Swiss Private Equity & Corporate Finance Association
Schweizerische Vereinigung für Unternehmensfinanzierung
Association Suisse des Investisseurs en Capital et de Financement

This document does not constitute legal advice and is not meant to serve as a recommended form suitable for every seed and/or early-stage convertible loan investment by 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 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

CONVERTIBLE LOAN INVESTMENT *(LONG FORM)*

TERM SHEET

Proposed Investment in

[*Name of the Borrower*] (the "**Borrower**")

This term sheet ("**Term Sheet**") summarizes the principal terms of a potential convertible loan investment (the "**CLA Round**") in the Borrower, 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 Borrower.

Investment	
Borrower / Issuer	[*Name of the Borrower*]
Type of Investment	Subordinated[1], unsecured[2] loans that are convertible into shares of the Borrower upon the occurrence of certain triggering events as further set forth in this Term Sheet (the "**Loans**" and each a "**Loan**").
Investment Amount[3]	Up to an aggregate amount of CHF [*amount*] (the "**Investment Amount**").
Investors[4]	[Up to CHF […] from [*name*] (the "**Lead Investor**").] Additional investors may, with the consent of the Borrower [and the Lead Investor], accede to this Term Sheet (together with the Lead Investor, the "**Investors**"). [Investors acknowledge that their commitment under this Term Sheet is subject to a reduction if and to the extent that existing shareholders of the Borrower exercise pre-emption rights.[5]]
Interest Rate[6]	[The Loan shall be interest-free.] [[*rate*]% per annum (accruing).] [The lower of (i) [*rate*]% per annum (accruing) and (ii) the maximum safe-

1 **Note:** Convertible loans are typically subordinated in the sense of article 725b para. 4 no. 1 of the Swiss Code of Obligations in order to address the over-indebtedness. Startups should be careful and seek legal advice if the loans are proposed to be non-subordinated.

2 **Note:** Convertible loans for startups are typically unsecured. As a matter of mandatory law, they must be unsecured if they are subordinated.

3 **Note:** Although technically not required, investors would generally expect to define the maximum loan amount that is planned to raise as part of the financing round (i.e., not only the amount from an individual investor but the aggregate amount).

4 **Note:** If the Borrower has several lenders, it should be aware of the so-called 10/20 non-bank rules as they relate to tax implications in case the loans are interest-bearing. In addition, having more than 20 non-bank lenders can give rise to substantial exposure under banking/financial market regulations and companies should refrain from entering into agreements before checking this with counsel.

5 **Note:** Absent any pre-existing waivers, existing shareholders are generally entitled (but not per se obliged) to participate in convertible loan financings. Therefore, any amount subscribed by new investors is subject to a respective waiver from existing shareholders. To the extent that existing shareholders do not participate in the entire Investment Amount, new investors may step in.

6 **Note:** Convertible loans are usually but not always interest-bearing. Loans that are interest-free are easier to implement because interest is typically accruing (i.e., not paid out) and then added to the principal amount in connection with the conversion upon the next (Non-)Qualified Financing Round. However, investors may often request that the loan is interest-bearing. Interest becomes more relevant the longer the next (Non-)Qualified Financing Round takes and the higher the principal amount is. Tax-wise it is important to check with counsel compliance of the interest rate with the yearly "safe haven" rates determined by the Swiss Federal Tax Administration if existing shareholders or persons related to them or the Borrower participate as lenders in the Financing Round. If interest is higher than the

	harbor rate for the relevant period as published by the Swiss Federal Tax Administration.]
Conditions Precedent	Disbursement shall be subject to customary conditions precedent, including - shareholder consents from [all] shareholders of the Borrower;[7]] - [shall not exceed the Maximum Investment Amount as part of this particular CLA Round;[8]] - [a minimum of [CHF] [*amount*] in aggregate principal amount(s) is committed as part of this CLA Round;] - [approval of investment by the Lender's investment committee;] - [satisfactory completion of financial and legal due diligence by the Lender;] - [the absence of any [material] breach by the Borrower of any provision of the convertible loan agreement;] - [*specify additional conditions precedent as appropriate, including based on due diligence findings*].
Term[9]	The Loans shall mature on [date] (the **"Maturity Date"**).
Mandatory Conversion Events	**1. Upon the next Qualified Equity Financing Round:** If the Borrower closes a Qualified Equity Financing Round (as defined below), the loan balance outstanding under the Loans will be mandatorily converted into the highest category of shares of the Borrower at the conversion price which is equal to [the lower of: - the price obtained by dividing CHF [*amount*][10] by the Borrower's [issued and outstanding Shares/Fully Diluted Shares][11] immediately prior to the relevant Qualified Equity Financing Round, and]

threshold, interest could be re-qualified as hidden dividend distributions, or, if lower, as hidden capital contributions. See also footnote 4 for interest-related tax implications.

