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| AANZ Template | **Term Sheet (equity investment)** |
| Release Date | Versions 1 - 4 February 2019 |
| AANZ Number | 218011 |
| Version 1 Notes | This template is a revised version of the NZVIF Term Sheets for Ordinary and Preferred Shares (23 December 2015). |
| Use Notes | This AANZ template term sheet applies if the investment is for shares.  Please use an alternative template term sheet if the investment is to be a loan convertible to equity. |

This template has been prepared by AANZ together with members of the NZ angel investment community and legal profession.

The aim of this template (and other template documents we make available) is to promote standardised legal documentation for use in NZ so investors, entrepreneurs, and companies can focus on deal-specific matters.

Footnotes are intended to assist with completing this Term Sheet and all parties should:

* ensure they are aligned about the business outcomes, success, and the return on their investment;
* consider the appropriateness and implications of key terms, including:
  + investment conditions
  + how the shares are priced and paid for
  + types of shares
  + warranties
  + the application of FMCA exclusions to the investor/investment
  + director appointment rights
  + board approval provisions
  + founder vesting
  + restricted share transfers
  + restraints
  + anti-dilution protections
  + tag-along and drag-along rights
  + employee share schemes; and
* seek their own legal advice when agreeing and documenting investments terms.

AANZ aims to coordinate updates of the template documents annually to keep up with market practice. Comments on the documents are welcome, and will be taken into account in the next review (or urgently should this be required). Comments can be sent to [templates@angelassociation.co.nz](mailto:templates@angelassociation.co.nz)

AANZ would like to thank Avid.legal, Chapman Tripp, NZVIF, Simmonds Stewart, and Simpson Grierson who, among others, kindly provided support and expertise in the development of this template.

**Disclaimer**: Neither AANZ nor any contributors to this document take any responsibility for the content of template documents or the consequences of using them. You should take your own legal advice before using this template. This template is intended to serve as starting point only and should be tailored to meet your specific requirements. Nothing in this template should be construed as legal advice for any particular facts or circumstances.

**TERM SHEET**

**FOR ISSUE OF SHARES BY**

**[**●**] LIMITED (Company)**

This document (**Term Sheet**) summarises the principal terms of a proposed investment in the Company (**Investment**). This Term Sheet is not legally binding except for the terms stated in part B of this Term Sheet. There will be no obligation to issue or subscribe for shares in the Company until binding investment documents are signed by the parties.

