

This document does not constitute legal advice and is not meant to serve as a recommended form suitable for each and every seed and/or early stage capital investment by business angels and similar start-up investors in a Swiss start-up company. It is intended for use as a starting point for drafting and negotiation only. All parties involved should carefully consider departing from its terms where necessary to reflect the business terms underlying the seed/early stage capital investment and should always satisfy themselves with their advisors and counsel of the commercial and legal implications of its use.

TERM SHEET

dated as of [date]

relating to

[the COMPANY]

made by and among

[INVESTORS]

and

[EXISTING SHAREHOLDERS]

and

[the COMPANY]

The Swiss Private Equity & Corporate Finance Association (SECA) consents to the use, reproduction and transmission of this document for the preparation and documentation of agreements relating to investments or potential investments in Swiss venture-backed companies. SECA expressly reserves all other rights.

© Swiss Private Equity & Corporate Finance Association (SECA). All other rights reserved.

TERM SHEET

Proposed Investment in
[Name of the company] (the "**Company**")

This Term Sheet summarizes the principal terms of a potential start-up investment (the "**Financing Round**") in the Company, a stock corporation having its registered office at [address], Switzerland. It is for discussion purposes only, and except as specifically set forth below there is no legally binding obligation on the part of any negotiating party until definitive agreements are signed and delivered by all parties. This Term Sheet does not constitute an offer to sell, nor an offer to purchase securities in the Company.

Company / Issuer	[Name of the company]										
Investment Amount	[amount]										
Investors	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">[Investor 1]</td> <td style="text-align: right;">CHF [amount]</td> </tr> <tr> <td>[Investor n]</td> <td style="text-align: right;">CHF [amount]</td> </tr> <tr> <td colspan="2" style="border-top: 1px solid black; padding-top: 5px;">Total</td> </tr> <tr> <td></td> <td style="text-align: right;">CHF [amount]</td> </tr> </table>	[Investor 1]	CHF [amount]	[Investor n]	CHF [amount]	Total			CHF [amount]		
[Investor 1]	CHF [amount]										
[Investor n]	CHF [amount]										
Total											
	CHF [amount]										
Type of Security	[number] of newly issued contractually preferred shares with a nominal value of CHF [amount] each (" Investor Shares ")										
Issue Price per Investor Shares	CHF [amount]										
Pre-money Valuation	CHF [amount] fully diluted pre-money valuation (including the effects of shares issuable to holders of options, warrants and other convertible securities of the Company, if any)										
Pre-Closing Shareholder Structure	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">[Founders] [number] shares</td> <td style="width: 50%; text-align: right;">[%]% of issued share capital</td> </tr> <tr> <td>[Other Shareholders] [number] shares</td> <td style="text-align: right;">[%]% of issued share capital</td> </tr> <tr> <td>[Management] [number] shares</td> <td style="text-align: right;">[%]% of issued share capital</td> </tr> <tr> <td colspan="2" style="border-top: 1px solid black; padding-top: 5px;">Total</td> </tr> <tr> <td></td> <td style="text-align: right;">CHF [amount]</td> </tr> </table>	[Founders] [number] shares	[%]% of issued share capital	[Other Shareholders] [number] shares	[%]% of issued share capital	[Management] [number] shares	[%]% of issued share capital	Total			CHF [amount]
[Founders] [number] shares	[%]% of issued share capital										
[Other Shareholders] [number] shares	[%]% of issued share capital										
[Management] [number] shares	[%]% of issued share capital										
Total											
	CHF [amount]										
Employee Participation / Option Pool	[Information about existing employee participation / option pool, if any, as well as information about employee participation / option pool to be implemented together with Financing Round]										
Shareholder Structure after Financing Round	As of completion of the Financing Round the Company shall have an issued share capital of CHF [amount] divided into [number] common shares and [number] Investor Shares with a nominal value of CHF [amount] each and the ownership structure of the Company [on a fully diluted basis] and the holdings of each shareholder in the respective class of shares shall be as set forth in the Cap Table set forth in Annex 1 .										
Use of Proceeds	[All corporate purposes/activities consistent with the business plan.]										