7 **Note**: Since convertible loans are usually not funded via conditional share capital (mainly because the category and features of the Conversion Shares in case of a Qualified Equity Financing Round are not known in advance) and since the Borrower cannot guarantee the issuance of Conversion Shares (which is in the competence of the shareholders' meeting), it is advised to solicit separate consent declarations in advance from all shareholders (even if this is not explicitly required as a condition precedent or otherwise by the lender(s)). Alternatively, they can also be added as parties to the convertible loan agreement. If the shareholders' agreement relating to the Borrower already contains a sufficient advance consent from the shareholders for the purposes of convertible loan agreements, the approval of shareholders for the convertible loan agreement may be dropped entirely depending on the circumstances of the case in question. Not obtaining the approval of all shareholders in connection with a convertible loan bears legal risks as to the validity and enforceability of the convertible loans which is why the parties should seek guidance from their counsel in case they cannot, for whatever reason, obtain appropriate approval from all shareholders.

8 **Note**: Only to be included if there are going to be several lenders in parallel.

9 **Note**: Convertible loans are usually meant to bridge the period required until the next equity round. The term is set accordingly.

10 **Note:** A valuation cap is often requested by investors to avoid that an investment made at a low valuation is subsequently converted at a disproportionately high valuation, thereby depriving them of participating in the upside that would have otherwise been achieved in light of the early investment, but it is not mandatory. Therefore, the cap would typically be set at a valuation that the loan investors would deem "not excessive" in the Qualified Financing and therefore needs to be negotiated. From a startup's perspective, a valuation cap introduces a negotiation element around valuation which is otherwise left out of convertible loan financing. Rarely seen in seed-stage financings but more frequent in later bridge round financings is a minimum valuation/floor, the counter-element of the valuation cap.

11 **Note:** It is more investor-friendly to stipulate that the price is calculated on a fully diluted basis and more startup-friendly if only on an undiluted basis. This needs to be negotiated carefully.

	- [*rate*]% of the subscription price paid (and not set off) by the investors in such Qualified Equity Financing Round [if closed within [3 / 4 / 5 / 6] months from the date of disbursement of the Loan or [*rate*]% if completed thereafter];[12] A "**Qualified Equity Financing Round**" shall mean the next *bona fide* share capital increase during which new shares of the Borrower are issued against cash in an overall amount equal to or exceeding CHF [*amount*][13] (including agio, if any) to existing or new investors, [including / excluding] any and all indebtedness that is converted (such as the Loans). ["**Fully Diluted Shares**" shall mean all issued shares of the Borrower together with all option or conversion rights of any kind (whether vested or not and including any authorized but unallocated rights) on an as-converted-basis (but excluding the effects of the conversion rights granted under the Loans).] **2. Upon Change of Control:** If the Borrower consummates a Change of Control (as defined below), the loan balance outstanding under the Loans will be mandatorily converted into the highest category of shares of the Borrower at the conversion price which is equal to [the lower of: - the price obtained by dividing CHF [*amount*][14] by the Borrower's [issued and outstanding Shares/Fully Diluted Shares][15] immediately prior to the closing of the Change of Control; and - [*rate*]% of the price per share agreed upon in the context of the Change of Control event [if closed within [3 / 4 / 5 / 6] months from the date of disbursement of the Loan or [rate]% if completed thereafter][16] A "**Change of Control**" shall mean: - the acquisition of more than 50% of the Borrower's outstanding Shares by any person or entity in any transaction or series of related transactions (other than as a result of *bona fide* equity financing purposes (including, but not limited to a Qualified Equity Financing Round [or Non-Qualified Equity Financing Round]); or - a merger, spin-off or other type of restructuring in which the holders of the voting securities of the Borrower outstanding

12 **Note:** The discount typically correlates with the term of the Loans: the longer the term the higher the discount. From a startup perspective, it can make sense to increase the discount over time based on a pre-defined schedule or at least to avoid a high discount if, for whatever reason, the Qualified Equity Financing Round can be closed very shortly after the raising of the Loan so as to reflect the risk premium more precisely.

13 **Note**: In order to avoid that the loans are converted in a too small round (jeopardizing the sustainable financing/future of the Borrower), it is commonplace to agree on a minimum cash amount that needs to be raised in such equity round. This amount needs to be determined on a case-by-case basis. It should not be too high (from a Borrower's perspective, because otherwise the loans would eventually become due and repayable, subject to the subordination, and from an investor's perspective, because otherwise the Borrower could avoid the Conversion by engaging in a series of smaller financing round), but it should also not be too low (in order to avoid Conversion upon a financing round which does not render sufficient capital to the Borrower or does not properly reflect a "benchmark" valuation). The amount needs to be defined in light of the financing strategy of the Borrower.

14 **Note**: See footnote 10.

15 **Note**: See footnote 11.

