

# Term Sheet Templates for Early Stage Investments

- Ordinary Shares
- Preferred Shares
- Convertible Loan

October 2006

# 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**).

**Amount of investment:** [Up to<sup>1</sup>] \$ [ ] [(subject to achievement of milestones)] (**Investment Amount**).

**[Minimum Available Investment]:** The minimum amount available for investment by the Investor[s] must be \$ [ ]<sup>2</sup>.

**Investor[s]:** [Insert name(s) of investor[s]] or [The persons identified in Appendix 2 [and other members of the [ ] investment syndicate who agree to participate in the Investment]<sup>3</sup>] (**Investor[s]**).

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

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

**Type of Shares:** [Series A<sup>5</sup>] ordinary shares (**Shares**).

**Issue Price:** \$ [ ] per Share.

**Number of Shares:** [Up to] [ ].

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

<sup>2</sup> 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 (e.g. if they are not happy with the outcome of due diligence etc).

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

<sup>4</sup> 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).

<sup>5</sup> May be appropriate to distinguish from other ordinary shares to the extent shares confer some special rights (e.g. anti-dilution, drag and forced liquidation).

# Term Sheet Templates

This folder includes three term sheet templates which New Zealand Venture Investment Fund Limited engaged Simpson Grierson to prepare to provide a resource available to all early stage investors and to promote greater consistency in the terms and documentation used.

The term sheets contain key investment terms which should be considered by an early stage investor, whether they be an angel, venture capitalist or other type of early stage investor.

## Ordinary Shares Template

The first term sheet is for an investment in ordinary shares which will rank equally with the other ordinary shares issued by the company. Angel groups typically invest in ordinary shares (although some will seek terms which are closer to the terms typically sought by venture capital investors, in which case they may invest in preferred shares).

## Preferred Shares Template

The second term sheet is for preferred shares and incorporates variable terms commonly sought by venture capital investors in New Zealand and overseas. The preferences include preferential dividend rights, liquidation preferences and redemption rights. In some cases all of these preferences will apply, while in others, the preferred shares will only have some of these preferences. The preferred shares are invariably convertible to ordinary shares at the option of the investor and have all of the rights of ordinary shares in addition to the preference rights.

## Convertible Loan Template

The third term sheet is for a convertible loan. Often an earlier stage investor will provide some initial funds under a convertible loan while the business case and

plan for a more substantial investment is being developed or pending satisfaction of a condition precedent to the more substantial investment. The convertible loan may be secured or unsecured, and may convert to either ordinary shares or preferred shares. Where a more substantial investment is intended to follow the convertible loan, the loan will convert to the same class of shares as that more substantial investment.

## Variables And Options

All of the term sheets contain a number of variables and options. They also contain footnotes to provide guidance on options which may not be self evident.

The templates seek to strike a balance between workable plain English documents and adequate coverage of most of the key variables of terms typically included in those term sheets. They do not contain exhaustive examples of possible terms or the potential variations of those terms, but rather represent what we regard as most typical.

We would be very happy to assist you with any queries you may have in respect of the use of the term sheets or the options contained in them. We can also assist you with the substantive investment documentation which reflects the terms contained in the term sheets.

## Contact

If you require assistance, please contact Andrew Lewis at Simpson Grierson:

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- 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**).
- Conditions Precedent:  
(for Investor['s][s'] benefit)**
- Due diligence being completed to the satisfaction of the Investor[s].
  - 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] [[ ] and [ ]] on terms acceptable to the Investor[s] (and which include suitable non compete covenants).
  - All relevant officers, consultants and contractors (including all Key People assigning (in a form acceptable to the Investor[s]) 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 precedent*<sup>6</sup>].

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<sup>6</sup> Consider other specific conditions precedent which should be specified (e.g. 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.

