**Term Sheet**

**Date:**

| **Item** | | **Details** |
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|  | **Proposed Transaction** | This term sheet (**Term Sheet**) summarises the principal terms of a proposed investment by the Investor into the Company (**Proposed Transaction**). |
|  | **Parties** | [insert] Pty Ltd ACN [insert] (**Company**)  [insert] Pty Ltd ACN [insert] (**Investor**) |
|  | **Expiry Date** | This term sheet expires on [insert date]. |
|  | **Investment** | The Investor will invest $[insert] for [insert]% of the fully diluted capital of the Company (calculated on the basis of the pre-money valuation of the Company set out in paragraph 6 and on the basis the Investor will hold that percentage of the issued capital of the Company once all shares under the employee share scheme referred to in paragraph 8 have been fully issued post completion). |
|  | **Round size** | The size of the round will be $[insert]. |
|  | **Valuation** | The pre-money valuation of the Company is $[insert]. |
|  | **Class of shares** | The Investor will be issued with Seed Preference Shares on the following terms:   1. Liquidation Preference– The Seed Preference Shares shall have the right to receive a 1 x non-participating liquidation preference; [Sparke Helmore note: This means that if the company is wound up or sold, the holders of the Seed Preference Shares will receive back only the amount that they paid on their shares before any other shareholder receives any proceeds, or holders of the Seed Preference Shares can elect to convert their Seed Preference Shares to ordinary shares and participate as ordinary shareholders.] 2. Conversion – Upon conversion, each Seed Preference Share will convert automatically to one ordinary share; 3. Anti-dilution – If, prior to the conversion of any Seed Preference Shares, the Company issues Shares at a price less than that paid by the holder of Seed Preference Shares, the conversion rate will be subject to a broad based weighted average anti-dilution adjustment; and [Sparke Helmore note: This clause ensures that the Investor is not adversely affected if money is subsequently raised at a discount to the price paid by the Investor for their shares. The broad based weighted average anti-dilution adjustment is the most common approach to anti-dilution protection and calculates the conversion rate considering the price and the amount of money previously raised as well as the price and amount of money being raised in the subsequent dilutive financing.] 4. Dividends – The Seed Preference Shares will have the same rights to dividends as ordinary shares. |
|  | **Employee Share Scheme** | The Company will implement (if it has not already done so) an employee share scheme, with ordinary shares equating to [insert]% of the fully diluted capital of the Company to be issued post-closing of the Proposed Transaction. The employee share scheme will be used to retain and incentivise existing key staff and new hires. [Sparke Helmore note: Employee share schemes may take several forms, the most common of which are loan plans and option plans.] |
|  | **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 1. |
|  | **Timetable** | The parties will use reasonable endeavours to enter into a subscription agreement 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 Investor 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 subscription agreement is executed. |
|  | **Key provisions in subscription agreement** | The subscription agreement will:   1. include standard warranties to be given by the Company and founders; 2. require the Company and its shareholders to enter into a shareholders agreement; and 3. require the founder to enter into a deed of assignment under which it assigns all intellectual property related to the business to the Company. |
|  | **Key provisions in shareholders agreement** | The shareholders agreement will:   1. provide that the founder may appoint a director while it holds [50]% or more of the shares; [Sparke Helmore note: The purpose of this clause is to enshrine the founder’s right to appoint a director, but only while the founder is actively engaged in the business as a major shareholder.] 2. provide that the holders of the Seed Preference Shares may appoint a director while they hold shares; [Sparke Helmore note: The purpose of this clause is to enshrine the Investor’s 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.] 3. provide that the board of the Company will be initially constituted as follows:  * [insert] – appointed by [insert] * [insert] – appointed by [insert]  1. provide that critical business decisions such as those set out in Schedule 2 may not be made without the approval of a Required Resolution (being a resolution of [75]% or more of the directors, provided that the director appointed by the holders of the Seed Preference Shares must be in favour of the decision); [Sparke Helmore note: The Company will be benefiting from the capital provided by the holders of the Seed Preference Shares and their expertise and those shareholders require the right to veto critical business decisions, so they can ensure that the capital is put to good use.] 2. include pre-emptive rights on issue and transfer of shares; [Sparke Helmore note: This means that existing shareholders will get the first opportunity to buy any shares that the Company issues or that a shareholder sells.] 3. 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 a majority of the holders of the Seed Preference Shares); [Sparke Helmore note: This allows the majority of the shareholders to force the other shareholders to sell their shares if a third party makes an offer to buy all of the shares.] 4. include tag along rights if the holders of at least [50]% of the issues shares accept an offer to buy their shares; [Sparke Helmore note: If a large number of shares are being sold by a shareholder, then this clause gives the other shareholders the right to force the buyer to buy their shares as well.] 5. provide for [50]% of the founder’s shares to vest over a [insert] year period; [Sparke Helmore note: This means that if the founder ceases to be employed at any time while its shares are “unvested” the company will have the right to buyback those shares at a nominal price (e.g. total of $1). Its purpose is to ensure that the founder remains actively committed to the business for a certain period.] 6. include a right to buy back the shares of any founder who is a bad leaver at [50]% of fair market value; and [Sparke Helmore note: This allows the Company to buyback a founder’s shares if they commit fraud, an indictable criminal offence, breach of restraint or confidentiality obligations or are otherwise terminated by the company ‘with cause’.] 7. include a standard restraint applying to all shareholders other than the Investor. [Sparke Helmore note: A restraint prevents a shareholder from competing with the Company or from soliciting the Company’s customers or staff for a period of time, in a defined area. The intention is to protect the Company and all other shareholders.] |
|  | **Exclusivity** | The Company must negotiate exclusively with the Investor for [insert] business days following the execution of this Term Sheet (**Exclusivity Period**). During the Exclusivity Period, the Company must not solicit or respond to enquiries relating to the proposed investment or a licensing transaction in the Company (other than as approved by the Investor), nor shop these terms to any other person or organisation. |
|  | **Confidentiality** | The contents of this Term Sheet and the fact that the Investor is considering entering into the Proposed Transaction is strictly confidential to the Investor and may not be disclosed by the Company to anyone other than the Company’s partners, shareholders, directors, employee and professional advisers who have a need to know the information in the course of their duties, and only under terms of strict confidentiality. |
|  | **Enforceability** | Except for sections 13 (exclusivity), 14 (confidentiality), 15 (enforceability), 16 (costs) and 17 (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. |
|  | **Costs** | The Company will bear all of the Investor’s third party expenses following execution of this Term Sheet including but not limited to expenses relating to the negotiation and preparation of the definitive documentation required for the Proposed Transaction, up to a maximum of $[insert], plus GST. |
|  | **Governing law** | The binding provisions of this Term Sheet are governed by the laws of [New South Wales] and each party submits to the exclusive jurisdiction of the courts of that jurisdiction. |