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| **PART A: INVESTMENT TERMS (non-binding)** | | | | | | |
| **Parameters of the investment round** | | | | | | |
| **Investment Round** | **[*Fixed Round*][[1]](#footnote-1)** | | | $ **[***insert amount***]** | | |
| **[*Minimum Round Size*]** | | | $ **[***insert amount***]** | | |
| **[*Maximum Round Size*][[2]](#footnote-2)** | | | $ **[***insert amount***]** | | |
| **[*Rolling Close*][[3]](#footnote-3)** | | | **Permitted?** | **[***Yes / No***]** | |
| **Rolling Close** | Up to **[***insert date***]** and  $**[***insert amount***]** | |
| **Investors and Investment Amounts** | The persons identified at the end of this Term Sheet, and the Investment Amounts set out beside their names*.*  **[***together with other investors identified by the Company***]**  **[***together with anyone else agreed by the Investors and Company (both acting reasonably)***]** | | | | | |
| **Pre-Money Valuation**  (*agreed Company value before Investment*) | $ **[***insert amount***]** | | | | | |
| **Issue Price**  (*price per Share payable by Investors*) | The Issue Price will be calculated by dividing the Pre-Money Valuation by the total number of shares, options, convertible loans, warrants, and other securities currently issued or otherwise reserved in the Company (**a fully-diluted basis**), **[***including/excluding***][[4]](#footnote-4)** any allocation for the Share Scheme (aka ESOP Pool). | | | | | |
| **Shares**  (*type of shares being issued to Investors*) | **[***Ordinary Shares***]**  **[**or**]**  **[***Preference Shares, being non-participating 1x preference shares.***][[5]](#footnote-5)** | | | | | |
| ***[Share Scheme (aka ESOP Pool)]*** | ***[Number of Shares]***  ***[or]***  ***[Percentage of Shares]*** | | | ***[[****insert number****]*** *will be reserved for a Share Scheme****]***  ***[****or****]***  ***[[****insert % of the****]*** *issued shares in the Company* ***[****from time to time****][****or****][****post-investment****]*** *will be reserved for a Share Scheme (excluding any shares issued as part of a Share Scheme).****]*** | | |
| **Capitalisation Table** | The current Capitalisation Table for the Company is set out in Appendix 2.  It shows all shares, options, convertible loans, warrants, and other securities currently on issue or otherwise reserved in the Company before the Investment.[[6]](#footnote-6) | | | | | |
| **Investment terms and conditions** | | | | | | |
| **Conditions**  (for the Company’s benefit) | 1. In respect to each Investor, the Company being satisfied that an exclusion applies to the disclosure requirements of Part 3 of the Financial Markets Conduct Act 2013 in relation to the issuance of Shares to that investor. | | | | | |
| **Conditions[[7]](#footnote-7)**  (for Investors' benefit) | 1. **[**Due diligence being completed to the satisfaction of the Investors.**]** 2. **[**All necessary corporate approvals of each Investor (as applicable).**]** 3. **[**Agreement to a business plan which comprises an agreed budget (**Agreed Business Plan**).**]** 4. **[***Agreement on milestones which must be achieved for disbursement of tranched Investment Amounts (****Milestones****)***]**. 5. **[**The Company entering into subscription agreements that bind investors to invest a total investment amount exceeding the Minimum Round Size.**]** 6. **[**Entry into a new shareholders’ agreement in the agreed form by the Company, all existing shareholders, founders, and all holders of securities in the Company which will convert to shares in the Company on Completion.**]** 7. **[**The existing shareholders of the Company adopting a new constitution in the agreed form.**]** 8. **[**Capitalisation of all outstanding loans **[***other than the loan(s) of $ from* **[** **]]** and that capitalisation resulting in the pre-investment capitalisation shown in the Capitalisation Table.**]** 9. **[**The Company signing employment or contractor agreements(s) with the **[***Founder(s)***][*AND/OR*][***insert names***]]** on terms acceptable to the Investors (and which include suitable non-competition and non-solicitation covenants).**]** 10. **[**The Investors being satisfied that relevant officers, consultants and contractors (including all Founders) have assigned (in a form acceptable to the Investors) all intellectual property linked to the Business.**]** 11. **[**Evidence that the Company has authority to issue the Shares.**]** 12. **[**Evidence that any third party consents or other authorisations required to complete the Investment have been obtained.**]** 13. **[***Vesting terms being agreed and recorded with the Founder(s).***]** 14. **[***Insert any other specific conditions precedent***]** | | | | | |
