

|  |
| --- |
|  |
| 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 *(SHORT FORM)*** | |

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 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, unsecured 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 | Up to an aggregate amount of CHF [amount] (the “**Investment Amount**”). |
| Investors | [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.] |
| Interest Rate | [The Loan shall be interest-free.] [[*rate*]% per annum (accruing).] [The lower of (i) [*rate*]% per annum (accruing) and (ii) the maximum safe-harbor rate for the relevant period as published by the Swiss Federal Tax Administration.] |
| Term | 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*] by the Borrower’s [issued and outstanding Shares/Fully Diluted Shares] 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 closed within [3 / 4 / 5 / 6] months from the date of disbursement of the Loan or [*rate*]% if completed thereafter];   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*] (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).]   1. **Upon Change of Control:**   If the Borrower consummates a change of control in relation to the Borrower, 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*] by the Borrower’s [issued and outstanding Shares/Fully Diluted Shares] 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];  1. [**Upon Maturity**:]   [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] by the Borrower’s [issued and outstanding Shares/Fully Diluted Shares].] |
| Voluntary Conversion Events | **[Upon Maturity:]**  [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] by the Borrower’s [issued and outstanding Shares/Fully Diluted Shares].]  **[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**”), then the Investors may request a conversion at the conversion price as applicable to a Qualified Equity Financing Round. |
| **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]. |

[*signature page to follow*]

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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_