Insert Company Logo

Right-click and select ‘Change Picture’ or Delete if not required

Term Sheet

**for Investment in [insert company name]**

**ACN [000 000 000]**

**Contact:** [insert name]

**Phone**: [insert phone]

**Email:** [insert email]

Introductory Notes

This Term Sheet summarises the principal terms of the investment into [company] ACN [000 000 000] (“Company”) by some, or all of the following types of investors:

* Members of [Angels Group] either individually or through an entity (“Lead Investor”);
* Related bodies and individuals known to the Lead Investor (“Other Investor/s”);
* interested parties known to the Company (“Additional Investor/s”);

which have become aware of this investment opportunity and who, each individually and independently, have elected to pursue this investment opportunity under the terms laid out below.

This is the only Term Sheet that represents the collective interest of Investors

This Term Sheet is not a commitment to invest and is conditional on the completion of due diligence, legal review and provision of documentation that is satisfactory to the Lead Investor.

This Term Sheet shall be governed in all respects by the laws of the State of Queensland.

TERMS OF PROPOSED INVESTMENT

|  |  |
| --- | --- |
| **item** | **Details** |
| 1. **Proposed Transaction**
 | This term sheet (“**Term Sheet”**) summarises the principal terms of a proposed investment by the Investor into the Company (“**Proposed Transaction”**). |
| 1. **Parties**
 | [company name] Pty Ltd ACN [000 000 000] (“**Company**”)[Full name Founder 1], [Full name Founder 2] (“**Founder/s**”)[company name] Pty Ltd ACN [000 000 000] **or** Members of [Angels Group] either individually or through an entity **(“Lead Investor”);**Related bodies and individuals known to the Lead Investor **(“Other Investor/s”);**interested parties known to the Company **(“Additional Investor/s”)**; (The Lead Investor, Other Investor/s and Additional Investor/s being collectively known as the “**Investors”**) |
| 1. **Expiry Date**
 | This term sheet expires on the earlier of:1. [date]; or
2. the date that the Round Size has been committed by the Investors.
 |
| 1. **Class of Shares**
 | The Investors shall be issued with fully paid shares in the Company of the class and carrying the rights defined in Schedule 4 (**Investor Shares**). |
| 1. **Investment**
 | 1. Subject to the completion of due diligence to the Investors’ satisfaction, the Investors agree to subscribe for fully paid Investor Shares in the capital of the Company up to the amounts listed in the table at Schedule 1.
 |
| 1. **Round Size**
 | The total size of this round of investment will be $[insert] / [0]% of the fully diluted capital of the Company. |
| 1. **Tax Incentives**
 | The Company warrants that it [is / is not] an Early-Stage Innovation Company (**ESIC**). If the Company is claiming ESIC status, it must complete the ATO ESIC decision tool <https://www.ato.gov.au/Calculators-and-tools/ESIC-decision-tool/> and attach in Schedule 4. |
| 1. **Valuation and Share Price**
 | Pre-money $[insert pre-money valuation]Post-money $[insert post-money valuation] (Max)**Guiding Note:** “Max” figure is the total of your pre-money valuation and the Round Size.Price per share $[insert]Minimum Individual Investment Size $[25,000] |
| 1. **Cap table**
 | A pro forma capitalisation table showing the fully diluted capital of the Company on completion of the Proposed Transaction is set out in Schedule 2. |
| 1. **Timetable**
 | The parties will use reasonable endeavours to meet the Investors Conditions within [insert] business days following the execution of this Term Sheet. During the period between execution of this Term Sheet and the execution of the Subscription Agreement, the Investors will conduct further due diligence on the Company and may during that time, by notice to the Company, advise the Company that it does not intend to proceed with the Proposed Transaction.Completion of the Proposed Transaction will occur within [insert] business days after the last Investors Condition is met or waived by the Investors and in accordance with the terms of the Subscription Agreement.**Guiding Note:** The number of days inserted into this term should reflect the number of days between signing the Subscription Agreement and completing the transaction outlined in that document. |
| 1. **Investors’ Conditions**
 | The Investors’ obligations to subscribe for Shares are subject to the following conditions (“**Investors** **Conditions**”):1. execution of a Subscription Agreement in a form acceptable to all parties (“**Subscription Agreement**”);
2. require the Company and its shareholders to enter into a Shareholders Agreement in a form acceptable to all parties (“**Shareholders Agreement**”);
3. require the Company and its shareholders to approve a Constitution in a form acceptable to all parties and
4. require the founder/s to enter into a deed of assignment under which it assigns all intellectual property related to the business to the Company.
 |
| 1. **Key Provisions in the Subscription Agreement**
 | The Investors’ obligations to subscribe for Shares is subject to the written satisfaction or waiver by the Investors of each of the Subscription Agreement Conditions:1. Capitalisation of all outstanding loans [other than the loan(s) of $[insert amount] from [insert lender] prior to investment.
2. a written acknowledgment from the Company that none of the investment funds will be used to pay finder or third party success fees.
3. the Company must use all reasonable endeavours to fulfil any outstanding obligations regarding the issue of shares or options to employees, contractors, advisors or third-parties prior to Investment.
4. all Employees whether employed, or engaged as a consultant, shall enter into an acceptable employment agreement containing appropriate confidentiality and intellectual property clauses.
5. the Company shall establish (if it has not already done so) an employee share option plan, with ordinary shares equating to at least [5]% of the Post-money fully diluted capital of the Company.
6. the Company shall obtain the following insurance policies:
	1. Directors & Officers policy that is at least $1,000,000.
	2. Key Person policy of $500,000 on [key people] (proceeds payable to the Company)