| **Anticipated Completion Date** | **[***Insert date***]** or 5 business days after satisfaction of all conditions precedent in the subscription agreement (actual completion date being referred to as the **Completion Date**). | | | | | |
| ***[Tranched Investment][[8]](#footnote-8)*** | ***Tranche $*** | | ***Milestones[[9]](#footnote-9)*** | | | ***Date[[10]](#footnote-10)*** |
|  | *$****[****insert**amount****]*** | *Satisfaction of Conditions* | | | *Completion Date* |
|  | *$****[****insert**amount****]*** |  | | |  |
|  | *$****[****insert**amount****]*** |  | | |  |
| ***[Anti-dilution][[11]](#footnote-11)*** | *A broad based weighted average anti-dilution provision will apply if the Company issues shares in the future at a price lower than the Issue Price (adjusted for any capital reorganisations). The anti-dilution provision will not apply in respect of any shares or options issued under the Share Scheme.*  ***[****The anti-dilution provision will apply for* ***[****insert number****]*** *months following Completion.****]*** | | | | | |
| **Warranties** | Customary warranties from the Company **[***and Founders***][[12]](#footnote-12)** will be contained in the subscription agreement, including:   * to its best knowledge and belief, all intellectual property and other rights used for the Business are the full legal, beneficial and unencumbered property of the Company or the subject of valid licences in favour of the Company; * the Company does not have any actual or contingent liabilities greater than $**[***insert amount***]** that have not beenspecified in the statement of financial position provided to the Investors and such statement provides a true and fair view of the Company's position; and * all information (excluding all forecasts and forward looking information) provided to the Investors is true, accurate and complete in all material respects. | | | | | |
| **Warranty Limitations** | * Matters fully and fairly disclosed in a disclosure schedule to the subscription agreement. * Maximum aggregate liability of the Company will be capped at the Investment Amount. **[***Maximum aggregate liability of each Founder will be capped at $****[****30,000****]****.***][[13]](#footnote-13)** * Claims must be notified within **[***12***]** months of the Completion Date. | | | | | |
| **Angel Club Transaction Commission[[14]](#footnote-14)** | Immediately following Completion, the Company will pay a sum equivalent to **[***insert number***]**% (plus GST) of the Investment Amount invested by **[***insert names of relevant Angel Club investors***]** to **[***insert Angel Club entity***]**. **[***Insert Angel Club entity***]** may choose to pay its Investment Amount net of its transaction commission. | | | | | |
| **Governance terms** | | | | | | |
| **Business** | The **[***proposed***]** business of the Company relating to**[***describe business***]** (**Business**).  The Company will not carry on any business other than the Business without the prior written consent of the Investors. | | | | | |
| **Board Composition[[15]](#footnote-15)** | The Board will consist of a maximum of **[***insert number***]** Directors, including up to:   * **[***insert number***]** Founder/Existing Shareholders Director**[***s***]** * **[***insert number***]** Investor Director**[***s***] [***during any period the Investors hold at least* ***[****insert****]****% of the issued shares in the Company***]**   Founder/Existing Shareholders Director**[***s***]** shall be appointed, removed, replaced by a majority of Founder/Existing Shareholders (based on shares held).  Investor Director**[***s***]** shall be appointed, removed, replaced by a majority of Investors (based on shares held).  As and when there is a need for additional Directors, additional Directors may be appointed, removed, replaced by **[***the Investor Director****[****s****]*** *and Founder/Existing Shareholders Director****[****s****]******[****OR****]*** *ordinary shareholder resolution***]**.  The Chairperson will be appointed, removed, or replaced **[***by a majority of the Board***]**, and shall not have a casting vote. | | | | | |
| **Initial Directors and Chairperson** | The initial Directors shall be:   * Founder/Existing Shareholders Director**[**s**]**: **[***insert name****[****s****]*]** * Investor Director**[***s***]**: **[***insert name****[****s****]*]**   The Chairperson shall initially be: **[***insert name***]** | | | | | |
