will be appointed, removed, or replaced ***[****by a majority of the Board****]***, and shall not have a casting vote. ***[****Where possible, the Chairperson should also be an independent Director.***]**[[13]](#footnote-13)  ***[****Board observer rights will be available to a nominated observer of the Investors* ***[****(approved by the Board)****]*** *where an Investor Director has not been appointed.****]*** | | | |
| **Initial Board Composition** | The initial Directors shall be:   * Founder/Existing Shareholders Director***[***s***]***: ***[****insert name****[****s****]]*** * Investor Director***[****s****]***: ***[****insert name****[****s****]]***   The Chairperson shall initially be: ***[****insert name****]*** | | | |
| **Other Board Provisions** | The Board will meet ***[****monthly****][****bi-monthly****][****six weekly****]***.  ***[****The Board will look to adopt appropriate ESG and diversity/inclusion policies and review the adherence to those policies in a way consistent with an organisation the size of the Company.***]**[[14]](#footnote-14)  ***[****No Directors' fees will be paid* ***[****until at least* ***[****insert number****]*** *years after Completion****]*** *unless authorised by a Special Resolution of Shareholders.****]***  ***OR]***   * ***[****The Chairperson will be paid $****[****insert amount****]*** *per annum/meeting****]****.* * ***[****Any independent Directors will be paid $****[****insert amount****]*** *per* ***[****annum/meeting****]*** * ***[****The* ***[****Investor****]******[****other****]*** *Directors will be paid $****[****insert amount****]*** *per* ***[****annum/meeting****]***   ***[****but otherwise attendance at Board meetings will not be remunerated****]****.* | | | |
| **Board Approvals** | The following Board matters require the support of an Investor Director:   * ***[****issues of shares (including any IPO), options or any instruments convertible to equity (unless undertaken through a pre-emptive rights issue);****]*** * approval of each Business Plan or any material amendments to or departures from the Business Plan (with such approval not to be unreasonably withheld); * allocations under any ESOP (approval not to be unreasonably withheld); * ***[****determining the fair market value of vested shares being bought back from a Founder that is a bad leaver****]***; * any transaction or arrangement likely to have the effect of the Company acquiring rights or interests or incurring obligations or liabilities outside of the Agreed Business Plan, the value of which is greater than $***[****insert****]***; * any borrowings, guarantees, indemnities or other contingent commitments (excluding indemnities given under customer or supplier agreements in the ordinary course of business), the value of which exceeds $***[***i*nser*t***]***; * any purchase or other acquisition by the Company of any securities of any other entity; * any change to accounting policies ***[****or the appointment or change of an auditor****]***; and * appointment of any C-suite positions or any other Founder, and any material modification of their engagement terms (with such actions not to be unreasonably withheld). * ***[****insert any other matters****]***   ***[****The support of an Investor Director for the above items will only be required* ***[****for a period of* ***[****insert****]*** *years following Completion****][****OR****][****while the Investors hold at least* ***[****insert****]****% of the shares on issue in the Company****][****OR****][****until the Company raises equity funding from a majority of new investors of no less than $****[****insert****]]*** *(the* ***Sunset Date****).***]** | | | |
| **Special Resolution** | A resolution of shareholders holding 75% or more of the shares (with voting rights) ***[****which must also include an Investor Majority* ***[****until the Sunset Date****]***. | | | |
| **Shareholder Approvals** | Special Resolution of shareholders is required for:   * any Major Transaction (as defined in the Companies Act 1993) [or transaction involving the disposal of a significant proportion of the Company's assets]; * any significant change in the nature of the Business (whether by acquisition or otherwise); and * 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 and Reporting** | **Financial Statements** | | Unaudited ***[****monthly and****]*** 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****]*** must be prepared. Those will be made available to the Board | |
| **Quarterly Reports** | | ***[***The Company will also distribute a quarterly report to all Shareholders.  Such quarterly report must meet the reasonable requirements of the following investors:   1. NZGCP (where it is an investor); 2. ***[***insert others**]**.   Those investors must seek to harmonise any individual requirements with a view of not unreasonably burdening the Company in the generation of such quarterly report. | |
| **Fund Reporting** | | Approved fund investors shall be entitled to report progress of the Company to their underlying or prospective investors subject to:   1. such reporting being done on an aggregated non-identifiable manner where possible; 2. ensuring that they have adequate confidentiality arrangements in place.   Approved fund investors must be specifically identified in the Investment Documents. | |
| **Access Rights** | Investors investing no less than $***[***insert**]** will be granted reasonable access rights to the Company records and also management team of (to discuss progress of the Company), provided that:   * such Investors use reasonable endeavours to minimise the impact of such rights; and * such Investors ensure that any person accessing such information is bound by reasonable confidentiality obligations (consistent with those contained in the Investment Documents); and * the Company shall be entitled to withhold all trade secrets or other information deemed commercially sensitive with respect the requesting Investor. | | | |
