

## **TERM SHEET TEMPLATE**

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# TERM SHEET

This term sheet (“**Term Sheet**”) summarises the main terms and conditions of [the potential acquisition of shares in [●] (the “**Company**”) by the Angel Investor (as hereinafter defined)], [the potential contribution in cash by the Angel Investor (as hereinafter defined) within [●] (the “**Company**”) in exchange for Company’s shares]. This Term Sheet is for discussion purposes only, and except as expressly set forth below, there is no obligation on the part of any negotiating Party (as hereinafter defined) until a definitive investment agreement is signed by all Parties, and other conditions set forth herein are met. The Binding Documentation (as hereinafter defined) may be complemented with new terms and conditions once the existing documentation on the Company has been comprehensively reviewed in the context of the Due Diligence (as hereinafter defined).

<b>TERM SHEET</b>	
<b>PARTIES</b>	
1. Target Company	The Company is duly incorporated and validly existing under the laws of [COUNTRY], having its office at [ADDRESS] and registered with the [NAME REGISTRATION OFFICE] under number [●];
2. Founders / Current Shareholders	<ol style="list-style-type: none"> <li>1) [NAME], born in [CITY], on [DATE], with national number [●] and domiciled at [ADDRESS] (“<b>Current Shareholder 1</b>”);</li> <li>2) [NAME], born in [CITY], on [DATE], with national number [●] and domiciled at [ADDRESS] (“<b>Current Shareholder 2</b>”);</li> <li>3) [NAME], a company duly incorporated and validly existing under the laws of [COUNTRY], having its office at [ADDRESS] and registered with the [NAME REGISTRATION OFFICE] under number [●] (“<b>Current Shareholder 3</b>”)</li> </ol> <p>“<b>Current Shareholder 1</b>”, “<b>Current Shareholder 2</b>” and “<b>Current Shareholder 3</b>” collectively, the “<b>Current Shareholders</b>” and, each of them individually, also “<b>Current Shareholder</b>”.</p>
3. Angel Investors	<ol style="list-style-type: none"> <li>1) [Angel Investor 1], born in [CITY], on [DATE], with national number [●] and domiciled at [ADDRESS] (“<b>Angel Investor 1</b>”);</li> <li>2) [Angel Investor 2], born in [CITY], on [DATE], with national number [●] and domiciled at [ADDRESS] (“<b>Angel Investor 2</b>”);</li> <li>3) [Angel Investor 3], a company duly incorporated and validly existing under the laws of [COUNTRY], having its office at [ADDRESS] and registered with the [NAME REGISTRATION OFFICE] under number [●] (“<b>Angel Investor 3</b>”);</li> </ol> <p>Angel Investor 1, Angel Investor 2 and Angel Investor 3, collectively, the “<b>Angel Investors</b>” and, each of them individually, also an “<b>Angel Investor</b>”.</p>
4. Parties	The Angel Investors, the Current Shareholders and the Company (collectively, the “ <b>Parties</b> ” and, each of them individually, also a “ <b>Party</b> ”).

5. Business	The Company is mainly active in [●] (the “ <b>Business</b> ”).										
<b>STRUCTURE, FEATURES AND INDICATIVE TIMELINE OF THE INVESTMENT</b>											
6. Intended transaction	The Angel Investors have the intention to invest an aggregate sum of [AMOUNT] EUR by subscription to new shares [through a Company's capital increase] (the “ <b>Angel Investment</b> ”). In return, the Investors receive [PERCENTAGE] % of the Company shares (after contribution of all investments described in this Term Sheet).										
7. Investment Structure	<p>The shares of the Company (the “<b>Shares</b>”) consist of two classes,<sup>1</sup> Class A and Class B, hereafter referred to, whereas applicable, as the “<b>Class A Shares</b>” or the “<b>Class B Shares</b>”.<sup>2</sup> The Angel Investors shall acquire Class B Shares. All existing Shares of the Current Shareholders shall be converted to Class A Shares. Except explicitly provided within this Term Sheet, , the Shareholders’ Agreement as defined hereinafter, and/or the Articles of Association of the Company Class A Shares and Class B Shares shall have the same rights and obligations. The shareholding structure of the Company prior to and after contribution of the Investors is as defined in the cap table in Appendix 1.</p> <p>Subject to the occurrence or waiver, in whole or in part, of the conditions precedent/preliminary undertakings under Clause 35 below, Angel Investors will subscribe and pay up the Angel Investment in the following amounts:</p> <table border="1" data-bbox="483 1104 1396 1288"> <thead> <tr> <th data-bbox="483 1104 1070 1137">Angel Investors</th> <th data-bbox="1070 1104 1396 1137">Amount in €</th> </tr> </thead> <tbody> <tr> <td data-bbox="483 1137 1070 1171">Angel Investor 1</td> <td data-bbox="1070 1137 1396 1171">€ [●]</td> </tr> <tr> <td data-bbox="483 1171 1070 1205">Angel Investor 2</td> <td data-bbox="1070 1171 1396 1205">€ [●]</td> </tr> <tr> <td data-bbox="483 1205 1070 1238">Angel Investor 3</td> <td data-bbox="1070 1205 1396 1238">€ [●]</td> </tr> <tr> <td data-bbox="483 1238 1070 1288"><b>Total Investment</b></td> <td data-bbox="1070 1238 1396 1288"><b>€ [●]</b></td> </tr> </tbody> </table> <p>The Investment Agreement (as hereinafter defined) may provide for the Angel Investment to be subscribed and paid-up in <i>tranches</i> upon the achievement of certain milestones to be agreed between the Current Shareholders and the Angel Investors.</p>	Angel Investors	Amount in €	Angel Investor 1	€ [●]	Angel Investor 2	€ [●]	Angel Investor 3	€ [●]	<b>Total Investment</b>	<b>€ [●]</b>
Angel Investors	Amount in €										
Angel Investor 1	€ [●]										
Angel Investor 2	€ [●]										
Angel Investor 3	€ [●]										
<b>Total Investment</b>	<b>€ [●]</b>										

<sup>1</sup> Attention: the formalities to be fulfilled to implement types of shares must be examined per country. By way of example, in Belgium, the creation of classes of shares must be provided for in the company's articles of association and the operation of Articles 5:102 and 7:155 of the Companies and Associations Code must be taken into account. These articles provide that the amendment of the rights attached to one or more classes of shares requires an amendment of the articles of association whereby the resolutions within each class must be passed in compliance with the presence and majority requirements prescribed for an amendment of the articles of association.

<sup>2</sup> In the presence of Current Shareholders other than founders and investors, and in order to provide potential future investors with an indication of the types of investment rounds already undertaken by the Company, the adoption of following classes of shares may be suggested:

- founder shares, to be allocated to founders of the Company;
- seed shares, to be allocated to Angel Investors;
- ordinary shares, to be allocated to Current Shareholders who are neither founders nor investors;
- non-voting shares, to be granted to the eventual beneficiaries of an incentive plan upon exercise of the stock options granted to them.

8. Valuation	<p>The pre-money valuation of the Company prior to the funding round amounts to [AMOUNT] euro. The post-money valuation amounts to [AMOUNT] (both on a fully diluted basis).</p> <p>Within the framework of the transaction, in exchange for the contributions in cash, [AMOUNT] new Class B Shares shall be issued at a price of [AMOUNT] EUR per Class B Share (the “<b>Class B Subscription Price</b>”), including the issue premium.</p>
9. Purpose of the Investment and use of proceeds	<p>The exclusive purpose of the Angel Investment is, and the proceeds thereof may only be used for:</p> <p>(a) in general, finance the growth plan and investments shared with Angel Investors.</p> <p>(b) [TO BE SPECIFIED PER TRANSACTION]</p> <p>The business and financial plan are part of this Term Sheet (<u>Appendix 4</u>).</p>
10. Binding Documentation	<p>The terms and conditions of the Angel Investment shall be set forth in detail in final and binding contractual documentation entered into among the Parties including, among other things, the following:</p> <p>(a) an investment agreement comprehensive of, <i>inter alia</i>:</p> <ul style="list-style-type: none"> <li>– the key terms of the investment;</li> <li>– a set of representations and warranties and indemnification obligations in accordance with Clause 34 below;</li> <li>– [TO BE SPECIFIED PER TRANSACTION]</li> </ul> <p>(the “<b>Investment Agreement</b>”);</p> <p>(b) a new text of Company’s articles of association<sup>3</sup> (the “<b>Articles of Association</b>”) providing, <i>inter alia</i>, for the share capital of the Company to be divided into different standardized classes of Shares with no par value and embodying all the rights and obligations agreed among the Parties.</p> <p>(c) a shareholders’ agreement (the “<b>Shareholders’ Agreement</b>”) governing the shareholder agreements that, by their nature, cannot be directly included in the Articles of Association;</p> <p>(d) management agreements governing the Current Shareholders’ obligation towards the Company (including stability, dedication as well as non-compete and non-solicitation obligations in line with the Current Shareholders’ commitments towards the Angel Investors pursuant to Clause 32), (the “<b>Management Agreements</b>”);</p> <p>(collectively, the “<b>Binding Documentation</b>”).</p> <p>The first draft of the Binding Documentation will be drawn-up in line with the best practice for this type of transactions, by the legal advisors of the Angel Investors and subsequently negotiated and finalized among the Parties prior to the Signing Date (as hereinafter defined). It remains agreed and understood that the Binding Documentation will be drawn-up in English, with the exception of the New Articles of</p>

<sup>3</sup> Insofar as this was not already foreseen and is furthermore desirable.