| **Other Board Provisions** | The Board will meet **[***monthly***][***bi-monthly***][***six weekly***]**.  **[***No Directors' fees will be paid* ***[****until at least* ***[****insert number****]*** *years after Completion****]*** *unless authorised by a Special Resolution of Shareholders.***]**  **[*or*]**   * ***[****The Chairperson will be paid $****[****insert amount****]*** *per annum/meeting****]****.* * ***[****Any independent Directors will be paid $****[****insert amount****]*** *per* ***[****annum/meeting****]*** * ***[****The* ***[****Investor****]******[****other****]*** *Directors will be paid $****[****insert amount****]*** *per* ***[****annum/meeting****]***   ***[****but otherwise attendance at Board meetings will not be remunerated****]****.*  Nothing set out above is intended to exclude directors from participating in a Share Scheme. | | | | | |
| **Board Approvals** | The following items require Board approval, and such approval will require the support of the Investor Director(s):   * ***[****issues of shares (including any IPO), options or any instruments convertible to equity (unless undertaken through a pre-emptive rights issue);****]*** * approval of each Business Plan or any material amendments to or departures from the Business Plan (with such approval not to be unreasonably withheld); * allocations under any Share Scheme (approval not to be unreasonably withheld); * ***[****determining the fair market value of shares being bought back from a Founder that is a bad leaver****]***; * any transaction or arrangement likely to have the effect of the Company acquiring rights or interests or incurring obligations or liabilities outside of the Agreed Business Plan, the value of which is greater than $**[***insert***]**; * any borrowings, guarantees, indemnities or other contingent commitments (excluding indemnities given under customer or supplier agreements in the ordinary course of business), the value of which exceeds $**[**i*nser*t**]**; * any purchase by the Company of any securities of any other entity; * any change to accounting policies **[***or the appointment or change of an auditor***]**; and * appointment of any C-suite positions or any other Founder, and any material modification of their engagement terms (with such actions not to be unreasonably withheld). * **[***insert any other matters***]**   **[***The support of the Investor Director(s) for the above items will only be required* ***[****for a period of* ***[****insert****]*** *years following Completion****][****or****][****while the Investors hold at least* ***[****insert****]****% of the shares on issue in the Company****]****.***]** | | | | | |
| **Special Resolution** | A resolution of shareholders holding 75% or more of the shares with voting rights attached **[***which must also include a majority of Investors’ shares***]**. | | | | | |
| **Shareholder Approvals** | Prior approval by Special Resolution of shareholders is required for the following:   * any Major Transaction or transaction involving the disposal of a significant proportion of the Company's assets; * any significant change in the nature of the Business (whether by acquisition or otherwise); and * any transaction between the Company and any holder of securities, Director, officer or employee of the Company or any associate of any of them, unless that transaction has been approved by a unanimous resolution of the Board (including at least one Director who is not interested in the transaction). | | | | | |
| **Financial Statements, Reporting** | Unaudited **[***monthly and***]** quarterly statements and **[***un***]**audited annual accounts, accompanied by reports covering all material aspects of the Company's progress **[***in the case of the quarterly and annual statements***]**.  **[**If NZVIF is an investor, the Company will also meet NZVIF’s quarterly report requirements in a format to be set out in the Investment Documents.**]**[[16]](#footnote-16) | | | | | |
| **Pre-emptive rights on the transfer of existing shares** | Usual pre-emptive rights on the transfer of existing securities shall apply. | | | | | |
| **Capital raising** | Usual pre-emptive rights on the issue of new securities shall apply.  Any unallocated shares will be applied (i) first, toward applications for oversubscriptions by the **[***shareholders/Investors***]** and if more than one applying, on a pro-rata basis among them, based on their holdings as against other oversubscribing **[***shareholders/Investors***]** and (ii) secondly, by the Board in the best interests of the Company, including to external investors provided that the terms of that allocation are no more favourable than those offered to the **[***shareholders/Investors***]**.  **[***Permitted exemptions to the pre-emptive rights process are:*   1. *capital raising approved by a Special Resolution* ***[****which must also include a majority of Investors’ shares****]****;* 2. *issuances under an agreed Share Scheme.***]** | | | | | |