| **Rights of First Refusal (transfer of shares)** | Usual pre-emptive rights on the transfer of existing shares shall apply ***[****to shareholders who hold at least* ***[****insert****]****% of the Shares***]**[[15]](#footnote-15).  ***[****Approved fund investors may assign their rights to affiliate funds under common control.***]** | | | |
| **Participation rights (issue of securities)** | Usual pre-emptive rights on the issue of new securities shall apply ***[****to shareholders who hold at least* ***[****insert****]****% of the Shares***]**[[16]](#footnote-16).  ***[****Approved fund investors may assign their rights to affiliate funds under common control.****]***  Any unallocated shares will be applied (i) first, toward applications for oversubscriptions by the ***[****shareholders/Investors****]*** and if more than one applying, on a pro-rata basis among them, based on their holdings as against other oversubscribing ***[****shareholders/Investors****]*** and (ii) secondly, by the Board in the best interests of the Company, including to external investors provided that the terms of that allocation are no more favourable than those offered to the ***[****shareholders/Investors****]***.  ***[****Permitted exemptions to the pre-emptive rights for issue of new securities process are:*   1. *capital raising approved by a Special Resolution* ***[****which must also include an Investor Majority* ***[****until the Sunset Date****]]****;* 2. *issuances under an agreed ESOP.****]*** | | | |
| **Drag Along Rights[[17]](#footnote-17)** | Drag along rights will apply where shareholders wish to sell ***[****75****]****%* ormore of the shares ***[****including an Investor Majority* ***[****and a majority of the Founder Shares****]]*** to a third party.  The shareholders being dragged will be required to sell on the same terms. | | | |
| **Tag Along Rights[[18]](#footnote-18)** | Customary tag along rights will apply where shareholders wish to sell more than ***[****25%****]*** of the shares in the Company to a third party. | | | |
| **Founder arrangements** | | | | |
| **Founders**[[19]](#footnote-19) | ***[****List* *names of founder(s)/key people****]***. | | | |
| ***[Founder Restricted Share Transfers]*** | *The Founders are not permitted to transfer any shares for a period of* ***[****3****]*** *years from Completion with the exception of transfers:*   * *approved by the Board with the support of the Investor Director(s);* * *totalling less than* ***[****10****]****% of a Founder’s shareholding on Completion;* * *in an IPO, or where a tag / drag along right applies; or* * *to their wholly owned and controlled entities or to immediate family (who remain subject to the restricted share transfers provisions).* | | | |
| ***[Founder******Vesting]*** *[[20]](#footnote-20)* | *Founders own their shares outright, subject to the Company’s right to buyback up to* ***[[****●****]****% of****][[21]](#footnote-21)*** *the shares (****Unvested Shares****) held by each Founder at cost where the Founder ceases to be engaged in the Company.*  *The vesting arrangements for Unvested Shares shall be:*   1. ***[****●****]****% of the Unvested Shares will vest (i.e., no longer be subject to such buyback) upon the* ***[****●****]*** *month anniversary after Completion; and* 2. *the balance of the Unvested Shares will vest in* ***[****monthly/yearly****]*** *increments over* ***[****●****]*** *further* ***[****months/years****]****.*   ***[****Where a Founder ceases to be engaged in the Company in a Bad Leaver situation, the Company shall also have a right to buyback the Bad Leaver’s vested shares at fair market value.****]***  ***[****Any unvested shares clawed back under the vesting provisions shall be allocated to the ESOP unless the Board determines* ***[****(with the Support of the Investor Director)****]*** *that they should be distributed by way of options or shares to the remaining Founders.****]*** | | | |
| **Non-Competition and Non-Solicitation** **Agreement** | Each Founder will enter into non-competition and non-solicitation restrictions. The restrictions will apply while they (or their associates) are shareholders, and for a ***[****12****]*** month period from ceasing to be actively engaged by the Company.  The restrictions will not apply to any activities approved by the Board, including the Investor Director (if any). | | | |
| **Other** | | | | |
| **Investment Documents** | The Investment Documents will be prepared by the Company using the standard AANZ template subscription agreement, shareholders’ agreement, and constitution.  See: <https://www.angelassociation.co.nz/resources/reports/> . | | | |
| ***[Other Key Terms]*** | ***[****Insert other key terms as required****]*** | | | |
| **PART B: LEGALLY BINDING TERMS** | | | | |
| ***[Exclusive Period][[22]](#footnote-22)*** | *For a period of* ***[****30****]*** *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[[23]](#footnote-23)** | The Company will pay all legal and professional costs incurred by ***[****insert lead investor name****]*** relating to the Investment Documents and related documentation ***[****up to a maximum of $****[****insert amount****]]*** plus GST, ***[****whether or not Investment Documents are entered into*.***]***  Except as set out above, the Company and all investors will pay their own legal and professional costs incurred by them in relation to the Investment Documents and related documentation*.* | | | |
| **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). | | | |