	Association and the Management Agreements, which will be drafted and executed in [LANGUAGE] <sup>4</sup> (without prejudice to the right of any non-[LANGUAGE] speaking Party to request a courtesy translation into English).
11. Due Diligence	<p>Angel Investors will be entitled to carry out, also through advisors of their choice, a legal, accounting, tax, technical and business due diligence on the Company (the “<b>Due Diligence</b>”), it being understood that such Due Diligence shall be considered as limiting the scope of the Representations and Warranties of the Current Shareholders / will have no exempting efficacy over the representations and warranties and the indemnification obligations set forth in the Binding Documentation.<sup>5</sup></p> <p>Current Shareholders will cause the Company to provide all the necessary and/or appropriate cooperation in the context of the Due Diligence process, by promptly making available to the Angel Investors and their advisors the requested information and documents by setting up a virtual data room (the “<b>VDR</b>”).</p>
12. Indicative timeline	The Parties will enter into the Investment Agreement on the date agreed among them and which shall fall indicatively on [DATE] (the “ <b>Signing Date</b> ”) and will carry out all the activities necessary to execute the Angel Investment (including but not limited to the approval of the Angel Investment and the adoption of the New Articles of Association) as set forth in the Investment Agreement and subject to the completion of the Due Diligence, on the date agreed among the Parties and which shall fall indicatively on [DATE] (the “ <b>Closing Date</b> ”).
<b>CORPORATE GOVERNANCE, ORGANISATIONAL STRUCTURE AND DILUTION</b>	
13. Board of Directors: Appointment	On the Closing Date, the shareholders’ meeting of the Company will, among other things, appoint a new Board of Directors consisting of [X] members, of which:

<sup>4</sup> In the majority of cases, this will be the language of the location of the registered office of the Company, but this is always to be checked against local law.

<sup>5</sup> It is also possible to provide a data room disclosure or disclosure letter.

Some more info regarding the data room disclosure and the disclosure letter:

The most far-reaching disclosure mechanism is the data room disclosure. Here, the founders and/or the company will not be liable if they (not intentionally) made a false statement about certain matters that were properly disclosed in the data room. Although this concept is very common in a civil law context, it is strongly opposed by Anglo-Saxon investors and in the common law countries. It should therefore be tested per transaction whether this mechanism is desirable.

A less far-reaching disclosure mechanism is the disclosure letter where parties decide to list only specifically communicated information in a disclosure letter, limiting the representations and warranties as such. This disclosure letter will be annexed to the investment agreement and forms an integral part of it. Specifically, the founders and/or the company are not liable for matters disclosed in the disclosure letter.

	<p>(a) <input checked="" type="checkbox"/> directors will be designated by Class A Shareholders (Current Shareholders) (“<b>Directors Class A</b>”); and</p> <p>(b) <input checked="" type="checkbox"/> director will be designated by Class B Shareholders (Angel Investors) (“<b>Directors Class B</b>”);</p> <p>Unless otherwise decided by the general meeting, these mandates are not remunerated.</p> <p>One or two independent directors may be elected, on the proposal of the majority of Class A Shares and the majority of Class B Shares. The mandate of the independent director may or may not be remunerated.</p> <p>The Chairman will be either a Director Class B or an independent director. The chairman and the managing director cannot be the same person.</p> <p>During the first <input checked="" type="checkbox"/> years after Closing Date, the Board of Directors will meet at least <input checked="" type="checkbox"/> times a year, thereafter at least <input checked="" type="checkbox"/> times a year.</p> <p>In addition, each Angel Investor can appoint an observer. Such observer will not be a director nor a permanent representative of any director. Each observer will be invited to each meeting of the Board of Directors, it being understood that they shall have no right to vote at such meetings. Any observer will receive the same information that is provided to the directors, and, as such, they commit to the same confidentiality obligations as a director. <input type="checkbox"/> It is understood that such observer may vary from board meeting to board meeting <input type="checkbox"/></p> <p>The Shareholders’ Agreement will specify what information will be provided by management to the Board of Directors, and with what frequency.</p> <p><input type="checkbox"/> The Company will provide a directors' liability insurance for the benefit of the directors. <input type="checkbox"/></p>
<p>14. Board of Directors: <i>quora</i> and voting rights</p>	<p>Decisions in the Board of Directors can only be taken if the majority of its members are present or represented and are taken by a simple majority of votes.</p> <p>Key decisions in the Board of Directors as set out in <u>Appendix 2</u> require an attendance quorum of at least fifty percent (50%) of its members, including at least one (1) Director Class A and at least one (1) Director Class B and must be taken by at least fifty percent (50%) of the Directors Class A and at least fifty percent (50%) of the Directors Class B.</p> <p>The Shareholders’ Agreement shall provide in a mechanism that shall be applied in case a first meeting of the Board of Directors is not capable to decide due to a lack of sufficient members being present at such meeting.</p> <p><input type="checkbox"/> In the event of a tie, the Chairman shall have a decisive vote. <input type="checkbox"/> In the event of a tie, the decision shall be deemed not to have been adopted. <input type="checkbox"/></p>

	Directors with a conflict of interest may not participate in the deliberations or in the vote on the item on the agenda in question, but their presence counts towards the attendance quorum. Their mandates shall be disregarded for the purposes of the voting quorum.
15. Shareholders' meetings	<p>The decisions in the general shareholders' meeting require a simple majority of the votes present or represented, except for the provisions of the company law of [COUNTRY] providing for stricter attendance and majority rules.</p> <p>Without prejudice to the application of the legal provisions, key decisions in the general meeting as set out in <u>Appendix 2</u> require an attendance quorum of [X] and will have to be approved by a majority of the Class A Shares present or represented and a majority of the Class B Shares present or represented. The Shareholders' Agreement shall provide in a mechanism that shall be applied in case a first general meeting is not capable to decide due to a lack of sufficient members being present at such meeting.</p>
16. Reporting and access rights	<p>The Company shall periodically provide the Angel Investors with adequate and effective reporting rights and will always provide them with any further information concerning the Company (as well as its subsidiaries/affiliates and/or their activities) reasonably requested by any Angel Investor.</p> <p>In addition, Angel Investors – and their representatives and/or trusted professionals – will always be entitled to adequate rights to inspect the premises and access the information on the Company's affairs.</p>
<b>TRANSFER OF SHARES AND EXIT</b>	
17. Standstill	<p>The Current Shareholders shall not be able to transfer or to constitute any encumbrance on their Shares during the first [X] years following the date of the Shareholders' Agreement, without the prior written consent of the majority of the Angel Investors. [The Angel Investors shall not be able to transfer or to constitute any encumbrance on their Shares during the first [X] years following the date of the Shareholders' Agreement, without the prior written consent of the majority of the Current Shareholders] (the "<b>Standstill</b>").</p> <p>This Standstill shall at all times have precedence on the other rights mentioned in this document, such as Tag-along Rights and Drag-along Rights. Free transfer of Shares shall be possible.</p>
18. Free Transfer of Shares	<p>After giving notice to the Board of Directors, Shares may always be transferred freely in the following cases:</p> <p>(a) with prior written consent of the Board of Directors as a Key Decision (as set out in <u>Appendix 2</u>);<sup>6</sup></p>

<sup>6</sup> Attention: the formalities to be fulfilled to transfer shares must be examined per country.

By way of example, in Italy, the provision that the transfer of shareholdings is subject to the prior approval of the corporate bodies constitutes a legitimate cause for the shareholders' withdrawal under Article 2469 of the Italian Civil Code.

	<p>(b) by a Party who is a physical person, in the event of death, to their spouse, their descendants and their ascendants or for succession planning purposes;</p> <p>(c) by a Party to an affiliated Company, this being a Company controlled by the transferring Party, a Company controlling the transferring Party, or a Company controlled by the same Company as the transferring Party. The concerned Parties must prove such control upon first request of the other Parties. Should the control over the acquiring Company change after the transfer, the original seller is required to buy back the Shares, otherwise this will be considered as a transfer to which pre-emptive rights are applicable;</p> <p>(d) as a result of an absorption, merger, or de-merger of a Company-Party, whereby the transferring Party retains control, as stipulated above; and/or</p> <p>(e) as a result of the exercise of a Call option on the Shares of the Current Parties (see below).</p> <p>The transferee must commit and undertake to accede to the Shareholders' Agreement in advance.</p>
19. Pre-Emptive Rights	<p>Parties have pre-emptive rights with regards to each other's' Shares, unless this is temporarily suspended within the framework of an exit arrangement. These pre-emptive rights apply in first instance between shareholders of the same class, followed by shareholders of another class. The Shares for which the pre-emptive rights are exercised convert to the share class of which the transferee is already a shareholder.</p>
20. Tag-Along Right	<p>Without prejudice to the Liquidation Preference set forth in Clause 24, should a Current Shareholder, as the case may be together with one or more other Current Shareholders, transfer in aggregate [25] % or more of the total number of Shares to a third party, whether or not a shareholder of the Company, each of the other [Angel Investors / Angel Investors and/or other Current Shareholders] (should they not assert their pre-emptive rights) may require that the aforementioned third party acquires 100% of the Shares of the respective [Angel Investors / Angel Investors and/or other Current Shareholders] subject to the same conditions.</p> <p>Should one or more Parties, in single or multiple transactions (provided that in case of multiple occurring transactions they shall be considered a single transaction) sell a minimum of [50]% of the total outstanding Shares to a third party, the other Parties (should they not assert their pre-emptive rights) may require the aforementioned third party to acquire 100% of the Shares of the respective Party (or Parties) subject to the same conditions.</p>
21. Drag-Along Right	<p>Without prejudice to the Liquidation Preference set forth in Clause 24, should a substantial majority of the Company's shareholders, i.e. holders of at least [70]% of the Shares, including at least the majority of both Class A Shares and Class B Shares, wish to transfer their Shares to a third party in good faith, whether or not they are a shareholder of the Company, they may require the remaining shareholders to transfer their Shares, subject to the same conditions, should the remaining</p>

