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TERM SHEET

CONVERTIBLE LOAN INVESTMENT (~~SHORT-FORM~~SHORT FORM)

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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 "FinancingCLA 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 Amount³	Up to an aggregate amount of CHF [amount] (the "FinancingInvestment Amount").
Investors⁴	[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 who are not yet shareholders of the Borrower 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 Rate⁶	[The Loan shall be interest-free.] [Rate rate]% per year annum (accruing).] [The lower of (i) [rate]% per annum (accruing) and (ii) the]

¹ **Note:** Convertible loans are typically subordinated in the sense of article ~~725~~725b para. ~~24 no. 1~~ of the Swiss Code of Obligations in order to ~~avoid/delay an~~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 ~~financing amount~~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

	maximum safe-harbor rate for the relevant period as published by the Swiss Federal Tax Administration.]
Term ⁷	The Loans shall mature on [date] (the “ Maturity Date ”).
Mandatory Conversion Events	<p>1. Upon the next Qualified Equity Financing Round:</p> <p>If the Borrower consummatescloses a Qualified Equity Financing Round (as defined below), thenthe 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:</p> <ul style="list-style-type: none"> - the price obtained by dividing CHF [amount]⁸ by the Borrower’s [issued and outstanding Shares/Fully Diluted Shares]⁹ as of immediately prior to the relevant Qualified Equity Financing Round, and] - [rate]% of the subscription price paid (and not set off) by the investors in such Qualified Equity Financing Round [if com-pletedclosed within [3 / 4 / 5 / 6] months from the date of dis-bursement of the final agreementLoan or [rate]% if completed thereafter];¹⁰ <p>A “Qualified Equity Financing Round” shall mean the next <i>bona fide</i> share capital increase during which new shares of the Borrower are issued against cash in an overall amount equal to or exceeding CHF [amount]¹¹ (including agio, if any) to existing or new investors, [including / excluding] any and all indebtedness that is converted (such as the Loans).</p> <p>[“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).]</p>

persons related to them or the Borrower participate as lenders in the Financing Round. If interest is higher than the 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:** Convertible loans are usually meant to bridge the period required until the next equity round. The term is set accordingly.

⁸ **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.

⁹ **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.

¹⁰ **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.

¹¹ **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.

	<p>2. Upon Change of Control:</p> <p>If the Borrower consummates a change of control in relation to the Borrower, then<u>the</u> 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:</p> <ul style="list-style-type: none"> = <u>the price obtained by dividing CHF [amount]¹² by the Borrower's [issued and outstanding Shares/Fully Diluted Shares]¹³ immediately prior to the closing of the Change of Control; and</u> - [rate]% of the price per share agreed upon in the context of the Change of Control event [if completed<u>closed</u> within [3 / 4 / 5 / 6] months from the date of <u>disbursement of the final agreement Loan</u> or [rate]% if completed thereafter], and¹⁴ <u>the price obtained by dividing CHF [amount]¹⁵ by the Borrower's [issued and outstanding Shares/Fully Diluted Shares]¹⁶ as of immediately prior to the closing of the Change of Control;</u> <p>3. [Upon Maturity:]¹⁷</p> <p>[If the Loans reach the Maturity Date, upon request of the Investors, they may<u>shall</u> 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]</p>
<p>Voluntary Conversion Events</p>	<p>[Upon Maturity:]²⁰</p> <p>[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.]</p> <p>[Upon Non-Qualified Financing]</p> <p>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"), then the Investors may request a conversion at the conversion price as applicable to a Qualified Equity Financing Round.</p>
<p>General Provisions</p>	

¹² [Note: See footnote 8.](#)

¹³ [Note: See footnote 9.](#)

¹⁴ **Note:** See footnote 10.

¹⁵ ~~**Note: See footnote 8.**~~

¹⁶ ~~**Note: See footnote 9.**~~

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 9.

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

²¹ **Note:** See footnote 18.

²² **Note:** See footnote ~~9~~19.

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 <u>the</u> 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 Financing <u>CLA</u> Round and all transactions contemplated thereby.
Effect of Term Sheet	The parties expressly agree that, with the exception of the obligations set forth <u>in/out under</u> the paragraphs <u>headings</u> ["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.
Governing<u>Applicable</u> Law and Jurisdiction	This Term Sheet <u>as well as the convertible loan agreement</u> is governed by Swiss law and subject to the exclusive jurisdiction of the ordinary courts of [<i>place</i>]. ²³

~~[Signature]~~signature page to follow]

²³ **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 ~~media-to~~mediator(s) has (have) been confirmed or appointed by the Swiss Arbitration Centre, it shall 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 _____

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