| **Drag Along Rights[[17]](#footnote-17)** | Drag along rights will apply where shareholders wish to sell **[***75***]***%* ormore of the shares **[***including a majority of the Investors' Shares* ***[****and Founder Shares****]*]** to a third party.  The shareholders being dragged will be required to sell on the same terms. | | | | | |
| **Tag Along Rights[[18]](#footnote-18)** | Tag along rights will apply where shareholders wish to sell more than **[***50%***]** of the shares in the Company to a third party.  The shareholders tagging into the sale will have the right to sell on the same terms, or on a pro-rata basis if the buyer does not wish to buy all of the available shares. | | | | | |
| **Founder arrangements** | | | | | | |
| **Founders**[[19]](#footnote-19) | **[***List* *names of founder(s)/key people***]**. | | | | | |
| ***[Founder Restricted Share Transfers]*** | *The Founders are not permitted to transfer any shares for a period of* ***[****3****]*** *years from Completion with the exception of transfers:*   * *approved by the Board with the support of the Investor Director(s);* * *totalling less than* ***[****10****]****% of a Founder’s shareholding on Completion;* * *in an IPO, or where a tag / drag along right applies; or* * *to their wholly owned and controlled entities or to immediate family (who remain subject to the restricted share transfers provisions).* | | | | | |
| ***[Founder******Vesting]*** *[[20]](#footnote-20)* | *Founders own their shares outright, subject to the Company’s right to buyback up to* ***[****[●]% of****][[21]](#footnote-21)*** *the shares (****Unvested Shares****) held by each Founder at cost where the Founder ceases to be engaged in the Company.*  *The vesting arrangements for Unvested Shares shall be:*   1. ***[****●****]****% of the Unvested Shares will vest (i.e., no longer be subject to such buyback) upon the* ***[****●****]*** *month anniversary after Completion; and* 2. *the balance of the Unvested Shares will vest in* ***[****monthly/yearly****]*** *increments over* ***[****●****]*** *further* ***[****months/years****]****.*   ***[****Where a Founder ceases to be engaged in the Company in a Bad Leaver situation, the Company shall also have a right to buyback the Bad Leaver’s vested shares at fair market value.****]*** | | | | | |
| **Non-Competition and Non-Solicitation** **Agreement** | Each Founder will enter into non-competition and non-solicitation restrictions. The restrictions will apply while they (or their associates) are shareholders, and for a **[***12***]** month period from ceasing to be actively engaged by the Company.  The restrictions will not apply to any activities approved by the Board, including the Investor Director (if any). | | | | | |
| **Other** | | | | | | |
| **Investment Documents** | The Investment Documents will be prepared by the Company using the standard AANZ template subscription agreement, shareholders’ agreement, and constitution. | | | | | |
| ***[Other Key Terms]*** | ***[****Insert other key terms as required****]*** | | | | | |
| **PART B: LEGALLY BINDING TERMS** | | | | | | |
| ***[Exclusive Period][[22]](#footnote-22)*** | *For a period of* ***[****30****]*** *days from the date of signing this Term Sheet, (****Exclusivity Period****) none of the Company, its shareholders, directors, officers, contractors or employees will conduct any discussions whatsoever with any third party regarding any investment in the Company, except as may be approved by the Investors in their discretion.* | | | | | |
| **Legal Costs[[23]](#footnote-23)** | The Company will pay all legal and professional costs incurred by **[***insert lead investor name***]** relating to the Investment Documents and related documentation **[***up to a maximum of $****[****insert amount****]*]** plus GST, **[***whether or not Investment Documents are entered into*.**]**  The Company will pay its own legal and professional costs incurred by it in relation to the Investment Documents and related documentation*.* | | | | | |
| **Confidentiality** | The contents of this Term Sheet, and the fact that one has been issued, may only be disclosed by the Company to its shareholders, directors and advisers or other person(s) approved by the Investors (on a need to know basis). | | | | | |