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

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| **SIGNED on behalf of the Investors** |  | **SIGNED on behalf of the Company** |
|  |  |  |
| *Name* |  | *Name* |
| *Date* |  | *Date* |

|  |  |
| --- | --- |
| **COMMITTED INVESTORS** | |
| **Name** | **Amount** |
| ***[insert investor name]*** | $***[insert amount]*** |
| ***[insert investor name]*** | $***[insert amount]*** |
| ***[insert investor name]*** | $***[insert amount]*** |
| ***[insert investor name]*** | $***[insert amount]*** |
| ***[insert investor name]*** | $***[insert amount]*** |

**APPENDIX 2**

**Current Capitalisation Table**

1. **Minimum and Maximum**: Sometimes a term sheet will be used to confirm investment commitments without knowing the exact final round size. In this case, the parties might agree a minimum and/or maximum round size parameters. In this case the “fixed round” section can be deleted. [↑](#footnote-ref-1)
2. **Rolling Close**: Sometimes a company and investors may wish to document and complete investments from initial investors, while leaving it open for the company to raise further investment from subsequent investors on the same terms for a fixed period of time and up to a maximum round size. This is called a “rolling close”. If a “rolling close” is not a feature of the investment round, this section can be deleted. [↑](#footnote-ref-2)
3. **Investor Majority**: Setting an appropriate threshold will be determined by the mix of investors and whether any particular investor is leading the round. Where there is a natural lead, the threshold may be set to enable that lead to represent all investors in that decision. Outside of a defined lead, you may look to set the threshold by reference to a percentage figure. Also consider if previous or future rounds are intended to come within any threshold count. [↑](#footnote-ref-3)
4. **Excluding/Including**: Typically the parties would agree to include a company’s allocation for the ESOP for the purpose of calculating the fully diluted issue price. This spreads the dilutive effect of the ESOP allocation over existing shareholders and results in a lower Issue Price than excluding allocations for ESOPs. However, occasionally the parties may agree to: (a) exclude the company’s allocation for the ESOP. This spreads the dilutive effect of the ESOP allocation over both existing shareholders and investors and results in a higher Issue Price; or (b) do a mix so that only allocated options are considered in calculating the Issue Price. Whether the parties vary away from the most typical arrangement will depend on the negotiating power of the parties and the context of the investment. The impact on the Issue Price will also depend on the size of the ESOP being included/excluded in the calculations. [↑](#footnote-ref-4)
5. **Preference Shares**: There are a variety of different preference share rights that may be negotiated. Different contexts may allow for different rights. If preference shares are agreed, 1x non-participating preference shares are most common for early stage investments in the NZ context and this is what the AANZ constitution template for preference shares is based on. They provide for on a liquidity event, that the holders get a return equal to the greater of: (a) an amount up to their investment (based on surplus funds available); or (b) a pro-rata share based on the number of shares that they hold as against all other shareholders. Parties should take advice on the consequences of electing preference shares, and on the rights to be agreed.