	shareholders not exercise their pre-emptive rights. Such drag-along rights would only be applicable after the Standstill-period.
22. Exit Procedure	<p>As from the expiry of the Standstill and without prejudice to the Liquidation Preference set forth in Clause 24, the Angel Investors shall have the right, but not the obligation, to trigger an <i>exit</i> procedure, which will be set out in detail in the Binding Documentation and will provide for the granting of an irrevocable mandate to an advisor of primary national and/or international standing to assess, with a view to maximizing the Company's value, the feasibility of:</p> <p>(a) an "<b>IPO</b>", meaning as such the admission, of Shares representing the Company's corporate capital on – or the authorization by any similar authority for such Shares to be admitted to or to be traded or listed on – a regulated national or foreign market and/or a multilateral trading system in [COUNTRY] or abroad; or</p> <p>(b) a "<b>Trade Sale</b>", meaning as such the joint sale of more than 70% of the Company's share capital, including through a competitive auction procedure.</p>
23. Top-up arrangement	<p>Should the Angel Investors realize an exit through the sale of their Shares to (one or more of) the Current Shareholders, who subsequently resell their Shares (partially or not) at a higher value, the Angel Investors will be entitled to a supplementary payment:</p> <p>(a) should such a sale by the Current Shareholders take place within 12 months after the Investors' exit, the exit value will be retroactively equated with the sale value;</p> <p>(b) should such a sale take place between 12-24 months after the Investors' exit, then the Current Shareholders shall pay a percentage of the difference between the sale value and the exit-value of the Investors to the latter. This percentage will decrease in linear fashion by 8.33% for each month (from 100% to 0% over such a period of 12 months).</p> <p>After 24 months the right to supplementary payment for the Angel Investors expires.</p>
24. Liquidation Preference <sup>7</sup>	<p>Upon occurrence of one or more Liquidation Event(s) (as hereinafter defined), the proceeds thereof (the "<b>Proceeds</b>") will be allocated among the Company's shareholders partaking in the Liquidation Event, in the following order (so called "<b>Waterfall</b>"): </p> <p>(a) first, to all shareholders of the Company, <i>pari passu</i> and <i>pro rata</i> among them, until they receive an amount equal to the (implicit) par value of the aggregate number of Shares respectively owned;</p> <p>(b) second, as for any amount exceeding the distribution under point (a) above, exclusively to Class B Shareholders, <i>pari passu</i> and <i>pro rata</i> among them based on the number of Class B Shares each of them owns, up to an amount equal to the higher of (i) the amount paid in cash by each Class B</p>

<sup>7</sup> A liquidation preference is commonly used in capital transactions since it dictates the payout order in case of a corporate liquidation. Typically, the company's investors or preferred stockholders get their money back first, ahead of other kinds of stockholders or debtholders, in the event that the company must be liquidated, sold or goes bankrupt.

	<p>Shareholder for the subscription of Class B Shares; and (ii) the amount each Class B Shareholder would be entitled to receive if the Proceeds were distributed <i>pari passu</i> and <i>pro rata</i> among all Company's shareholders without applying the waterfall set out in this Clause 24;</p> <p>(c) third, as for any amount exceeding the distributions under points (a) and (b) above, to all the Company's shareholders other than Class B Shareholders, <i>pari passu</i> and <i>pro rata</i> among them.</p> <p>It remains agreed and understood that, for the purposes of this Clause 24:</p> <ul style="list-style-type: none"> <li>- <b>"Liquidation Event"</b> means any of the following: <ul style="list-style-type: none"> <li>o any bankruptcy, liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, or any other similar transaction;</li> <li>o transfer of more than 50% of the Company's share capital (even as a result of any of the procedures under Clauses 20 (<i>Tag-Along Right</i>), 21 (<i>Drag-Along Right</i>) and 22 (<i>Exit Procedure</i>);</li> <li>o an IPO;</li> <li>o a merger, (partial) demerger, contribution of a branch of activity, or other corporate restructuring resulting in a change of control of the Company;</li> <li>o any transfer of all (or substantially all) the Company's business and/or assets.</li> <li>o any other similar transaction or series of transactions that has substantially the same effect as any of the abovementioned transactions other than equity financings.</li> </ul> </li> </ul>
<p>25. Employee Stock-Option Plan</p>	<p>Subject to the execution of the Angel Investment and within [6] months of the Closing Date, the Company's competent corporate bodies will adopt an incentive stock-option plan reserved for employees to be identified from time to time by the Company's Board of Directors (the "<b>ESOP</b>"), it being understood that the aggregate stock option pool servicing the ESOP will allow its beneficiaries to subscribe, in the aggregate, a number of non-voting Shares representing up to [5-10]% of the Company's fully diluted share capital.</p> <p>It remains agreed and understood that the capital increase servicing the ESOP will be approved by the Shareholders' meeting of the Company on the Closing Date.</p>
<b>SPECIAL RIGHTS OF THE ANGEL INVESTORS</b>	
<p>26. Anti-dilution</p>	<p>Should the Company issue additional Shares or other securities (such as options or subscription rights) in the [three (3)] years following the Closing Date at an issuing price lower than the Class B Subscription Price, then the number of Shares held by the Angel Investors shall be adjusted without additional cost as though the Angel Investment had taken place at the aforementioned lower price.<sup>8</sup></p>

<sup>8</sup> As an alternative to full ratchet anti-dilution protection, it could be considered to implement an anti-dilution protection based on a standard weighted average formula.

	An issuance of Shares benefiting employees, an issuance of subscription rights within the framework of an Employee Stock Option Plan, and the issuance of subscription rights allocated within such an Employee Stock Option Plan shall not trigger this anti-dilution provision.
27. Call Option	<p>The Angel Investors shall have a call-option on the Shares of a Current Shareholder with a management function in the Company, should he/she leave the Company. The price at which these Shares are being transferred shall be determined in function of whether the Manager leaves the Company as a Good Leaver or as a Bad Leaver.</p> <p>Should the Manager leave the Company as a Good Leaver, then the transfer of Shares shall happen at Market Value.<sup>9</sup> Should the Manager leave the Company as a Bad Leaver, then the Shares shall be transferred at the lower of the following values: (1) the market value minus [50%] discount or (2) the net equity value.</p> <p>See <u>Appendix 3</u> for the definitions and procedure of the Good Leaver/Bad Leaver.</p>
<b>SPECIAL OBLIGATIONS</b>	
28. Current Shareholders Non-compete Obligation	Each of the Current Shareholders, undertakes to, up until [two (2)] years after ceasing his/her operational activity for the Company or up until [two (2)] years after the transfer of his or her Shares, refrain from engaging in a competing Business with the Company and undertakes to refrain from soliciting customers, suppliers, employees and consultants from the Company, up until [two (2)] years after leaving the Company or up until [two (2)] years after the transfer of his or her Shares. <sup>10</sup>
29. [Current Shareholders' Stability Obligation]	[Each Current Shareholder will undertake a stability commitment, by undertaking not to relinquish the operational role from time to time held in the Company without the prior consent of the angel investors' majority.]
30. Confidentiality	Each shareholder (i.e. the Current Shareholders, the Angel Investors and any future shareholders) will include in the Shareholders' Agreement a confidentiality obligation of [five (5)] years (neither disclosure or use of confidential information) after leaving the Company and/or the sale of his Shares (for the Current Shareholders, whichever occurs later), with regard to confidential information / business secrets.
<b>DUTIES OF THE CURRENT SHAREHOLDERS</b>	

<sup>9</sup> In the event of a Good Leaver, it is possible to determine the price of the transferred Shares according to when the Good Leaver Situation occurs.

<sup>10</sup> Provision could be made for other investments up to an amount equal to five times the (listed) target company's capital to be an exception to the non-compete clause.