**Guiding Note:** The requirement for the Company to obtain these insurance policies may be too costly for a startup prior to taking on investment. We recommend contacting insurance brokers to find out about the cost of these products prior to including this term.1. there being no subsisting breach of any warranty given by the Company under the Subscription Agreement as at the date of subscription; [; and]
2. [insert any other conditions required by the Investors].
 |
| 1. **Additional Provisions in the Subscription Agreement**
 |  NA |
| 1. **Key provisions in the Shareholders Agreement**

**Guiding Note:** The items in this clause may not reflect your current Shareholders Agreement or Constitution, it is important to review your Shareholders Agreement and Constitution alongside any terms you wish to include in this Term Sheet prior to signing. If these terms do not match those in your existing company documents, you will need to seek advice to ensure that any variations you wish to make to these documents are completed correctly. | The Shareholders Agreement will:1. provide that:
	1. Founders or their related shareholding entity may each appoint one director while they hold any number of Shares in the Company;
	2. the Lead Investor (with support of other Investors) may appoint one non-executive director while they hold at least 5% of the Shares;
	3. each other shareholder may appoint one director if they hold at least 20% of the shares and

**Guiding Note:** The purpose of this clause is to enshrine the Investors’ right to appoint a director. As a financial investor, their right to appoint a director is not linked to it holding a percentage of the shares.Angel Investors often request the inclusion of this right to appoint a director. Founders may choose to negotiate on the required percentage of shares to be held by the Lead/Co-Investor to retain this right.* 1. where a Lead Investor has not appointed a director, they may nominate a person to attend all meetings and proceedings of the board of directors of the Company (**“Board”**) as an observer and to receive all papers provided to the Board;
1. provide that the board of the Company will be initially constituted as follows:
	* [insert name] – appointed by [insert name] (Chairperson)
	* [insert name] – appointed by [insert name]
	* [insert name] – appointed by [insert name]
2. provide that a quorum for a Board meeting will be at least two directors, including at least one director appointed by an Investor and if the Board comprises of three or more directors, at least one director appointed by a Founder;
3. provide that each director is entitled to exercise one vote per director by way of a show of hands;
4. provide that in the event of a split decision, the Chairperson shall have a casting vote in addition to their one directors’ vote;
5. provide that certain business decisions such as those set out in Part A of Schedule 3 may not be made without the approval of a Special Resolution (being a resolution of [75]% or more of the directors, provided that the director appointed by the holders of the Investor Shares must be in favour of the decision);
6. provide that certain business decisions such as those set out in Part B of Schedule 3 may not be made without the approval of a Special Resolution (being a resolution approved by holders of at least [75]% or more of all issued shares);
7. provide that the investors receive:
	1. quarterly financial statements within 30 days after the end of each quarter including a balance sheet, a short report of operations and cash flows for such quarter.
	2. Annual financial statements within 30 days after the Financial Year end, including a balance sheet, a statement of operations and cash flows for such year.
8. include pre-emptive rights on issue and transfer of shares;