Ranking	Up to the Preference Amount the Investor Shares will rank senior to the common shares of the Company with respect to exit/liquidation events and dividends.
Preference Amount	Preference Amount shall mean the sum of (i) the aggregate Issue Price paid by the respective holder of Investor Shares and (ii) interest of [percentage]% per year on the Issue Price (to be calculated on the basis of the Issue Price paid and not yet compensated by a preferred repayment) since payment of the Issue Price until payment of the Preference Amount in full.
Dividends	<p>Dividends which will be payable when, as and if declared by the shareholders upon proposal by the Board of Directors ("Board" and each member, a "Director"), shall be paid in first priority to the holders of Investor Shares <i>pro rata</i> to their holdings in the Investor Shares.</p> <p>The maximal amount of preferred dividends shall not exceed the Preference Amount less any proceeds received by a holder of Investor Shares resulting from a voluntary or non-voluntary liquidation, a dissolution or winding up or a Sale of the Company (together with a dividend event, each an "Exit/Liquidation Event"), whereby a "Sale" shall mean the sale, transfer or other disposal (whether through a single transaction or a series of related transactions) of shares in the Company that result in a change of control or the sale of all or [substantially all]/[a major part] of the Company's assets.</p> <p>Further dividends to be paid to all holders of Investor Shares and common shares <i>pro rata</i> to their respective aggregate holdings of shares in the then issued share capital of the Company will be paid only provided the Preference Amount has been fully paid.</p>
Liquidation Preference	<p>In an Exit/Liquidation Event, the proceeds resulting therefrom shall be allocated as follows:</p> <ol style="list-style-type: none"> 1. [In first priority and up to the Preference Amount to the holders of Investor Shares <i>pro rata</i> to their holdings in the Investor Shares, it being understood that that the maximal amount payable to holders of Investor Shares shall not exceed the Preference Amount less any proceeds received by a holder of Investor Shares resulting from a previous Exit/Liquidation Event.] 2. [In second priority, if and to the extent the Preference Amount has been fully paid, to all holders of Investor Shares and common shares <i>pro rata</i> to their respective aggregate holdings of shares.]
Anti-Dilution	[Broad based weighted average adjustment formula.] To be effected by issuance to the Investors of new Investor Shares at nominal value.
Voting Rights	Each Investor Share carries one vote; <i>i.e.</i> the same vote as each common share.
Qualified Majorities	<p>Important Shareholder Matters as listed in Annex 2:¹</p> <ol style="list-style-type: none"> 1. Each shareholder will undertake not to cast an affirmative vote unless such Important Shareholder Matter will be approved by at least (i) [66²/₃%] of shareholder votes and the absolute majority of the share capital of the Company [represented at the relevant

¹

[Note: See explanatory drafting notes (re considerations to be made on how to implement qualified majority thresholds for important shareholder and board matters) in the Shareholders Agreement of the SECA Model Documentation "light".]