31. IP rights	Each Current Shareholder shall, prior to the Closing Date, undertake to waive all IP rights to the Company in a form and with a content acceptable to the Investors. <sup>11</sup>
32. Management agreements	<p>The Current Shareholders will provide their services to the Company through an employee or management agreement, the terms, conditions, fees and terms of which will be agreed upon prior to the Closing Date.</p> <p>These contracts will also include the usual Good Leaver / Bad Leaver terms and conditions, provisions on intellectual property, non-competition, non-solicitation, stability and confidentiality obligations both during and after termination of the cooperation, as well as the commitment that the Current Shareholders will be active for 100% of their time (and thus exclusive) for the Company.<sup>12</sup></p>
33. Key Personnel	The Company and the Current Shareholders shall use their best efforts to ensure that all persons (management, employees, independent employees or otherwise affiliated with the Company) being part of to the Company's key personnel have an agreement with the Company that includes similar commitments (up to the maximum permitted by law) with respect to non-competition, prohibition of solicitation, confidentiality and IP rights.
<b>CONDITIONS FOR CLOSING</b>	
34. Representations and warranties indemnification obligations	<p>The current Shareholders will provide the usual representations and warranties concerning the Company with regard to the Company, the balance sheet and profit and loss account, the operation of the Company, debts, arrears, authorizations, permits, labor matters, tax and duty matters, off-balance sheet obligations, relevant contracts, securities and real estate, intellectual and industrial properties and licenses, insurance policies, etc.</p> <p>Such representations and warranties will be given for the usual period of time (and for those representations and guarantees where applicable, the legal periods). These can be expanded and supplemented on the basis of the findings of any due diligence. To this end, the Current Shareholders will set up a VDR, where they will have the possibility to disclose relevant information and documents relating to such guarantees and securities to the Angel Investors. The VDR shall be considered as limiting the scope of the Representations and Warranties of the Current Shareholders. The VDR will not limit the scope of the representations and warranties and the indemnification obligations set forth in the Binding Documentation.<sup>13</sup></p> <p>In the event of a breach of the representations and warranties given by the Current Shareholders, a claim may be made by any Angel Investor. The compensation for the damage suffered will be paid by</p>

<sup>11</sup> Only if relevant.

<sup>12</sup> When drafting this management agreement, it is important to cover the risk of re-qualification as a false self-employed person as much as possible according to the applicable national legislation.

<sup>13</sup> Please refer to what was explained in this regard in paragraph 12 and footnote 4.

	<p>the Current Shareholders in cash or by transferring (some or all of) their Shares to the Angel Investors.</p> <p>The maximum liability of the Current Shareholders is equal to the amount of the Angel Investment described in this Term Sheet. However, the liability of the Company and the Current Shareholders is unlimited in the event of fraud or deception which means that, only in such case, the damage can then be recovered in its entirety without limitation.</p> <p>Angel Investors' claims for breach of the representations and warranties made by the Company and the Current Shareholders can only be taken into account to the extent that these claims are disclosed within twenty-four (24) months after the Closing Date. In the case of infringements of representations and warranties relating to taxation, social security and taxation, claims must be made no later than six months after the expiry of the statutory limitation period for such infringements.</p>
<p>35. Conditions Precedent</p>	<p>The Angel Investment is subject to the following conditions precedent:</p> <ul style="list-style-type: none"> <li>(a) The total amount of the investment amount is present.</li> <li>(b) Availability of a detailed financial business plan for the Company for the first 3 years, in a form acceptable to the Investors, attached to this term sheet; in addition, all Parties agree that this plan provides the necessary assurance that the financing round is sufficient to provide the Company with the necessary resources for at least the next <input checked="" type="checkbox"/> months.</li> <li>(c) No material adverse change will occur with respect to the Company between the signing of the Term Sheet and the Closing Date.</li> <li>(d) The preparation of legal documents for the transaction that satisfy the Parties, including an investment and Shareholders' Agreement (containing the usual provisions regarding transfer of Shares, tag along, drag along, special majorities in the board of directors and general meeting of shareholders) and management agreements with the Current Shareholders and key personnel. As a minimum, the documents may be submitted, at their cost, for review to a legal expert in the field, appointed by the Investors.</li> <li>(e) Satisfactory due diligence desired by the Angel Investors.</li> </ul>
<b>MISCELLANEOUS</b>	
<p>36. Investment Process</p>	<p>In chronological order:</p> <ul style="list-style-type: none"> <li>(a) Signature of non-binding Term Sheet</li> <li>(b) Due diligence including discussion of Representations and Warranties,</li> <li>(c) Drafting of Articles of Association, investment and Shareholders' Agreement and possibly other agreements (loan agreement, management agreements,...),</li> <li>(d) Signing of the investment and Shareholders' Agreement and</li> <li>(e) Closing (notarial deed).</li> </ul>

	Separate folders for Company documents and closing documents will be created in the VDR.
37. Nature of the Term Sheet	<p>This Term Sheet contains the main terms and conditions of the Angel Investment, on the basis of which the Parties undertake to negotiate the Binding Documentation in good faith.</p> <p>Except as provided for in Articles 38 (<i>Exclusivity</i>), 39 (<i>Confidentiality</i>), 40 (<i>Costs</i>), 41 (<i>Notices</i>) and 42 (<i>Governing Law and Jurisdiction</i>), which are immediately effective and binding among the Parties, this Term Sheet does not constitute, nor may it be construed as, a binding commitment of the Parties to the execution of the Angel Investment and/or the Binding Documentation.<sup>14</sup></p> <p>This Term Sheet will expire if the transaction is not carried out before [DATE] without any further obligations on the part of the Parties towards each other and without the Parties having anything to claim from each other and without prejudice to the right of the Angel Investors to claim compensation for their losses if the expiry of the term for the realization of the intended transaction is due to the error or culpable default of (one or more of) the Current Shareholders</p>
38. Exclusivity	<p>From the signing of this Term Sheet until [DATE] (the “<b>Exclusivity Period</b>”), without prejudice to the right of the Parties to agree in writing and in good faith an extension of such Exclusivity Period, the Current Shareholders and the Company hereby undertake:</p> <p>(a) not to enter into and/or conduct, and in any event undertake to prevent, any negotiations with counterparties other than the Angel Investors concerning a potential investment in the Company’s share capital or the performance of transactions which may in any way interfere with the execution of the Angel Investment by the Angel Investors;</p> <p>(b) to promptly inform the Angel Investors should any event occur and/or resolution be taken which is likely to significantly affect Company’s financial performance and/or asset structure.</p>
39. Confidentiality	<p>Except as otherwise allowed by the other Parties, each Party undertakes to keep strictly confidential the existence and content of this Term Sheet, as well as the negotiations preceding its signing. Confidentiality extends to the Parties’ advisors and professionals in charge of the Due Diligence, who shall have free access to all information mentioned herein for the purpose of carrying out their mandate.</p>

<sup>14</sup> While sufficient freedom should be provided in the term sheet, it is appropriate to already include some provisions that bind the parties in the period after the term sheet has been agreed, but before the Binding Documents are concluded.

To that extend, exclusivity and confidentiality give the parties room for the organization of a due diligence, while agreements on costs and notices provide parties with clarity. Finally, it is appropriate to agree upon the governing Law and jurisdiction already in this phase of the investment, for example in case one of the parties does not comply with the exclusivity provision.

40. Costs	<p>The parties shall bear their own costs relating to the proposed transaction. The Angel Investors shall appoint their own external advisors by mutual agreement between the Angel Investors. Such external costs, i.e. costs for external advisors and/or due diligence are borne by the candidate investors (pro rata their intended subscription to the proposed capital contribution).</p> <p>Subject to the execution of the Angel Investment, the costs of the legal structuring (inter alia the drafting of the investment and Shareholders' Agreement and any related documentation) other than the costs of the external advisors appointed by the Angel Investors, are borne by the Company, with a maximum amount of EUR [AMOUNT] (not including VAT, mandatory social security contributions and administrative cost charged at a flat rate [x]% of the agreed fees).</p> <p>The Company will in any case bear any costs, expenses and notary fees related to the execution of the Angel Investment.</p>
41. Notices	<p>Any notices and communications relating to this Term Sheet shall be addressed as follows:</p> <p>if to <u>Current Shareholder 1</u>: <input type="checkbox"/> if to <u>Current Shareholder 2</u>: <input type="checkbox"/></p> <p>If to <u>Current Shareholder 3</u>: <input type="checkbox"/></p> <p>if to <u>Angel Investor 1</u>: <input type="checkbox"/> if to <u>Angel Investor 2</u>: <input type="checkbox"/></p> <p>if to <u>Angel Investor 3</u>: <input type="checkbox"/></p> <p>If to the <u>Company</u>: <input type="checkbox"/></p>
42. Applicable law, dispute resolution and jurisdiction	<p>This Term Sheet and all other agreements entered into on the basis of this Term Sheet shall be subject to [COUNTRY] law.</p> <p>Disputes will be settled amicably as much as possible. If the parties fail to reach an amicable settlement, a mediator will be appointed no later than two months after the dispute has arisen. If no mediator is appointed within two months or if the mediation does not lead to an agreement within two months of appointment, the disputes will be definitively settled by means of arbitration via an independent arbitration procedure (shareholders' lawyers led by an independent lawyer to be appointed by them, the costs of which will be shared among all).<sup>15</sup></p> <p>The aforementioned does not affect the Parties' right to claim temporary measures from the President of the Enterprise Court where the registered office of the Company is located or any other competent court.</p>

[SIGNATURE PAGE FOLLOWS]

<sup>15</sup> As an alternative to arbitration, the Parties may identify the court having exclusive jurisdiction to decide any dispute relating to this Term Sheet and the Binding Documentation.