9. include a drag along right if the holders of at least [75]% of the issued shares accept an offer to buy their shares (which must include holders of at least 50% of the Investor Shares); and
10. include a tag along right if the holders of at least [50]% of the issued Shares accept an offer to buy 100% of the issued Shares.
 |
| 1. **Additional Provisions in the Shareholders Agreement**
 |  NA |
| 1. **Exclusivity**
 | The Company must negotiate exclusively with the Lead Investor for [insert] business days following the signing of this Term Sheet by the Company (“**Exclusivity Period**”). During the Exclusivity Period, the Company is encouraged tosolicit or respond to enquiries relating to the Proposed Transaction from other potential investors in an effort to procure additional participation in the Proposed Transaction (“**Investment Procurement**”),however, whilst the Investment proceeds between the Lead Investor and the Company, any additional investment made during the Round shall be on the same terms as this term sheet. Any Additional Investors who wishes to participate in the Proposed Transaction must be reported to the Lead Investor and shall be included in Schedule8 and provided with a copy of the term sheet for execution.  |
| 1. **Confidentiality**
 | The contents of this Term Sheet and the fact that the Investors are considering entering into the Proposed Transaction is strictly confidential and may not be disclosed by Investors, Co-Investor, the Company or the Founder except so far as the disclosure of the contents of this Term Sheet is related to or for the purpose of Investment Procurement. However, the Investors, Co-Investor, the Company and the Founder may disclose this information to their own directors, shareholders, employees, contractors and professional advisers who have a need to know the information in the course of their duties, and only under terms of strict confidentiality. |
| 1. **Enforceability**
 | Except for sections 16 (exclusivity), 17 (confidentiality), 18 (enforceability), 19 (costs) and 20 (governing law) which are legally binding on the parties, the terms in this Term Sheet express current intentions only, are not intended to be legally binding or to give rise to legal rights or obligations and are subject to the negotiation and execution of definitive transaction documents.Nothing in this Term Sheet creates, or is intended to create, any fiduciary relationship or gives rise to any duty of care by any party to another. |
| 1. **Costs**
 | Each party will pay its own costs in relation to the negotiation and preparation of the definitive documents referred to in this Term Sheet |
| 1. **Governing law**
 | The binding provisions of this Term Sheet are governed by the laws of [Queensland] and each party submits to the exclusive jurisdiction of the courts of that jurisdiction. |

Execution

**Company**

|  |  |  |
| --- | --- | --- |
| **Executed** by **[company name]** ACN [000 000 000] in accordance with section 127 of the *Corporations Act 2001* (Cth) by: | ))) |  |
|  Signature of Director |  |  Signature of Director/Secretary |
|  Print name of Director |  |  Print name of Director/Secretary |

**Lead Investor**

|  |  |  |
| --- | --- | --- |
| **Executed** by **[company name]** ACN [000 000 000] in accordance with section 127 of the *Corporations Act 2001* (Cth) by: | ))) |  |
|  Signature of Director |  |  Signature of Director/Secretary |
|  Print name of Director |  |  Print name of Director/Secretary |

# Schedule 1 – Investors

# Item 1 Lead Investor (Individuals or Groups)

|  |  |  |  |
| --- | --- | --- | --- |
| **Investor** | **Class of shares** | **Number of shares** | **Subscription Amount** |
| [insert]  | Investor Shares | [insert]  | [insert]  |
| [insert]  | [insert] | [insert]  | [insert]  |
| [insert] | [insert] | [insert]  | [insert]  |
| **TOTAL** | **N/A** | [insert]  | [insert] |