	<p>General Meeting of Shareholders)/[issued by the Company] and (ii) [66²/3%] of shareholder votes of the holders of Investor Shares [represented at the relevant General Meeting of Shareholders]/[issued by the Company].</p> <p>Important Board Matters as listed in <u>Annex 2</u>.²</p> <ol style="list-style-type: none"> 1. [Alternative 1:] [Each shareholder will undertake that any affirmative decision with respect to such Important Board Matter will require the consent of at least [percentage]% of [all elected Directors]/[the Directors present at the meeting].] 2. [Alternative 2:] [Each shareholder will undertake to procure that the Director(s) nominated by such shareholder shall not, subject only to their fiduciary duties, cast an affirmative vote unless such Important Board Matter will be approved by (i) the simple majority of the Directors present at the meeting and (ii) [each]/[at least [number]] Investor Director[s].]
Board Composition	<p>The Board shall comprise a maximum of [number] Directors.</p> <p>Each Investor shall have the right to be represented on the Board by a Director nominated by such Investor (each an "Investor Director").</p> <p>The Existing Shareholders shall have the right to be represented on the Board by [number] Director[s] nominated by a simple majority of the holders of common shares (each a "Common Shareholder Director").</p>
Information Rights	<p>The Company shall provide each shareholder by e-mail with (i) [audited] financial statements within [120] days of the end of each financial year and (ii) unaudited quarterly financial statements within [45] days of the end of each fiscal quarter.</p> <p>In addition, each Investor shall have the opportunity at its discretion to discuss any issues relating to its investment and the Company at least on a bi-annual basis with the Company, and the Company shall allow (i) consultation on significant issues and (ii) access to the books, records and facilities of the Company at any time upon reasonable advance request to the Board at the costs of the Investor.</p>
General Transfer Restrictions	<p>No transfer other than transfers in accordance with customary transfer restrictions set forth in the Shareholders Agreement.</p>
Right of First Refusal	<p>Each shareholder will have the right of first refusal to purchase any shares any shareholder wishes to transfer to another shareholder or a third party in any transaction other than a transfer to an affiliate of an Investor.</p>
Tag-Along Right	<p>Each of the shareholders shall have the right to participate, on a <i>pro rata</i> basis on identical terms, in any transfer or sale of shares by other shareholders provided such transfer or sale of shares would [result in a change of control].</p>
Drag-Along Right	<p>If a shareholder or a group of shareholders solely or jointly holding more than [50]% of the outstanding share capital of the Company wish(es) to Transfer all its (their) shares in one or a series of related transactions to a proposed acquirer (including another shareholder, but excluding an affiliate), who wishes to acquire all (but not less than all) shares in the Company, pursuant to a <i>bona fide</i> purchase offer,</p>

² [Note: See footnote 1 above.]

	such shareholder(s) (the " Relevant Selling Shareholders ") shall, have the right (but not the obligation) to require all other shareholders to sell all of their shares to the proposed acquirer for the same consideration per share and otherwise at the same terms and conditions as applicable to the Relevant Selling Shareholder(s).
Confidentiality	The terms and existence of this Term Sheet are confidential and will not be disclosed by the undersigned except as otherwise agreed in advance by each of the parties hereto.
Exclusivity	From the date hereof until <i>[date]</i> , or such earlier date upon which the Investor[s] and the Company agree in writing to terminate discussions contemplated by this Term Sheet, neither the Company nor the members of its senior management or the Existing Shareholders will, directly or indirectly, solicit or participate in any way in negotiations with, or knowingly provide any information to, any person (other than the Investor(s)) concerning any potential investment in the debt or equity securities of the Company (an " Alternative Proposal ") or otherwise facilitate any effort or attempt to make or consummate an Alternative Proposal.
Documentation	The investment into the Company is subject to contract and shall be made pursuant to the agreements and documents listed below drafted by the counsel to <i>[Investor[s]]/[Company]</i> : <ol style="list-style-type: none"> 1. Investment Agreement [(substantially in the form of SECA's Model Documentation "light" template)]; 2. Shareholders Agreement [(substantially in the form of SECA's Model Documentation "light" template)]; 3. Articles [(substantially in the form of SECA's Model Documentation "light" template)]; 4. Board Regulations [(substantially in the form of SECA's Model Documentation "light" template)]; and 5. such ancillary documents and annexes related thereto as required or deemed appropriate by the Investor[s].
Conditions to Closing	The consummation of the Financing Round contemplated by this Term Sheet shall be subject to satisfactory due diligence and the approval and signing of legally binding Documentation by the Investor[s].
Legal Fees and Expenses	The Company will reimburse the Investor[s], or pay at the direction of the Investor[s], for the reasonable legal fees and expenses incurred by counsel to the Investor[s] not to exceed CHF <i>[amount]</i> , payable at Closing. Should the investment not complete each side shall pay for their own costs. [The Investors agree amongst themselves to share the costs of legal counsel and other due diligence expenses and costs.]
Timing	Due Diligence: <i>[date]</i> Negotiations: <i>[date]</i> Signing: <i>[date]</i> Closing: <i>[date]</i> End of Exclusivity: <i>[date]</i>