The parties respectively acknowledge the intended investment terms described in Part A and agree to be bound by the terms in Part B.

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| --- | --- | --- |
| **SIGNED on behalf of the Investors** |  | **SIGNED on behalf of the Company** |
|  |  |  |
| *Name* |  | *Name* |
| *Date* |  | *Date* |

|  |  |
| --- | --- |
| **COMMITTED INVESTORS** | |
| **Name** | **Amount** |
| **[*insert investor name*]** | $**[*insert amount*]** |
| **[*insert investor name*]** | $**[*insert amount*]** |
| **[*insert investor name*]** | $**[*insert amount*]** |
| **[*insert investor name*]** | $**[*insert amount*]** |
| **[*insert investor name*]** | $**[*insert amount*]** |

**APPENDIX 2**

**Current Capitalisation Table**

1. **Fixed round**: Sometimes a round will be for a fixed amount, in which case the “Minimum” and “Maximum” rows can be deleted. [↑](#footnote-ref-1)
2. **Minimum and Maximum**: Sometimes a term sheet will be used to confirm investment commitments without knowing the exact final round size. In this case, the parties might agree a minimum and/or maximum round size parameters. In this case the “fixed round” section can be deleted. [↑](#footnote-ref-2)
3. **Rolling Close**: Sometimes a company and investors may wish to document and complete investments from initial investors, while leaving it open for the company to raise further investment from subsequent investors on the same terms for a fixed period of time and up to a maximum round size. This is called a “rolling close”. If a “rolling close” is not a feature of the investment round, this section can be deleted. [↑](#footnote-ref-3)
4. **Excluding/Including**: Typically the parties would agree to include a company’s allocation for the Share Scheme for the purpose of calculating the fully diluted issue price. This spreads the dilutive effect of the Share Scheme allocation over existing shareholders and results in a marginally lower Issue Price than excluding allocations for Share Schemes. However, occasionally the parties may agree to: (a) exclude the company’s allocation for the Share Scheme. This spreads the dilutive effect of the Share Scheme allocation over both existing shareholders and investors and results in a relatively higher Issue Price; or (b) do a mix so that only allocated options are considered in calculating the Issue Price. Whether the parties vary away from the most typical arrangement will depend on the negotiating power of the parties and the context of the investment. [↑](#footnote-ref-4)
5. **Preference Shares**: There are a variety of different preference share rights that may be negotiated. Different contexts may allow for different rights. If preference shares are agreed, 1x non-participating preference shares are most common for early stage investments in the NZ context and this is what the AANZ constitution template for preference shares is based on. Parties should take advice on the consequences of electing preference shares, and on the rights to be agreed.