# Item 2 Other Investor (Groups or Individuals investing with Lead Investor)

|  |  |  |  |
| --- | --- | --- | --- |
| **Investor** | **Class of shares** | **Number of shares** | **Subscription Amount** |
| [insert]  | [insert] | [insert]  | [insert]  |
| [insert]  | [insert] | [insert]  | [insert]  |
| [insert] | [insert] | [insert]  | [insert]  |
| **TOTAL** | **N/A** | [insert]  | [insert] |

# Item 3 – Additional Investor (Investing alongside Lead and other Investors)

|  |  |  |  |
| --- | --- | --- | --- |
| **Investor** | **Class of shares** | **Number of shares** | **Subscription Amount** |
| [insert]  | [insert] | [insert]  | [insert]  |
| [insert]  | [insert] | [insert]  | [insert]  |
| [insert] | [insert] | [insert]  | [insert]  |
| **TOTAL** | **N/A** | [insert]  | [insert] |

# Schedule 2 - Fully diluted cap table

|  |  |  |  |
| --- | --- | --- | --- |
| **Shareholder** | **Class of shares** | **Number of shares** | **Fully Diluted Percentage** |
| [insert]  | [insert]  | [insert]  | [insert]  |
| [insert]  | [insert]  | [insert]  | [insert]  |
| Unallocated Employee Share Scheme | Ordinary Shares | [insert]  | [insert]  |
| Investor | Investor Shares | [insert]  | [insert]  |
| **TOTAL** | **N/A** | [insert]  | **100%** |

# Schedule 3 – Critical business matters

**Part A: Matters to be determined by Special Resolution of the Board**

1. Matters to be determined by Special Resolution of the Board are:
	* + 1. (**business plan**) adopt a business plan for the Company and its subsidiaries (**Group**) and vary that business plan;
			2. (**employees**) other than the Founder, appoint or remove or materially change the terms of engagement of key executives or any other employee with a total remuneration package in excess of $100,000 per annum, or pay any such person a bonus;
			3. (**Board composition**) appoint a director or otherwise alter the structure of the Board other than in accordance with the Shareholders’ Deed;
			4. (**Employee Incentive Plan**) adopt or vary the terms of any Employee Incentive Plan and issue any securities under that Employee Incentive Plan;
			5. (**accounts**) the approval of the monthly and annual statutory accounts of any company in the Group (**Group Company**);
			6. (**accounting practices**) any change to the accounting practices and policies of any Group Company;
			7. (**issuing securities generally**) issue of securities except as expressly permitted in the Shareholders’ Deed;
			8. (**issuing securities for corporate transactions**) issue of securities for the purpose of an IPO or consideration for an acquisition of assets or shares;
			9. (**restructure**) any restructuring involving the Company or any subsidiaries, including creation of a trust, trustee, subsidiary or branch of the Company or any subsidiaries;
			10. (**dividends**) declare, make or pay a dividend;
			11. (**administration**) appoint an external administrator, liquidator or receiver;
			12. (**partnership**) enter into, materially amend the terms of or terminate any material partnership, joint venture, profit-sharing agreement, technology licence or collaboration;
			13. (**capital expenditure**) incur capital expenditure of more than $100,000 in a financial year;
			14. (**financial indebtedness**) incur any financial indebtedness by the Group which exceeds by more than $100,000 any proposed indebtedness included in an approved budget (and for these purposes, ‘financial indebtedness’ means any indebtedness, present or future, actual or contingent, in respect of money borrower or raised or any financial accommodation);
			15. (**encumbrances – Company**) grant any security interest of any nature in respect of all or any material part of the Company’s undertaking, property, assets or the issuance of any guarantee in favour of the obligations of a third party;
			16. (**election of chair**) elect a new chair of the Board;
			17. (**encumbrances – securities**) approve the granting of any security interest over securities;
			18. (**fair market value**) determine the fair market value of shares to be bought back from the Founder;
			19. (**prohibited actions**) provide prior approval for action by a restrained party that would otherwise be prohibited; and
			20. (**Insurance**) enter into any D&O insurance policy for the Board and the Company’s officers.