Executed on [DATE], in as many originals as there are parties. Parties agree that (i) electronic signatures which qualify as an advanced or a qualified e-signature under the eIDAS Regulation (Regulation (EU) N°910/2014) or (ii) scan copies of duly signed counterpart signature pages to this Agreement transmitted by email in .pdf format, will have the same probative value as a wet ink original paper document bearing a manually signed signature.

<b>Name:</b>	
<b>Place of residence:</b>	
<b>Date:</b>	
<b>Signature:</b>	

<b>Name:</b>	
<b>Place of residence:</b>	
<b>Date:</b>	
<b>Signature:</b>	

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<b>Signature:</b>	
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<b>Name:</b>	
<b>Place of residence:</b>	
<b>Date:</b>	
<b>Signature:</b>	

<b>Name:</b>	
<b>Place of residence:</b>	
<b>Date:</b>	
<b>Signature:</b>	

Appendices:

- Appendix 1 : Cap table before and after the proposed transaction
- Appendix 2 : List of key decisions in General Meeting and Board of Directors and of executive management powers
- Appendix 3 : Good Leaver/Bad Leaver procedure
- Appendix 4 : Business and financial plan

## Appendix 1: Cap Table

Cap table for Closing					
Total number of shares	x				
Capital	x				
Share allocation	Input		Type	Number	% in operation
	€	%	A		%
	€	%	A		%
		<b>100</b>			
	€	%			<b>100%</b>

Cap table after Closing					
Total number of shares	x]				
Investment	x€				
Share Investors	x %				
Pre-money rating	x€				
Post money valuation	x€				
Share option pool	%				
Share Current Shareholders	x %				
Total number of shares					
Price per Class B Share	x €				
Share allocation	Input		Type	Number	% in operation
<b>Number of shares Current Shareholders</b>			A		%
			A		%
					%
<b>Number of shares Angel Investors</b>					%

	€	%	B		%
	€	%	B		%
<b>Employee Stock Option Plan</b>			A		%
	€				<b>100,00%</b>

## **Appendix 2: List of key decisions<sup>16</sup> in General Meeting and Board of Directors and powers of the executive board**

### **1) At the level of the General Meeting**

Without prejudice to the application of stricter provisions in the company law of [COUNTRY], the following resolutions ("**Key Decisions General Meeting**") are only approved if at least fifty percent (50%) of the outstanding voting Shares are present or represented and if the majority of the outstanding voting Shares of Class A are present or represented and if the majority of the outstanding voting Shares of Class B are present or represented.

The Key Decisions General Meeting must be approved by a simple majority of the Shares present or represented and, in addition, by at least fifty percent (50%) of the Shares present or represented in Class A and at least fifty percent (50%) of the Shares present or represented in Class B.

The Key Decisions General Meeting:

- 1) dissolution or liquidation of the Company;
- 2) the sale or transfer of an industry or an important activity of the Company;
- 3) merger or demerger of the Company, formation of an alliance;
- 4) amendment of the articles of association;
- 5) changes in the registered capital;
- 6) issuance of Shares, convertible bonds, options, subscription rights or other securities and/or other derivative financial instruments;
- 7) approval of the annual accounts;
- 8) appointment and dismissal of directors, supervisory board members and liquidators and the determination of their remuneration;
- 9) granting discharge to the directors and the statutory auditor;
- 10) appropriation of the profit for the financial year;
- 11) any decision relating to the issue of options, subscription rights.

### **2) At the level of the Board of Directors**

The following decisions ("**Key Decisions Board**") can only be validly taken if the majority of the directors are present or represented, including at least one (1) Director Class A and at least one (1) Director Class B.

The Key Decisions Board are approved by a simple majority of the votes of the directors present or represented and require the approval of at least fifty percent (50%) of the Directors Class A and at least fifty percent (50%) of the Directors Class B:

- 1) approval of the annual business plans and any significant deviations from them, as well as significant changes in the strategy, capital structure and debt burden contained in an approved business plan;
- 2) all decisions (loans, purchases, sales, rentals, recruitments, guarantees, etc.) that are not provided for in the budget as approved by the board of directors and have an impact of more than ten thousand (10,000) EUR per year;

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<sup>16</sup> The listing of key decisions in this appendix contains examples of common key decisions. Within the limits of the rules on division of competence in national law, the aforementioned key decisions can be adapted to the needs of the parties.

- 3) amending signature powers within the board of directors or the management, amending proxies or delegating powers from the board of directors, and appointing a managing director;
- 4) all decisions concerning the intellectual property rights of the Company, with the exception of acquiring patents or licenses and granting non-exclusive licenses which do not fall within the normal course of business of the company;
- 5) all decisions concerning the filing, transfer, assignment, pledging, transfer, transfer of patents, licences and/or any other intellectual property rights other than those in the ordinary course of business (e.g. software licences);
- 6) acquisition and/or disposal of equity interests (meaning as such, by way of example, shares, quotas, warrants, options on shares or quotas, bonds convertible into shares or quotas, participatory and non-participatory financial instruments, whether convertible or not) in other companies or entities of other kinds in excess of [x];
- 7) entering into an agreement between the Company and affiliated parties, such as its shareholders, bondholders, directors, employees or managers (directly or indirectly, including (but not limited to) their respective family members and affiliated companies as defined in article [X] of the company law of [COUNTRY] and all other companies of which at least 10% of the Shares are held by that shareholder, profit-sharing certificate holder, director, employee or manager of the company), whereby a stakeholder who is also (directly or indirectly) a director will in this case not participate in the deliberations or in the vote; for the determination of the attainment of the attendance quorum or the required majority to be able to take a valid decision, the provisions of the articles of association are calculated without taking into account the mandate of the stakeholder;
- 8) the purchase of own Shares of the Company or affiliated companies, their sale or pledging (pursuant to a valid authorisation of the general meeting);
- 9) the adoption of the annual accounts and the proposal for the distribution of profits to the ordinary general meeting;
- 10) the proposal for and determination of the manner in which a capital increase will be carried out;
- 11) approval or amendment of stock option plans and/or other incentive schemes as well as any resolution related to their execution (including, but not limited to, the identification of the relevant beneficiaries and the allocation of option rights);
- 12) any decision and proposal regarding the hiring, the remuneration (including bonuses, commissions, or benefits) and any variation in the working relationship (employment or otherwise) of any employee and/or other type of worker for the Company who earns a gross annual remuneration (RAL) in excess of € [x] [if not provided for in the approved annual budget];
- 13) any proposal or decision to take on financing in excess of a total of € [x] per contract, or grant financing (or any other form of financial indebtedness to be granted by the Company to third parties);
- 14) resolutions to bring or settle litigation with a value in excess of € [x];
- 15) purchase and/or sale (in any form and/or under any title), lease and/or other schemes with similar effects having as their subject the Company's assets with a unified (*unitario*) value equal to or greater than € [x];
- 16) [any decision within the framework of an authorisation granted by the General Meeting concerning the "authorised capital";]<sup>17</sup>

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<sup>17</sup> "Authorised capital" allows the board of directors of a company to make one or more capital increases for a specified amount over five years without requiring an amendment to the articles of association.

Authorised capital thus provides flexibility to the company as it can generate additional capital at short notice by quickly issuing new Shares in a way that is not too formalistic.

In addition, authorised capital also protects the interests of existing shareholders as they are given priority when new Shares are issued.

- 17) any decision and approval of reports relating to a merger, demerger, transfer of all or a significant part of the business.

The amounts in this list refer to each project as a whole; a project may not be broken down into sub-projects in order to circumvent this provision.

### 3) List of powers of the executive board

Each managing director and director shall in this capacity, acting alone, have the authority to represent the company for the following transactions and decisions:

- 1) signing the daily correspondence;
- 2) the payment of overdue and uncontested debts of up to EUR x,000;
- 3) receive payments of overdue debts and give discharge for them;
- 4) the conclusion of settlements and the approval of credit notes up to an amount of EUR x,000 per party per year;
- 5) entering into a loan/leasing for a principal amount of up to EUR x,000;
- 6) entering into management or consultancy agreements with third parties when this concerns amounts up to and including EUR x,000 per year;
- 7) investments within the approved investment budget, insofar as they fall within a deviation of 10% with a maximum of EUR x,000;
- 8) to all public and private administrations, the Crossroads Bank for Enterprises, the services of customs and excise, direct taxes, taxes assimilated to the seal, value added tax, postal services, telephones, railways, shipping companies, airlines and other transport companies, to issue valid forms, certificates or declarations or to sign for receipt of documents from these authorities;
- 9) to collect by post the insured, registered and other documents, to receive the money orders, discharges, assignments, letters of credit and other values and to give valid discharge or signature for them;
- 10) the handling of pending cases;
- 11) implementing decisions taken by the Management Board;
- 12) recruiting, dismissing and/or setting remuneration for staff (i.e. those responsible for the various departments such as financial, administrative, legal, sales, etc.), with the exception of management;
- 13) managing and supervising the staff.

All of this, to the extent that it is done within the respective powers, modalities, budgets and limits set by the board of directors. The above amounts apply per global project; a project may not be subdivided into sub-projects for the sole purpose of circumventing the limits set.