Effect of Term Sheet	The parties expressly agree that, with the exception of the obligations as set forth under the paragraphs ["Confidentiality", "Exclusivity", "Timing", "Legal Fees and Expenses", "Effect of Term Sheet" and "Governing Law"] which are intended to be and shall be legally binding, no binding obligations shall be created by this Term Sheet until definitive, legally binding agreements are duly executed and delivered by the parties.
Governing Law	This Term Sheet is governed by Swiss law and subject to the exclusive jurisdiction of the ordinary courts of [<i>place</i>].

[Signature page to follow]

[Investor 1]

By: _____
Names: _____
Titles: _____

[Investor n]

By: _____
Names: _____
Titles: _____

[Existing Shareholder 1]

By: _____
Names: _____
Titles: _____

[Existing Shareholder n]

By: _____
Names: _____
Titles: _____

[Company]

By: _____
Names: _____
Titles: _____

List of Annexes

Annex 1: Cap Table

Annex 2: List of Important Shareholder and Board Matters

Cap Table

Attached.

List of Important Shareholder and Board Matters

Part A – Important Shareholder Matters

Each of the following decisions shall be an Important Shareholder Matter and shall require the consent requirements set forth in the Term Sheet:

- (a) any amendment of the Company's Articles or its corporate purpose;
- (b) any creation of shares with preferential rights of any kind, shape or form or with privileged voting rights [(other than for an approved financing (to be defined in the Shareholders Agreement))];
- (c) any amendment to the restriction of the transferability of shares;
- (d) any authorized or conditional capital increase [(other than for an approved financing (to be defined in the Shareholders Agreement))];
- (e) any increase of capital against the Company's equity, against contributions in kind, or for the purpose of acquiring assets or the granting of special benefits;
- (f) any limitation or withdrawal of subscription rights [(other than for an approved financing (to be defined in the Shareholders Agreement))];
- (g) any change of [the corporate name or] registered office of the Company;
- (h) any sale of all or substantially all of the assets of the Company;
- (i) any merger, demerger or similar reorganization of the Company;
- (j) the liquidation of the Company;
- (k) any resolution on dividend payments or other distributions to the shareholders;
- (l) the election of the auditors of the Company; and
- (m) [*specify additional Important Shareholder Matters as appropriate*].

Part B – Important Board Matters

Each of the following decisions shall be an Important Board Matter and shall require the consent requirements set forth in the Term Sheet:

- (a) [the approval of the budget, and any change thereto;
- (b) the sale, disposal or transfer of all or substantially all of the Company's business and/or assets;
- (c) any acquisition of a business or any part thereof (whether a share or asset transaction);
- (d) any investment, capital expenditure, sale of assets, incurrence of debt or any contract obligation by the Company in excess of CHF [*amount*] (whether by a single transac-

tion or a series of related transactions) unless such expenditure has been specifically provided for in the budget;

- (e) any approved financing (to be defined in the Shareholders Agreement) including any agreements to facilitate and effect an approved financing;
- (f) the appointment and removal of the Company's CEO and all other members of the management;
- (g) the approval and amendment of any share option plan and option and/or share grants to the Management, the issuance of shares or equity-related securities out of the Company's authorized or conditional share capital (including the determination of the issue price, the date for the entitlement for dividends and the type of contribution therefore), except in respect to any shares issued in accordance with anti-dilution adjustments;
- (h) the creation of any security interests upon any part of the Company's property or assets in any form whatsoever exceeding CHF [*amount*] in aggregate (whether by a single transaction or by a series of related transactions) save as set forth in the budget or in the ordinary course of business;
- (i) any related-party transactions or arrangements including variations thereof;
- (j) any material change in accounting policies or principles save with the prior approval of the Company's audit company;
- (k) any transfer of shares other than in accordance with the transfer restrictions set forth in the Shareholders Agreement;]
- (l) [*specify additional Important Board Matters as appropriate*]; and
- (m) any amendment or modification of the board regulations.