



TERM SHEET Preferred Shares with Put-Call

This Term Sheet summarizes the principal terms of an investment by ABC ("ABC") into XYZ a [] company formed on [date] with an address at [] and any of its subsidiaries, affiliates and assigns; here after collectively referred to as ("XYZ").

Except for sections referring to "Exclusivity", "Confidentiality", "Fees and Expenses", and "Governing Law", which are intended to be, and are, binding agreements between XYZ and ABC (the "Parties"), in part in consideration of the time and expense already devoted, and anticipated to be devoted, by ABC, no other legally binding obligations are created until definitive agreements are executed and delivered by the parties.

Execution of this Term Sheet is not a commitment to invest by ABC, and is conditioned on the completion of due diligence, legal review and documentation that is satisfactory to ABC, including an acceptable Purchase Agreement which shall contain, among other things, appropriate representations and warranties by XYZ.

1. **Investment:**

Share Purchase: ABC will make an investment of \$[] in XYZ by purchasing from XYZ Preferred Shares representing approximately []% of XYZ's issued, authorized and outstanding Shares. The final percentage of XYZ will be determined after further due diligence and discussions among the Parties.

Share Price: XYZ's "Enterprise Value" shall be equal to [] times "EBITDA" (earnings before interest taxes depreciation and amortization) as of [], according to an Independent Auditor's (such auditor to be agreed by the parties, the "Independent Auditor") report following GAAP. The issued Share capital of XYZ will be valued at the Enterprise Value less any outstanding debt (the "Share Value"). ABC will purchase the Preferred Shares at a price equal to the "as converted" per share basis of the Share Value.

2. **Preferred Shares:**

(i) **Put:** ABC will have an option ("Put") to sell all of their Preferred Shares to XYZ from [] onward at a price which is the higher of:

[] times \$[]; or

The amount equal to [___] times XYZ's EBITDA per share in its most recent [___] complete consecutive financial quarters multiplied by the number of shares being sold by ABC.

If XYZ defaults on the purchase of the Put Shares, XYZ will promptly take such necessary actions make itself available for sale with a reputable investment bank and the proceeds of such sale will be distributed as described in below.

- (ii) Call: XYZ will have an option ("Call") to call for purchase of all of the Shares owned by ABC in full at any time at a price which is the higher of:
 - (x) [___] times the amount invested by ABC; or
 - (y) The amount equal to [___] times XYZ's EBITDA per share in its most recent [___] complete consecutive financial quarters multiplied by the number of shares being sold by ABC.
- (iii) Dividends: The Preferred Shares, on an "if converted basis", shall receive its prorata share of any dividends paid or other payments to shareholders, by XYZ.
- (iv) Conversion: The Preferred Shareholders shall have the right to convert their Preference Shares, at any time, into Common Shares of XYZ at a conversion rate of one Common Share for each Preference Share (the "Conversion Rate").
- (v) Anti-dilution Provisions: Any reorganisation of the Share capital of XYZ, including any share split or bonus issue, shall cause an appropriate adjustment to the Conversion Rate and to the payment of dividends. Additionally, in the event that XYZ issues additional Shares at a price less than the price paid by ABC for the each Preference Share as set out in this Term Sheet, the Conversion Rate shall be adjusted accordingly.
- (vi) Voting Rights: The Preference Shares shall vote on all matters requiring a vote of the Shareholders and at all shareholder meetings of XYZ together with the Common Shares as if they had been converted, and not as a separate class, except on matters that relate solely to the Preference Shares as a class.
- (vii) Election of Board Members: The Preference Shares as a class shall be entitled to elect [___] members of the Board of Directors of XYZ.
- (viii) Protective Provisions: The consent of the holders of at least [_____] of the Preference Shares shall be required for any action that (a) alters or changes the rights, preferences, or privileges of the Preference Shares; (b) increases or decreases the authorized number of shares of Preference Shares; (c) creates (by reclassification or otherwise) any new class or series of shares having rights, preferences, or privileges senior or pari passu to those of the

Preference Shares; (d) results in the redemption of any Common Shares (other than pursuant to employment agreements); (e) results in any merger, other corporate reorganization, change of control, or any transaction in which all or substantially all of the assets of XYZ are sold or exclusively licensed; (f) amends or waives any provision of XYZ's Articles; (g) increases or decreases the authorized size of XYZ's board; or (h) results in the payment or declaration of any dividend on any shares.