### **Appendix 3: Good Leaver/Bad Leaver**

The [Angel Investors / Parties] have a right to acquire the Shares (“**Leaver Shares**”) of a Current Shareholder with a management position in the Company (a “**Manager**”) if the Manager leaves the Company subject to this appendix 3 (“**Call Option**”).

The Manager (or its legal successors) warrants that, in the event of the Call Option being exercised, the relevant Shares shall not be encumbered with any usufruct, pledge, lien, or other impediment which could prevent the free Transfer, such that the Shareholders entitled to the Call Option (as defined hereafter) shall acquire them unconditionally and in free ownership.

#### Good Leaver / Bad Leaver

The situations which give cause to the [Angel Investors / Parties] to exercise the Call Option, are the hereinafter mentioned good leaver and bad leaver situations (hereinafter referred to as the “**Good Leaver Situations**” and the “**Bad Leaver Situations**”).

##### a) Good Leaver Situations

- In the event that the cooperation agreement or management contract, as the case may be, between a Manager (or his service company, as the case may be) on the one hand and the Company on the other hand is terminated unilaterally by the Company or in mutual consent, except in the event of proven intentional or due to grave fault or fraud by the Manager;
- In the event that the cooperation agreement or management contract, as the case may be, between a Manager (or his service company, as the case may be) on the one hand and the Company on the other hand is terminated due to illness or disability of the Manager or its permanent representative lasting more than [X] months;
- In the event that the cooperation agreement or management contract, as the case may be, between a Manager (or his service company, as the case may be) on the one hand and the Company on the other hand is terminated due to the death of the Manager or its permanent representative;
- In the event that the cooperation agreement or management contract, as the case may be, between a Manager (or his service company, as the case may be) on the one hand and the Company on the other hand is terminated for any reason other than a Bad Leaver Situation;
- [TO BE SPECIFIED PER TRANSACTION]

##### b) Bad Leaver Situations

- In the event that the cooperation agreement or management contract, as the case may be, between a Manager (or his service company, as the case may be) on the one hand and the Company on the other hand is terminated unilaterally by the Company in case of proven willful or serious misconduct or fraud on the part of the Manager;
- In the event that the cooperation agreement or management contract, as the case may be, between a Manager (or his service company, as the case may be) on the one hand and the Company on the other hand is terminated because its execution

was done by a natural person or legal entity other than the permanent representative of the Manager, without the prior agreement of the Company;

- In the event that the cooperation agreement or management contract, as the case may be, between a Manager (or his service company, as the case may be) on the one hand and the Company on the other hand is terminated unilaterally by the Manager within a period of [X] years after the Closing Date, except if this would be the result of a proven gross negligence on the part of the Company;
- In the event of a breach of the Standstill by the Manager;
- In the event of a breach of the non-competition clause by the Manager;
- [TO BE SPECIFIED PER TRANSACTION]

#### Purchase right of the Shares of an outgoing Manager

If the cooperation agreement between a Manager and the Company terminates, for whatever reason, the [Angel Investors / Parties] (the "**Shareholders entitled to the Call Option**") have an unconditional right to purchase the Shares the Manager holds in the Company. However, the Call Option does not apply if the termination is accompanied by the simultaneous conclusion of a new management agreement with the Company (e.g. for another assignment). It can be invoked in full if this new agreement is terminated.

The purchase right of the Shareholders entitled to the Call Option is relative to the number of Shares they hold in relation to the total number of Shares that all the Shareholders entitled to Call Option together hold in their possession (the "**First Rank Shareholders**"). The part of the Call Option that is not exercised by one party, belongs to the other shareholders who benefit from the Call Option. The Shareholders entitled to the Call Option can always reach a different distribution agreement. They shall inform the outgoing Manager and the Board of Directors of this at the appropriate time.

The Call Option, however, must be exercised by the Shareholders entitled to the Call Option on the totality of the Shares to which the Call Option relates.

The purchase right procedure is conducted between those parties who, within the time limit applicable to the pre-emptive right, have expressed their wish to exercise their Call Option.

#### Period of validity of the Call Option.

The Call Option as granted by this Appendix is of indefinite duration.

#### Price

The price at which the Call Option (hereinafter the "**Call Option Price**") may be exercised is determined as follows:

- in the case of a Good Leaver Situation, a price per Leaver Share equal to the Market Value of the Shares;
- in the case of a Bad Leaver Situation, a price per Leaver Share equal to [25%-75%] of the Market Value of the Leaver Shares.

The "**Market value**" is determined taking into account the following elements: the Company is viewed as a going concern, the sale is a voluntary sale and no distinction is made between a minority or majority shareholding.

In the first instance, the Market Value is determined in mutual consultation between the Manager and the Shareholders entitled to the Call Option. If the Parties do not reach an agreement on the Market Value of the Shares within a period of fourteen (14) days from the Date of Termination (as defined hereafter), they will in consultation with each other within the period of fourteen (14) days appoint an expert, who will be chosen from the list of auditors approved in [COUNTRY]. If the Manager and the Shareholders entitled to the Call Option are unable to appoint an expert by mutual agreement within the set period, the most diligent party may request the President of the Enterprise Court of the district in which the registered office of the Company is situated to appoint an expert from the list of approved auditors. This expert will determine the Market Value within thirty (30) days of his appointment in a final and binding matter. The date on which the Market Value is determined between the parties or the date on which the price is notified to the Company by the appointed expert shall be deemed to be the "**Date of Price Determination**".

#### Exercise of the Call Option.

The Call Option can be exercised up to [twenty (20)] working days after the termination of the cooperation agreement with the Manager has been notified or agreed (the "**Date of Termination**"). At the time of termination, the Board of Directors will inform the First Rank Shareholders entitled to the Call Option by a registered letter in an "**Initial Notice**":

- the Date of Termination of the cooperation agreement;
- the number of Shares on which the shareholders entitled to Call Option have a right to exercise the Call Option; and
- the number of Shares on which each party concerned has a Call option according to the proportional distribution.

The Shareholders entitled to the Call Option will contact the Manager for the determination of the Market Value. After the Date of Price Determination, each Shareholder entitled to the Call Option has [ten (10)] working days to inform the departing Manager or his legal successors and the Board of Directors of the Company by registered letter whether he / she is exercising his Call Option and on how many Shares he / she will exercise the Call Option.

The Board of Directors shall communicate the result of this first round to all Shareholders entitled to the Call Option and to the departing Manager within [twenty (20)] days of the Date of Price Determination (the "**Second Notice**").

As from this Second Notice, shareholders who have exercised their Call Option have [fifteen (15)] days to confirm the number of Shares they additionally wish to purchase from the Shares that were eligible for the Call Option but were not purchased by the Shareholders entitled to the Call Option.

After this second round, the Board of Directors shall communicate the result of the round to all First Rank Shareholders entitled to purchase and to the outgoing Manager within [ten (10)] days of the conclusion of the second round (the "**Final Notice**").

#### Payment of the Shares and Transfer of ownership.

The transfer of ownership and the payment of the Shares for which the Call Option has been exercised occur simultaneously within one month of the conclusion of the procedure.

The proceedings are deemed to be closed:

- on the date of sending the Second Notice if the exercise of the Call Option in this first round relates to all the Shares of the Manager;
- on the date of dispatch of the Final Notice otherwise.

The transfer of ownership only takes place at the time of payment.

Exercise of the voting rights attached to the Shares concerned.

During the period the Call Option procedure is ongoing, the voting rights attached to the Shares held by the Manager in the Company or the group related companies are suspended, without this suspension lasting more than six months. The Manager always has the right to vote if a proposal for a decision seriously prejudices his rights in the context of the transfer as a result of the exercise of the Call Option.

**Appendix 4: Business and financial plan**

*This document is provisional and is currently pending input from a local legal expert. It provides only a general overview and should not be considered complete or legally binding. Under no circumstances can it be considered to be binding legal advice.*

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*Please contact a qualified attorney for specific advice regarding the national legislation.*



## **TERM SHEET (Equity)**

### **Key Legal Considerations for Romania**

This information document provides an overview of some of the most important Romanian legal considerations for the template Term Sheet for cross-border angel investments in Romania. It is not and it does not purport to be an exhaustive legal review of the template. It does not constitute, and cannot be interpreted either as a binding legal advice and it does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. Please always consult a legal expert for specific advice. DLA Piper Dinu SCA will accept no responsibility for any actions taken or not taken on the basis of this information document.

Please see the contact details below of DLA Piper Dinu SCA.

#### **Commercial considerations to the attention of BAE:**

The template Term Sheet is, in our view, much more complex than expected for a venture capital transaction at a stage when angel investor(s) are involved.

The template Term Sheet also grants to the Angel Investor(s) quite a broad spectrum of rights and prerogatives in spite of them being minority shareholders.

Examples of notable provisions which may generate concerns amongst the Founders include:

- the veto rights of the Angel Investors on any issuance of Shares or other equity-linked instruments in paragraph 6 of clause 1 (*At the level of the General Meeting*) of Appendix 2 (*List of key decisions in General Meeting and Board of Directors and powers of the executive board*) which would most likely not be commercially acceptable to the Founders, as such requires the Angel Investors' consent for any future rounds of investment (a veto on "down-rounds" could be considered instead);
- the veto rights of the Angel Investors on any amendments to the articles of association would likely not be commercially acceptable to the Founders, as such requires the Angel Investors' consent for any amendments (a veto on amendments affecting the Angel Investors' rights could be considered instead);
- the low threshold (25%) set in clause 20 (*Tag-Along Right*) for triggering the tag along right of the Angel Investors for their full (as opposed to pro-rata) participation;

**Disclaimer:** This information document provides an overview of some of the most important Romanian legal considerations and does not constitute legal advice. Please always consult a legal expert for specific advice.