   [↑](#footnote-ref-5)
6. **Qualified IPOs**: Conversion/reclassification in the event of an IPO is also sometimes dealt with by defining what constitutes a qualified IPO by reference to the amount raised on IPO and/or the listing price of shares in an IPO (being a multiple of the current round pricing). If a qualifying IPO is set solely by reference to the amount raised, Investors need to be comfortable that it is sufficiently large that it constitutes a meaningful pricing event. [↑](#footnote-ref-6)
7. **Existing allocations**: The Company and Investors need to be satisfied that the unallocated ESOP pool is sufficient for the Company’s future needs (at least until its next funding round). [↑](#footnote-ref-7)
8. **Capitalisation Table**: If there is a ESOP in place, the Capitalisation Table should also show how much of the ESOP has been allocated and/or converted into shares (if the allocation was first granted as an option or other instrument convertible into shares). It is also useful for the Capitalisation Table to model the current investment round. [↑](#footnote-ref-8)
9. **Conditions**: The parties should consider what conditions are necessary. A list of some common suggestions for the Investor’s benefit has been included to assist. It is unlikely all suggestions will be appropriate to your investment arrangement. Please amend as appropriate. [↑](#footnote-ref-9)
10. **Anti-dilute**: Anti-dilution rights are a downside protection for Investors if a later share issue is done at a lower price. The anti-dilution mechanism works by requiring the Company to issue more shares to Investors if the Company carries out a future capital raising at a lower price than the issue price of this investment round. There are various types of anti-dilution provisions (including “narrow-based weighted average” and “full ratchet”). The broad based weighted average anti-dilution provision is most common in the NZ context and is the type used in the AANZ templates. It results in the least number of shares being issued to Investors when compared with “narrow-based weighted average” and “full ratchet” anti-dilution provisions. While sunsets on these rights are common in New Zealand, international investors often don’t expect these rights to have a sunset – this is a point for negotiation. [↑](#footnote-ref-10)
11. **Angel Club Transaction Commission**: NZ Angel Clubs and some other types of investment groups may charge a commission on funds raised from the club or group. This is how many Angel clubs fund their activities. If a company is not raising funds through an Angel Club or other type of investment group that charges a transaction commission, this row can be deleted. [↑](#footnote-ref-11)
12. **Board composition**: Board composition should be carefully considered by the parties. If there are any percentage holding or other requirements to maintain board appointment rights, these should be recorded here. [↑](#footnote-ref-12)
13. **Independent Chair**: Where there is a mature/larger board in place consider, for good governance, ensuring that the Chair is independent. If the Board is relatively small and just has nominated Directors on it, you could delete this provision. [↑](#footnote-ref-13)
14. **Policies**: Only relevant if an investor requires this as part of its investment mandate. [↑](#footnote-ref-14)
15. **Rights of First Refusal**: Consider if a minimum shareholding threshold is required in order to have rights of first refusal on the transfer of shares. This may be appropriate where the Company has an existing wide and inactive shareholder base – having to go wider to this group may create greater administrative burden. [↑](#footnote-ref-15)
16. **Participation Rights**: Consider if a minimum shareholding threshold is required in order to have rights of first refusal on the transfer of shares. This may be appropriate where the Company has an existing wide and inactive shareholder base – having to go wider to this group may create greater administrative burden. [↑](#footnote-ref-16)
17. **Drag Along Rights**: Drag along rights give the company the right to force all shareholders to participate in and vote for a sale of the company if the sale has been agreed by a significant portion of the shareholders. Those selling shareholders are able to force any of the remaining minority to also sell their shares in the company, on the same terms and to the same buyer. This can be a useful tool in managing an exit transaction. The triggering % can vary but 75% is often used as the starting point because it aligns with the approval threshold under the Companies Act 1993 for major transactions, however the company’s share register should be specifically considered in relation to who (or what groups) may be able to compel who to sell. [↑](#footnote-ref-17)
18. **Tag Along Rights**: Tag along rights allow minority shareholders to sell their shares (on the same terms and to the same buyer) if a large enough shareholding is being sold by other shareholders so that minority shareholders do not miss out on a partial (or full) exit event. Thresholds can vary among investment deals. Some adopt a threshold of 50% of the company’s shares (because a change in control is the logical trigger for providing minority shareholders with a right to also participate in that sale). Others adopt lower thresholds of 10-25% (on the basis that anyone looking to exit a material portion of shares should also give others the same opportunity). [↑](#footnote-ref-18)
19. **Founders**: The term "Founders" is commonly used, but the arrangements in this section may sometimes extend to other "Key People" depending on the context. The arrangements set out in this section of the term sheet need to be carefully considered in the context of the investment. [↑](#footnote-ref-19)
20. **Founder Vesting**: The point of founder vesting is that it is unfair to the rest of the shareholders, particularly the other founders, if one founder leaves early on in the life of a company. Founder vesting allows the company to take back a portion of a founder’s shares if that founder leaves the company within the vesting period. The portion at risk is often negotiated, and is rarely 100%. A typical vesting period will be 3-4 years with 1/3 or 1/4 of founder shares vesting after 1 year (the vesting “cliff”), and the remaining founder shares vesting in equal monthly tranches over 2-3 years. Ideally multi-founder teams will have already agreed appropriate vesting arrangements at the outset of their venture but, if not, it is advisable to consider founder vesting at the time investment terms are being agreed. [↑](#footnote-ref-20)
21. **% of shares subject to vesting**: Excluding a percentage of each founder’s shares from the vesting arrangements is a common compromise agreed between parties where a company may have operated for longer period, or to which founders have contributed cash or significant IP developed prior to the commencement of the venture. [↑](#footnote-ref-21)
22. **Exclusive Period**: It may be appropriate for Investors to ask that the Company not enter into or negotiate investment with any other party for a designated period if they intend to take up the full round. This may a reasonable request, as the investors will be investing time in due diligence, legal fees, and resources to complete the transaction. In other cases, this section may not be appropriate and can be deleted. [↑](#footnote-ref-22)
23. **Legal Costs**: Term sheets will typically include a commitment from the company to reimburse the reasonable legal fees of the lead investor. This obligation is typically “capped” at a specific amount, but if the deal takes longer or requires more legal work than was expected, the cap may be subsequently revised by mutual agreement to take that into account. [↑](#footnote-ref-23)