- (ix) **Liquidation:** In the event of any sale, liquidation, dissolution or winding up of XYZ, the proceeds, after repayment of any debt or other obligations of XYZ, the Preferred Shares shall be paid until they have received the greater of either the Call price as described above, or the "as converted" price.

3. **Board of Directors:**

The Board of XYZ shall be governed by:

- (i) **Appointment of Board Members:** The Board will consist of [__] directors, [__] appointed by the Preferred Shares and [__] appointed by the remaining shareholders.
- (ii) **Votes Requiring Preferred Board Member:** A vote of the Board will require approval by the Preferred appointee for approval of:
- (a) Hiring of all officers of XYZ;
 - (b) Any activity relating to the geographic expansion of XYZ which is anticipated to generate an annual cumulative expense of greater than \$[_____];
 - (c) Annual budgets, business plans, and financial plans;
 - (d) All real estate leases or purchases greater than \$[_____];
 - (e) Execution of loans or commitments, including capital equipment leases or purchases, with total value greater than \$[_____] per year and which are outside the most recent business plan or budget approved by the Board of Directors.
 - (f) Compensation programs including base salaries and bonus programs for all officers and key employees;
 - (g) All stock option programs as well as issuance of all stock and stock options.

4. **Exclusivity:**

XYZ agrees to work in good faith expeditiously with ABC towards a closing and that XYZ agree that they will not, for a period of [__] days from the date of execution of this Term Sheet, take any action to solicit, initiate, encourage or assist the submission of any proposal, negotiation or offer from any person or entity other than ABC relating to the sale or issuance, of any of the capital stock of XYZ and shall notify ABC promptly of any inquiries by any third parties in regards to the foregoing.

In the event that XYZ breaches this Exclusivity obligation and closes any of the above-referenced transactions without providing ABC the opportunity to invest on the same terms as the other parties

to such transaction, then XYZ shall pay to ABC all its material expenses and fees upon the closing of any such transaction as liquidated damages.

5. **Fees and Expenses:**

(i) In consideration of the time and expense already devoted, and anticipated to be devoted, by ABC, XYZ will pay ABC a transaction fee of \$[____], even though such transaction fee is not considered to fully compensate ABC fully for such time and expenses.

(ii) ABC and its legal counsel will draft the closing documents. XYZ will pay all legal and administrative costs of the Transaction at closing. XYZ will also pay, but no more than \$[____], of all reasonable fees and expenses of ABC's legal counsel and reasonable out of pocket expenses of ABC.

6. **Confidentiality:**

This Term Sheet and the Transaction shall be governed by the Confidentiality Agreement dated [_____].

7. **Governing Law:**

This Agreement shall be interpreted and construed both as to performance and validity in accordance with, and governed by, the laws of [_____], even if its choice of law provisions are in conflict with this requirement.

8. **Authority:**

Each party represents and warrants that its delivery of this Agreement has been duly authorized by all necessary corporate or other action and that the person signing the Agreement on its behalf is duly authorized to do so.

9. **Entire Agreement:**

This Agreement constitutes the entire agreement between the Parties hereto and supersedes all prior representations, agreements, understandings and arrangements, oral or written, between the Parties hereto with respect to the subject matter hereof. This Agreement may not be modified except by a writing that expressly refers to this Agreement and is executed by the Parties hereto.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.

ABC

XYZ

By: _____

By: _____

Name: _____

Name _____

Title: _____

Title: _____