   [↑](#footnote-ref-5)
6. **Capitalisation Table**: If there is a Share Scheme in place, the Capitalisation Table should also show how much of the Share Scheme has been allocate and/or converted into shares (if the allocation was first granted as an option or other instrument convertible into shares). It is also useful for the Capitalisation Table to model the current investment round. [↑](#footnote-ref-6)
7. **Conditions**: The parties should consider what conditions are necessary. A list of some common suggestions for the investor’s benefit has been included to assist. It is unlikely all suggestions will be appropriate to your investment arrangement. Please amend as appropriate. [↑](#footnote-ref-7)
8. **Tranched Investment**: If tranching is not relevant, this section can be deleted. Occasionally parties may agree to stagger an investment, with each tranche subject to an agreed Milestone being met. If the Company does not meet a Milestone, the associated shares are not issued, and the associated investment amount is not paid. Tranching is not common unless there are sound reasons to agree tranching in the context of the investment. Care needs to be taken when agreeing Milestones. Milestones should be relevant to the Company’s planned growth path. There is a risk a milestone creates a warped incentive to pursue a milestone that is no longer in the best interests of the company (taking the focus away from more important commercial objectives). [↑](#footnote-ref-8)
9. **Milestones**: The 1st tranche would be payable on Completion, conditional on agreed completion conditions. Subsequent tranche milestones should be listed below. [↑](#footnote-ref-9)
10. **Milestone Date**: This is the last date on which a milestone may be met to trigger a milestone payment and the issue of related shares. [↑](#footnote-ref-10)
11. **Anti-dilute**: Anti-dilution rights are a downside protection for Investors if a later share issue is done at a lower price. The anti-dilution mechanism works by requiring the Company to issue more shares to Investors if the Company carries out a future capital raising at a lower price than the issue price of this investment round. There are various types of anti-dilution provisions (including “narrow-based weighted average” and “full ratchet”). The broad based weighted average anti-dilution provision is most common in the NZ context and is the type used in the AANZ templates. It results in the least number of shares being issued to Investors when compared with “narrow-based weighted average” and “full ratchet” anti-dilution provisions. [↑](#footnote-ref-11)
12. **Founder Warranties**: For investments in earlier stage companies, it may be appropriate for Founders (or a subset of them) to provide warranties subject to an appropriate cap – see the footnote below. The purpose of the warranty regime is to focus the parties on the information and disclosure process to ensure both parties are entering into the investment in an informed manner. Founder warranties can help bring focus to this process. [↑](#footnote-ref-12)
13. **Cap on Founder Warranties**: If Founder warranties are given, the parties should consider what an appropriate cap should be in the context of the investment. [↑](#footnote-ref-13)
14. **Angel Club Transaction Commission**: NZ Angel Clubs and some other types of investment groups may charge a commission on funds raised from the club or group. This is how many Angel clubs fund their activities. If a company is not raising funds through an Angel Club or other type of investment group that charges a transaction commission, this row can be deleted. [↑](#footnote-ref-14)
15. **Board composition**: Board composition should be carefully considered by the parties. If there are any percentage holding or other requirements to maintain board appointment rights, these should be recorded here. [↑](#footnote-ref-15)
16. **NZVIF reporting**: If NZVIF is an investor or existing shareholder, then the investment documents should make provision for NZVIF’s reporting requirements. [↑](#footnote-ref-16)
17. **Drag Along Rights**: Drag along rights give the company the right to force all shareholders to participate in and vote for a sale of the company if the sale has been agreed by a significant portion of the shareholders. Those selling shareholders are able to force any of the remaining minority to also sell their shares in the company, on the same terms and to the same buyer. This can be a useful tool in managing an exit transaction. The triggering % can vary but 75% is often used as the starting point because it aligns with the approval threshold under the Companies Act 1993 for major transactions, however the company’s share register should be specifically considered in relation to who (or what groups) may be able to compel who to sell. [↑](#footnote-ref-17)
18. **Tag Along Rights**: Tag along rights allow minority shareholders to sell their shares (on the same terms and to the same buyer) if a large enough shareholding is being sold by other shareholders so that minority shareholders do not miss out on a partial (or full) exit event. Thresholds can vary among investment deals. Some adopt a threshold of 50% of the company’s shares (because a change in control is the logical trigger for providing minority shareholders with a right to also participate in that sale). Others adopt lower thresholds of 10-25% (on the basis that anyone looking to exit a material portion of shares should also give others the same opportunity). [↑](#footnote-ref-18)
19. **Founders**: The term "Founders" is commonly used, but the arrangements in this section may sometimes extend to other "Key People" depending on the context. The arrangements set out in this section of the term sheet need to be carefully considered in the context of the investment. [↑](#footnote-ref-19)
20. **Founder Vesting**: The point of founder vesting is that it is unfair to the rest of the shareholders, particularly the other founders, if one founder leaves early on in the life of a company. Founder vesting allows the company to take back a portion of a founder’s shares if that founder leaves the company within the vesting period. The portion at risk is often negotiated, and is rarely 100%. A typical vesting period will be 3-4 years with 1/3 or 1/4 of founder shares vesting after 1 year (the vesting “cliff”), and the remaining founder shares vesting in equal monthly tranches over 2-3 years. Ideally multi-founder teams will have already agreed appropriate vesting arrangements at the outset of their venture but, if not, it is advisable to consider founder vesting at the time investment terms are being agreed. [↑](#footnote-ref-20)
21. **% of shares subject to vesting**: Excluding a percentage of each founder’s shares from the vesting arrangements is a common compromise agreed between parties where a company may have operated for longer period, or to which founders have contributed cash or significant IP developed prior to the commencement of the venture. [↑](#footnote-ref-21)
22. **Exclusive Period**: It may be appropriate for Investors to ask that the Company not enter into or negotiate investment with any other party for a designated period if they intend to take up the full round. This may a reasonable request, as the investors will be investing time in due diligence, legal fees, and resources to complete the transaction. In other cases, this section may not be appropriate and can be deleted. [↑](#footnote-ref-22)
23. **Legal Costs**: Term sheets will typically include a commitment from the company to reimburse the reasonable legal fees of the lead investor. This obligation is typically “capped” at a specific amount, but if the deal takes longer or requires more legal work than was expected, the cap may be subsequently revised by mutual agreement to take that into account. [↑](#footnote-ref-23)