**Part B: Matters to be determined by Special Resolution of shareholders**

1. Matters to be determined by Special Resolution of the shareholders are:
	* + 1. (**Principal Place of Business**) change the principal place of Business.
			2. (**Founder**) appoint or remove or materially change the terms of engagement of the Founder, or pay the Founder a bonus;
			3. (**change of business**) make a material change in the nature of the Company’s business;
			4. (**Directors’ fees**) agreeing to any change in directors’ fees;
			5. (**sale**) a sale of a majority of the assets of the Company or a transaction to sell or licence all or a substantial part of the intellectual property rights of the Company;
			6. (**new class of securities**) create any class of securities with rights that are superior to the rights of the Ordinary Shares;
			7. (**share rights**) varying the rights of any shares;
			8. (**constitution**) amend the constitution of the Company; and
			9. (**related party transactions**) other than as permitted by the Shareholders’ Deed or the Constitution, transactions between the Company and a shareholder or its affiliate or authorising the payment of any money to a shareholder or its affiliate.

# Schedule 4 – Share Issue and Rights

**Guiding Note:** It is important to recognise that the class of share listed in this section and the rights associated with same are negotiable.

Further, we strongly recommend that you spend time understanding how these rights affect your business and refer to our glossary if you are unsure what certain terms mean.

**Seed Preference Shares** shall be issued with the following rights.

1. **Rights of first offer** - The right of first offer to purchase its pro rata portion of any new equity securities offered by the Company.
2. **Liquidation Preference** – The Seed Preference Shares shall have the right to receive a 1 x non-participating liquidation preference.

An event shall include;

* 1. a liquidation, dissolution, or winding up of the Company; or
	2. “Change in Control,” which means a merger or consolidation (other than one in which the stockholders of the Company own a majority by voting power of the outstanding shares of the surviving or acquiring corporation) and a sale, lease, transfer, or other disposition of all or substantially all of the assets of the Company.
1. **Conversion** – Upon conversion, each Seed Preference Share will convert automatically to one ordinary share (**Automatic Conversion**)

The following events will trigger an Automatic Conversion:

* + the closing of a firmly underwritten public offering of not less than $15,000,000 (before payment of underwriters’ discounts and commissions) (ie a “**Qualified IPO**”);
	+ the Company raising at least $2,000,000 in any funding round following the Proposed Transaction; or
	+ the written consent of holders of this class of shares.
1. **Dividends** – The Seed Preference Shares will have the same rights to dividends as ordinary shares.
2. **Voting Right** – The Seed Preference Shares will have the same weighting and rights as equivalent ordinary shares.

# Schedule 5 – Early-Stage Innovation Company (ESIC) Status statement

**Guiding Note:** We strongly recommend that Founders/Directors seek advice prior to providing this statement to ensure the statement is correctly made.

We, the directors of [company name] ACN [000 000 000] (the “**Company**”), confirm that the Company meets the criteria of an Early Stage Innovation Company (ESIC) under subsection 360-40(1) of the Income Tax Assessment Act 1997 (ITAA 1997) as follows:

In accordance with Sect 360-40(1) ITAA 1997

* + 1. The Company:
1. is under 3 years old, and it and its 100% owned subsidiaries, incurred total expenses not exceeding $1 million per year; or
2. The Company is under 6 years old and over the previous 3 years, and it and its 100% owned subsidiaries, incurred total expenses not exceeding $1 million per year.
	* 1. The Company’s total assessable income is less than $200,000 in the last income year;
		2. Company’s equity interest has never been listed on any stock exchange; and
3. the company has provided a letter from the Australia Taxation Office attesting to eligibility under the principals’ test **or**;
4. the company has attained [number of points] points of the self-assessment 100 point Innovation Test in accordance with Sect 360-45 ITAA 1997.

|  |  |
| --- | --- |
| **Points** | **Details** |
| [insert] | [insert] |
| [insert] | [insert] |
| [insert] | [insert] |

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_­