- the Angel Investors' right to trigger an exit in clause 22 (*Exit Procedure*);
- the top-up extended to the Angel Investors in clause 23 (*Top-up arrangement*);
- the intended compensation of the Angel Investors in clause 37 (*Nature of the Term Sheet*) for their losses if the expiry of the term for the realization of the investment is due to the error or culpable default of (one or more of) the Current Shareholders is uncustomary, particularly at a Term Sheet stage - consider tailoring the clause to intention or gross negligence at the very least;
- extensive reporting and access rights (clause 16 (*Reporting and access rights*));
- having a Call Option for an indefinite period over the Shares of the Founders also acting as Managers - meaning that regardless of the number of years lapsed from the date of the investment made by the Angels Investors, the Call Option may be exercised if the Manager becomes a leaver. From a commercial perspective, consider accommodating a reverse vesting mechanism over a certain number of years from the date of the investment made by the Angel Investors (typically four (4)) insofar as the purchase right of the Shares of an outgoing Manager is concerned; etc.

It is worth considering whether the template Term Sheet could be further streamlined, reaching mid-way negotiation positions for angel investments. While certain matters will always be subject to negotiation between parties, an angel-investor-driven draft might deter founders from engaging in transactions based on it, making it less of a practical tool.

### **1. Sanity check to align definitions and clauses**

When tailoring the template Term Sheet for use, it should be ensured that definitions are used consistently and capture the intended scope thereof (for example, the scope of the definition of "Current Shareholders" should be tailored accordingly as certain provisions referring to "Current Shareholders" are not adequate for both Founders and other pre-existing investors and should instead refer to Founders only). By way of example only:

- in relation to paragraph d) of clause 10 (*Binding Documentation*), we assume only the Founders will be signing management agreements;
- standstill obligations in clause 17 (*Standstill*) should typically refer to Founders only;
- the representations and warranties on the good standing of the business and its underlying assets (the so-called "business-driven/operational representations and warranties") pursuant to clause 34 (*Representations and warranties - indemnification obligations*) are usually either issued by the Founders only or by the Founders and the Company, not by all Current Shareholders; etc.

References to foreign legislation and/or legal entities or bodies (such as the Crossroads Bank for Enterprises) should be also removed.

### **2. Rights granted to the Angel Investor(s) and potential joint control over the Company**

Some of the rights granted to the Angel Investors at the level of the Board of Directors and of the Shareholders' meeting exceed the usual type of veto generally granted for the

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purpose of protecting minority investments and may lead to a joint control over the Company. Where there is a change of control over the Company (including switching from sole control to joint control), the Parties will need to assess whether the merger clearance from the Romanian Competition Council is required for the investment.

By way of example only:

- the favourable vote of at least 50% of the attending Directors Class B is required for the approval of annual business plans (paragraph 1 of clause 2 (*At the level of the Board of Directors*) of Appendix 2 (*List of key decisions in General Meeting and Board of Directors and powers of the executive board*));
- the Chairman has a decisive vote in case of a tie (clause 14 (*Board of Directors: quora and voting rights*); where the Chairman is a Director Class B (designated by the Angels Investors) and not an independent director (clause 13 (*Board of Directors: Appointment*)), his/her decisive vote may influence matters leading to joint control;
- the favourable vote of least 50% of the Shares present or represented in Class B is required for appointment and dismissal of directors (paragraph 8 of clause 1 (*At the level of the General Meeting*) of Appendix 2 (*List of key decisions in General Meeting and Board of Directors and powers of the executive board*));
- the amounts in paragraph 6 and paragraphs 12 to 15 of clause 2 (*At the level of the Board of Directors*) of Appendix 2 (*List of key decisions in General Meeting and Board of Directors and powers of the executive board*) should be established at a significantly high value by reference to the financial situation of the Company in order to represent only a protection for the Angel Investors, not a means of granting them joint control; etc.

### **3. Foreign direct investment (FDI) checks**

The FDI authorisation is typically applicable if the amount of the investment exceeds EUR 2 million and the field of activity of the Company is one of those deemed relevant for national security and public order. The potential requirement to obtain the FDI authorisation of the investment performed by the Angel Investors should be considered and assessed on a case-by-case basis, considering the value of the investments made as well as the activity of the Company.

### **4. Limitations on issuing different classes of shares under Romanian law and type of corporate vehicle**

There is not much flexibility in general for Romanian companies to issue different classes of shares. Moreover, such limited possibility is only available to certain types of corporate vehicles. We will refer below to the 2 most common corporate vehicles used by start-ups.

**Limited liability companies (LLCs)** (*Romanian: societate cu răspundere limitată* or *S.R.L.*) are by far the most common type of corporate vehicle used by start-ups (given

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their flexible incorporation procedure and limitation of the shareholders' liability). Romanian LLCs do not operate with classes of shares and such cannot be instated conventionally through the articles of association. Therefore, any special rights of certain shareholders would need to be agreed on as contractual rights rather than rights attached to a specific class of shares. To the extent that the Company is a LLC, the entire Term Sheet (including clause 7 (*Investment Structure*)) would need to be amended accordingly, with matters connected to a particular class of shares being redrafted and accommodated for example as contractual rights, contractual veto rights or by providing higher quorum and voting thresholds to account for the shareholdings of the Angel Investors, etc.

The second most common type of corporate vehicle used by start-ups is **the joint stock company (JSC)** (*Romanian: societate pe actiuni* or *S.A.*). JSCs are to a certain extent more regulated than LLCs and more suitable for more mature companies. JSCs are allowed to issue, in addition to ordinary shares, a special class of shares called preferred shares with priority dividend rights, but (except when the company delays the payment of dividends) with no voting rights attached. This special class of shares cannot represent more than 25% of the total share capital and cannot be held by the management of the Company. In context, this class of shares does not seem best suited for capturing the prerogatives intended to be reserved to the Angel Investors under the Term Sheet. Therefore, any special rights of certain shareholders would need to be agreed on as contractual rights rather than rights attached to a specific class of shares. To the extent that the Company is a JSC, the entire Term Sheet (including clause 7 (*Investment Structure*)) would need to be amended accordingly, with matters connected to a particular class of shares being redrafted and accommodated for example as contractual rights, contractual veto rights or by providing higher quorum and voting thresholds to account for the shareholdings of the Angel Investors, etc.

## 5. Binding documentation

In relation to clause 10 (*Binding Documentation*) paragraphs a) and c), the investment agreement and the shareholders agreement can, and for venture capital equity investments on the Romanian market often are, combined in a single document called subscription and shareholders agreement.

In relation to paragraph b), shares cannot be issued with no par value (even if such is minimal, for example RON 0.1).

A Romanian version of the Articles of Association is mandatory since it must be filed with the Trade Registry. A Romanian version of the Management Agreements is not mandatory. Other than that, the Articles of Association and the Management Agreements can be, and often are, bi-lingual (Romanian and English version).

## 6. Board of Directors: Appointment

In relation to clause 13 (*Board of Directors: Appointment*), **if the Company is a JSC**, it may be managed by: (i) a Board of Directors, with the possibility of management

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delegation, in the one-tier system; directors being appointed by the Shareholders' meeting, while managers being appointed by the Board of Directors; or (ii) an executive board and a supervisory board, in the two-tier system; members of the executive board being appointed by the supervisory board, while members of the supervisory board being appointed by the Shareholders' meeting.

To the extent that they would opt for a JSC as corporate vehicle of choice in the first place (which is rather infrequent at an angel investment stage), the vast majority of start-ups would opt for the one-tier system, the two-tier system being more suitable for mature, large companies. We note that clause 3 (*List of powers of the executive board*) of Appendix 2 (*List of key decisions in General Meeting and Board of Directors and powers of the executive board*) refers to an executive board. It is not clear whether this is supposed to reflect the two-tier system for a JSC or refer to the managers under the one-tier system of a JSC to whom the Board of Directors have delegated the management.

The Board of Directors and the executive board must comprise an odd number of members.

**If the Company is a LLC**, it may be managed by one or more directors, appointed by the Shareholders' meeting. Directors do not form by law a board of directors as corporate body; however, in practice, LLCs may provide for a board of directors in their articles of association as a way of organizing the activity of their directors.

It is uncustomary for each Angel Investor to appoint its own observer (and might also be impractical to implement).

Directors and officers (D&O) insurance is only mandatory insofar as JSCs are concerned.

## **7. Board of Directors: Quora and voting rights and representation rights**

Clause 14 (*Board of Directors: quora and voting rights*) should provide that the quorum and voting requirements therein are subject to the mandatory provisions of Romanian law in this regard.