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| **Executed** by **[insert]** ACN [insert] 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 |

|  |  |  |
| --- | --- | --- |
| **Executed** by **[insert]** ACN [insert] 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 – 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 | Seed Preference Shares | [insert] | [insert] |
| **TOTAL** | **N/A** | [insert] | **100%** |

Schedule 2 – Decisions requiring the approval of Required Resolution

* + - 1. (**business plan**) adopt a business plan for the group and vary that business plan;
      2. (**employees**) appoint or remove or materially change the terms of engagement of the founder and 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 Agreement;
      4. (**employee equity scheme**) adopt or vary the terms of any employee share scheme and issue any securities under that employee share scheme;
      5. (**accounts**) the approval of the monthly and annual statutory accounts of any group company;
      6. (**accounting practices**) any change to the accounting practices and policies of any group company;
      7. (**change of business**) make a material change in the nature of the group’s business;
      8. (**issuing securities**) issue of securities, other than an excluded issue;
      9. (**new class of securities**) create any class of shares with rights that are superior to the rights of the Seed Preference Shares;
      10. (**restructure**) any restructuring involving the Company or any subsidiaries, including creation of a trust, trustee, subsidiary or branch of the Company or any subsidiaries;
      11. (**dividends**) declare, make or pay a dividend;
      12. (**administration**) appoint an external administrator, liquidator or receiver;
      13. (**partnership**) enter into (or terminate) any material partnership, joint venture, profit-sharing agreement, technology licence or collaboration;
      14. (**capital expenditure**) incur capital expenditure of more than $[insert] in a financial year;
      15. (**financial indebtedness**) incur any financial indebtedness by the group which exceeds $[insert] (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);
      16. (**encumbrances**) 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; and
      17. (**Insurance**) enter into any D&O insurance policy for the board and the Company’s senior executives.