16 **Note**: See footnote 12.

	immediately prior to such transaction retain less than the majority of the total voting power represented by the voting securities of the Borrower or such surviving entity outstanding immediately after such transaction; or - a sale, lease, transfer, exclusive license or other conveyance of all or substantially all of the assets of the Borrower in an arms' length transaction (other than to a wholly-owned subsidiary of the Borrower or to a parent Borrower). **3. [Upon Maturity:]**[17] [If the Loans reach the Maturity Date, they shall be converted into the highest then existing category of shares of the Borrower at the price per share obtained by dividing [valuation/fair market value][18] by the Borrower's [issued and outstanding Shares/Fully Diluted Shares.][19]]
Voluntary Conversion Events	**[Upon Maturity:]**[20] [If the Loans reach the Maturity Date, upon request of the Investors, they may be converted into the highest then existing category of shares of the Borrower at the price per share obtained by dividing [valuation/fair market value][21] by the Borrower's [issued and outstanding Shares/Fully Diluted Shares][22].] **[Upon Non-Qualified Financing]** If, prior to the Maturity Date, the Borrower consummates an equity financing round that does not qualify as a Qualified Equity Financing Round (a "**Non-Qualified Financing Round**"), then the Investors may request a conversion at the conversion price as applicable to a Qualified Equity Financing Round.
[Pro Rata Subscription Rights][23]	[In addition to the rights for conversion of the Loans, the Borrower will grant to the Investors a right to participate in the next Qualified Equity Financing Round at the price and on the terms such shares are offered to other investors in such Qualified Equity Financing Round on a pro rata basis (the "**Pro Rata Right**").]
Events of Default	As customary in investments of this type such as illiquidity, insolvency, breach of representations, warranties and covenants.

[17] **Note**: Conversion upon maturity can be mandatory or voluntary. To be negotiated on a case by case basis.

[18] **Note**: Many investors would argue that in this scenario, the conversion price should be quite attractive because the startup failed to do a Qualified Equity Financing Round which is why the valuation cap is rarely accepted. In many cases a fixed valuation is agreed or a reference to the then fair market value is included.

[19] **Note**: See footnote 11.

[20] **Note**: Conversion upon maturity can also be mandatory.

[21] **Note**: See footnote 18.

[22] **Note**: See footnote 19.

[23] **Note:** This is an investor-friendly clause allowing lenders to subscribe for new shares beyond the shares they get as a result of the conversion. In other words, they get a right to participate in the Qualified Equity Financing Round at the same terms on the basis of their equity stake acquired through the conversion. A startup should carefully assess if it is ready to grant this right because it reduces the flexibility to onboard new investors.

Representations and Warranties / Covenants	Customary representations and warranties as well as covenants of the Borrower to the Investors[, substantially in the form of the representations and warranties set forth in the SECA CLA Model Documentation "long form" [reasonably taking into account the findings of Investors' due diligence].
[Most Favored Nation][24]	[If the Borrower previously or subsequently to the Loan has granted or grants terms to another lender participating in the CLA Round that are more favorable for the respective lender than the ones agreed with the Lender, such more favorable terms shall equally apply to the Investors, unless such equal treatment is explicitly waived by the Investors.] *OR (more Company-friendly)* [The Borrower shall not agree with any other lender participating in the CLA Round on the amendment of terms regarding the CLA Round that are more favorable for the respective lender than the ones agreed with the Lender, unless such amendments are equally agreed with the Lender, or such requirement is explicitly waived by the Lender.]
General Provisions	
Confidentiality	The terms 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 and except that the Borrower is authorized to disclose this Term Sheet to its advisors, shareholders and other potential investors and the Investors to their advisors.
Documentation	The investment into the Borrower shall be made pursuant to convertible loan agreements drafted by the counsel to the Borrower.
Legal Fees and Expenses	Each Party shall bear its own costs and expenses arising out of or incurred, and any taxes and fees imposed on it, in connection with the CLA Round and all transactions contemplated thereby.
Effect of Term Sheet	The parties expressly agree that, with the exception of the obligations set out under the headings ["Confidentiality", "Legal Fees and Expenses", "Effect of Term Sheet" and "Governing Law and Jurisdiction"] 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 all parties thereto.
Applicable Law and Jurisdiction	This Term Sheet as well as the convertible loan agreement is governed by Swiss law and subject to the exclusive jurisdiction of the ordinary courts of [*place*].[25]

24 **Note:** This most-favored-nation clause is limited to the particular Financing Round. As an alternative, this provision could be drafted to extend to any future loan financings until a specified date, i.e., it would then not be limited to the investors participating in this particular Financing Round, thus imposing a greater limit to the flexibility of the Company.

25 **Note**: As an alternative to (direct) litigation, the parties may consider mediation. In such a case, a possible sample wording could be as follows: “Any dispute, controversy or claim arising out of or in relation to this Term Sheet, including the validity, invalidity, breach or termination thereof, shall be submitted to mediation in accordance with the Swiss Rules of Mediation of the Swiss Arbitration Centre in force on the date when the request for mediation was submitted in accordance with these Rules. The seat of the mediation shall be in [City], Switzerland. The mediation shall be conducted in English. If such dispute, controversy or claim has not been fully resolved by mediation within 60 days from the date when the mediator(s) has (have) been confirmed or appointed by the Swiss Arbitration Centre, it shall

[*signature page to follow*]

be submitted to the ordinary courts at the registered seat of the Company, subject to appeal to the Swiss Supreme Court."

Place, date: _______________

[Startup] AG

Signature(s): ____

Name(s): ____

Place, date: _______________

Lead Investor

Signature(s): ____

Name(s): ____

Additional acceding Investors:

Place, date: _______________

Signature(s): ____

Name(s): ____

Committed Amount: CHF ___________________________