In relation to the representation rights in clause 3 (*List of powers of the executive board*) of Appendix 2 (*List of key decisions in General Meeting and Board of Directors and powers of the executive board*), **if the Company is a JSC** managed in the one-tier system, the Chairman represents the Company, but the Articles of Association may provide that the Chairman and one or more other directors represent the Company acting jointly or individually. If management was delegated to managers, the general manager represents the Company, but the Articles of Association may provide that the general manager and one or more other managers represent the Company acting jointly or individually. Under the two-tier system, representation power is exercised by members of the executive board.

**If the Company is a LLC**, the right to represent the Company belongs to any director, unless otherwise provided for by the Articles of Association.

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## 8. Shareholders' meetings

In relation to clause 15 (*Shareholders' meetings*), different mandatory quorum and voting requirements apply depending on the type of corporate vehicle to be used. Moreover, specific quorum and voting requirements are provided imperatively by law depending on the type of matters to be decided upon. Such should be considered when tailoring the Term Sheet (including Appendix 2 (*List of key decisions in General Meeting and Board of Directors and powers of the executive board*)).

It is the right approach for the quorum and voting requirements in clause 15 (*Shareholders' meetings*) to be subject to the mandatory provisions of Romanian law in this regards. However:

- the wording "*except for the provisions of the company law of [COUNTRY] providing for stricter attendance and majority rules*" in its first paragraph should be replaced by "*except for the provisions of the company law of [COUNTRY] providing for imperative attendance and majority rules*", considering that the law may provide for either higher or lower quorum and voting requirements which the articles of association may not deviate from;
- the wording "*without prejudice to the application of the legal provisions*" in its second paragraph should be replaced by "*without prejudice to the application of the imperative legal provisions*" so that only the imperative provisions of the Romanian law override the provisions to be included in the Articles of Association.

Same comment applies in relation to clause 1 (*At the level of the General Meeting*) of Appendix 2 (*List of key decisions in General Meeting and Board of Directors and powers of the executive board*), where the wording "*without prejudice to the application of stricter provisions in the company law of [COUNTRY]*" should be replaced by "*without prejudice to the application of imperative provisions in the company law of [COUNTRY]*" and should refer to both paragraph 1 (quorum requirements) and paragraph 2 (voting requirements) thereof.

It is not clear in the first paragraph of clause 15 (*Shareholders' meetings*) what would be the quorum required in general for decisions to be taken by the Shareholders' meeting. A reference to the legal provisions could be considered.

## 9. Free Transfer of Shares

In relation to clause 18 (*Free Transfer of Shares*), if the Company is a LLC, unless its Articles of Association provide otherwise, transfer of shares to persons outside the Company is permitted only if it has been approved by shareholders representing at least three-quarters of the share capital. Hence, any derogatory provisions agreed under the Term Sheet need to be appropriately accommodated under the Articles of Association.

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## **10. Liquidation preference is subject to mandatory rules on bankruptcy/insolvency**

In relation to the definition of "Liquidation Event" in clause 24 (*Liquidation Preference*) comprising bankruptcy, any rules on liquidation preference are subject to mandatory legal provisions applicable in case of bankruptcy/insolvency.

## **11. Employee Stock-Option Plan (ESOP)**

In relation to clause 25 (*Employee Stock-Option Plan*), please refer to our comments in section 4 (*Limitations on issuing different classes of shares under Romanian law and type of corporate vehicle*) above. No special classes of non-voting shares in LLCs may be created (hence, the shares issued under ESOP would have voting rights attached). A special class of preferred shares with priority dividend rights, but (except when the company delays the payment of dividends) no voting rights attached could be created in JSCs subject to certain limitations.

The Shareholders' meeting will approve the share capital increase to issue the ESOP Shares only after the options have been exercised by the beneficiaries and the Shares are to be issued to them. The Shares cannot be issued to the Company.

**If a Company is a JSC**, the Shareholders' meeting could also authorize the Board of Directors to increase the share capital up to a certain maximum amount and within a specific timeframe (subject to the limitations provided by law) (authorized capital). The Company could also consider purchasing treasury stock from shareholders for the purposes of the ESOP (subject to the limitations provided by law).

Treasury stock and authorized capital are not options for **LLCs**, therefore the corresponding prerogatives in paragraphs 8 and 16 of clause 2 (*At the level of the Board of Directors*) of Appendix 2 (*List of key decisions in General Meeting and Board of Directors and powers of the executive board*) should be removed if the Company is organized as such.

## **12. Non-compete, stability and confidentiality obligations**

In relation to clauses 28 (*Current Shareholders Non-compete Obligation*) and 30 (*Confidentiality*), non-compete and non-solicitation obligations can generally be imposed (in certain circumstances and for certain periods of time) only in case of change of control in respect of a company (in case of a new shareholder taking over the sole control or of switching from joint control to sole control or vice versa). In general, for minority shareholders, imposing non-compete and non-solicitation obligations is not justified unless they have a form of joint control or sole control over the target. Therefore, an assessment from a competition law perspective of the possibility, conditions and duration of imposing non-compete and non-solicitation obligations to Current Shareholders should be made on a case-by-case basis.

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If, following the case-by-case assessment, it is determined that non-compete and non-solicitation clauses are justified, then no exemption (related to the amount of competing investments or otherwise) would be required.

A maximum duration of the confidentiality obligation of three (3) years following the exit from the company should be also considered; always seek appropriate competition law advice when tailoring such obligations.

Separately, non-compete obligations undertaken as part of employment agreements are subject to mandatory compensation and other limitations pursuant to the Romanian Labour Code.

In relation to clause 29 (*[Current Shareholders' Stability Obligation]*), one's right to work or, alternatively, unilaterally terminate an employment relationship cannot be restricted. Conversely, even if retained under a management agreement, the right to unilaterally resign and terminate the mandate cannot be eliminated.

### **13. IP rights**

In relation to clause 31 (*IP rights*), it should be ensured that there is proper, valid and legally binding assignment of IP rights to the Company, rather than waiver.

### **14. Management agreements**

In relation to clause 32 (*Management agreements*), managers should at most dedicate 100% of their business time, not aggregate time, so as not to restrict their right to work for another engagement outside of such time.

### **15. Representations and warranties - indemnification obligations**

In relation to clause 34 (*Representations and warranties - indemnification obligations*), having the Angel Investors being compensated for breach of the representations and warranties via transfer of Shares by the Current Shareholders would trigger practical enforcement issues. A pledge over Shares could be considered but such would generate further complexity to the investment process and documentation.

In terms of time limitations for claims, an extended period for representations and warranties related to capacity and title to shares is customary.

### **16. No notarization formalities**

In relation to clause 36 (*Investment Process*), the venture capital investment suite of documentation does not typically require execution in notarized form; unless a specific transaction entails any elements that trigger notarization requirements, it should be assumed that simple execution by the parties will suffice.

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## **17. Dispute resolution**

In relation to clause 42 (*Applicable law, dispute resolution and jurisdiction*), mediation is not commonly used in Romania and may be difficult to enforce. Therefore, a simple recommendation to attempt an amicable settlement within a two-month period should suffice.

Arbitration in Romania may be more costly, both financially and in terms of time, than regular court proceedings. Moreover, ad hoc arbitration, as opposed to institutional arbitration, may lack certain essential safeguards and can pose challenges with regard to both the constitution of the arbitral tribunal and enforcement of the award, leading to delays and additional costs.

The jurisdiction for temporary measures cannot, in all cases, be determined solely by the parties. They cannot limit the jurisdiction to a single location, nor can they assign powers to the president of the court if that type of claim is not typically within the president's authority.

## **18. Execution formalities**

The legal regime of the electronic signature is regulated in Romania by Regulation (EU) no. 910/2014 (eIDAS Regulation). Pursuant to the eIDAS Regulation, only the qualified electronic signature (QES) is automatically recognized as equivalent to a handwritten signature. As such, we recommend that the documents be either executed via QES or wet ink (provided that in such case, originals fully executed in wet ink by all parties are ultimately collated and exchanged).

It is unclear why the execution block also refers to the place of residence of each signatory; the signatories are already identified at the beginning of the document; consider removing this row.

## **19. No definition of affiliates in Romanian company law**

Romanian company law no. 31/1990 does not set out a definition for affiliates. Reference to this definition in paragraph 7 of clause 2 (*At the level of the Board of Directors*) of Appendix 2 (*List of key decisions in General Meeting and Board of Directors and powers of the executive board*) should be removed and replaced with the respective definition under the Investment Agreement.

## **20. Good Leaver/Bad Leavers provisions**

In relation to the right to acquire Leaver Shares as set out in Appendix 3 (*Good Leaver/Bad Leaver*), this right usually pertains to the other Founders and the Company (in case of a JSC) or solely to the other Founders (in case of a LLC, as the LLC cannot acquire own shares).

The provisions in Appendix 3 (*Good Leaver/Bad Leaver*) concerning the determination of the Market Value of the Shares by an expert appointed by the President of the

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Enterprise Court of the district in which the registered office of the Company is based are not aligned with Romanian law, as the president of the court has no such prerogatives. Consider pre-agreeing a set list of auditors and establishing objective criteria for selecting one (such as a favourable fee arrangement).

The provisions in Appendix 3 (*Good Leaver/Bad Leaver*) whereby during the period the Call Option procedure is ongoing, the voting rights attached to the Shares held by the Manager are suspended might not be enforceable from a Romanian law perspective.

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